



referred to as “the Parties”). *See Exhibit 1, ¶¶ 1, 7.* This case was originally filed in this Court on January 25, 2022. The case was removed to federal court on March 16, 2022. On December 2, 2022, the case was remanded to this Court agreement. The Parties now seek preliminary approval of a Settlement that provides a substantial relief to Class Members via direct checks and without the need to submit a claim form.

The Parties seek approval of a \$296,762.40 Settlement for a 330-person Settlement Class, or a gross amount of \$899.27 per person. *See Exhibit 1, ¶ 31.* After deduction of approved fees and costs, Class Members are projected to receive a direct check in the approximate amount of \$545. Class Members will have 120 days to cash their checks. *Id.* ¶ 39(c). Funds left over as a result of class members not cashing their settlement checks are allocated 50% to *cy pres* recipient Prairie State Legal Services. *Id.* The remaining 50% of the funds from uncashed checks shall be returned to the Defendant. *Id.*

The Settlement is fair, reasonable, and adequate, and provides a broad range of relief during a difficult time for many workers. The anticipated payments will hopefully provide much needed assistance. Given that the Class Members, non-exempt hourly workers, will receive direct checks while the country continues to recover from the effects of the COVID-19 Pandemic, the payment comes at an important time. The Court should grant preliminary approval and enter the Parties’ proposed Preliminary Approval Order attached as Exhibit 2 hereto and as Exhibit B to the Settlement Agreement.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Plaintiff’s Allegations Regarding BIPA**

The Illinois legislature passed BIPA in 2008 to provide individuals recourse when companies compromised their biometric information. *See Class Action Complaint; 740 ILCS 14/5.* Generally, BIPA makes it unlawful for any private entity to “collect, capture, purchase, receive

through trade, or otherwise obtain a person’s biometric identifier (defined as a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry) or biometric information (defined as information derived from biometric information), unless it first: (1) informs the subject . . . in writing that a biometric identifier or biometric information is being collected or stored; (2) informs the subject . . . in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; and (3) receives a written release executed by the subject of the biometric identifier or biometric information. 740 ILCS 14/15(b). BIPA also establishes standards for how companies must handle Illinois consumers’ biometric data. 740 ILCS 14/15(a). To enforce the statute, BIPA provides a civil private right of action and allows for the recovery of statutory damages in the amount of \$1,000 for negligent violations (or \$5,000 for intentional or reckless violations), plus attorney fees and costs. *See* 740 ILCS 14/20.

## **B. Background**

This action was started by Plaintiff, individually and as the representative of a class of allegedly similarly situated persons, by filing this action on January 25, 2022. Through informal discovery, Defendant identified 330 putative Class Members that utilized the Voice Technology System since January 25, 2017. *Id.* ¶ 7. Defendant identified and alleged facts that potentially support defenses relevant to the merits and to class certification.

First, this case involved the alleged use of a voice technology system in violation of BIPA. To date, no Court has issued a conclusive opinion on whether the voice technology used by Defendant qualifies as collection of biometric data. Plaintiff had also originally named Honeywell International, Inc. (“Honeywell”), whom he alleged to be the manufacturer of the subject headset, as a Respondent-In-Discovery. The Parties settled this action prior to engaging in substantive discovery in relation to Honeywell or any other third party for the Voice Technology System at issue.

Second, the Settlement Class consists of persons who used the Voice Technology System at Defendant's distribution center going back five years. *Id.*, ¶¶ 7-8. Of note, on September 17, 2021, the First District Appellate Court decided in the *Tims v. Black Horse Carriers, Inc.*, Case No. 1-20-0563 (1st Dist.) appeal that the five-year statute of limitations applies to Plaintiff's claims. However, the Illinois Supreme Court granted the *Tims* appellant's petition for leave to appeal. Oral argument took place in the *Tims* appeal on September 22, 2022. The Settlement here secures relief for employees of Defendant regardless of the outcome in *Tims*, for the longest possible limitations period of five years.

Given the potential risks, Plaintiff were open to settlement discussions. While Plaintiff was confident in the claims, an adverse ruling as to the issues would greatly limit or even gut this case, and there is a benefit to having a settlement now, rather than years from now.

### **III. TERMS OF THE SETTLEMENT AGREEMENT**

The terms of the Settlement are set forth in the attached agreement (attached hereto as Exhibit 1). The agreement's key terms include the following:

a. Certification of a Settlement Class. The Parties have stipulated to certification of a 735 ILCS 5/2-801 "Settlement Class" consisting of the following:

Class Members: All persons with last known addresses in Illinois employed by Defendant, at its distribution center located at 716 East 111<sup>th</sup> St., Chicago, IL 60628 from whom it allegedly collected, captured, purchased, received through trade, or otherwise obtained any information which is or could be covered by BIPA, including but not limited to any retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry, and/or any information, regardless of how it is captured, converted, stored, or shared, based on an individual's biometric identifier used to identify an individual based on any retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry, in

Illinois at any time from January 25, 2017 through the date of preliminary approval without first executing a written release. *Id.*, ¶ 8.

b. The Class Representative and Class Counsel. The Parties have agreed that Plaintiff is the “Class Representative” and that Plaintiff’s attorneys David J. Fish and Mara Baltabols of Fish Potter Bolaños, P.C. are “Class Counsel.” *Id.*, ¶¶ 9, 24.

c. Monetary Relief to Class Members. Defendant has agreed to provide \$296,762.40 (“Settlement Fund”) to pay Class Members, to pay the Service Award to the Class Representative, to pay attorneys’ fees and expenses to Class Counsel, and to pay settlement administration costs. *Id.*, ¶ 31.

(i) **Gross Settlement Fund**: The Gross Settlement Fund means a cash settlement fund from which the Settlement Administrator will establish from funds by Defendant in the total amount of \$296,762.40 or a gross amount of \$899.28 per person based upon an estimated Total Class Size of 330 Settlement Class Members. If additional Class Members are located prior to the check void date, the Gross Settlement Fund will increase \$899.28 for each additional Class Member over 330. *Id.*

d. Cy Pres. Class Members will have 120 days to negotiate Settlement Payments. Funds from uncashed checks from the Settlement Fund will be paid as follows: 50% going to Prairie State Legal Services as *cy pres* recipient and the remaining 50% of the uncashed checks shall be returned to the Defendant. *Id.*, ¶ 39(c).

e. Class Notice. The Parties have agreed to notify the Settlement Class about the proposed Settlement by sending the Notice by U.S. Mail and email, where email addresses are available. *Id.*, ¶ 49. The Settlement Administrator shall take all reasonable

steps to obtain contact information for Class Members. *Id.* The Parties' proposed Notice is attached to the Settlement as Exhibit A.

f. Settlement Administration.

(i) Direct Checks. Each class member will receive their net pro rata share of the Settlement Fund (the Settlement Fund minus their portion of the Incentive Award and Class Counsel's Requested Fees and Expenses), in the approximate amount of \$545.

(ii) The Settlement Administrator. Plaintiff has selected, and Defendant approved, Analytics Consulting, LLC as the Settlement Administrator.

g. Release. As explained in greater detail in the Agreement, the Settlement Class will release all claims that were brought or could have been brought in this action against Defendant and the other released parties about biometric identifiers or information purportedly collected by Defendant. *Id.* ¶¶ 27-28.

h. Attorney's Fees and Expenses and Class Representative Service Award. At the final approval hearing, as indicated in the class Notice, Class Counsel will apply to the Court to approve an award of attorney's fees and expenses equal to thirty-five percent (35%) of the Settlement Fund (approximately \$103,866.84), and expenses, including but not limited to the cost of Settlement administration (estimated to be \$6,917.00). *Id.* ¶ 63. Class Counsel will also ask the Court to approve the Service Award of \$5,000 for the Class Representative. *Id.* ¶ 66.

**IV. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES.**

A party seeking class certification must demonstrate that the proposed settlement class satisfies the factors enumerated in 735 ILCS 5/2-801 by showing that (1) the class is so numerous

that joinder of all members is impracticable, (2) common questions of law and fact predominate over any questions affecting only individual interests of the class members, (3) the representative parties fairly and adequately protect the interests of the class, and (4) class treatment is an appropriate method for the fair and efficient adjudication of the controversy. 735 ILCS 5/2-801; *see Cruz v. Unilock Chicago, Inc.*, 383 Ill. App. 3d 752, 760–61 (2d Dist. 2008).

**A. The Numerosity Requirement is Satisfied.**

Section 2-801’s first requirement—numerosity—is satisfied where the class is so numerous that joinder of all members is “impracticable,” *Bueker v. Madison Cty.*, 2016 IL App (5th) 150282, ¶ 23, and attempting to do so would “render the suit unmanageable.” *Gordon v. Boden*, 224 Ill. App. 3d 195, 200 (1st Dist. 1991).

Here, the Settlement Class readily satisfies the numerosity requirement. Defendant allegedly used a Voice Technology System within the most generous statute of limitations (going back 5 years). Because the proposed Settlement Class is comprised of approximately 330 members, the numerosity requirement is satisfied. *See Cruz*, 383 Ill. App. 3d at 771; *CE Design Ltd. v. C & T Pizza, Inc.*, 2015 IL App (1st) 131465, ¶ 28.

**B. Common Issues of Fact and Law Predominate.**

The second requirement is whether “questions of fact or law common to the class . . . predominate over any questions affecting only individual members.” 735 ILCS 5/2-801(2). Common questions typically predominate when a defendant has engaged in standardized conduct towards the proposed class. *See Miner v. Gillette Co.*, 87 Ill. 2d 7, 17 (1981); *McCarthy v. LaSalle Nat’l Bank & Trust Co.*, 230 Ill. App. 3d 628, 634 (1st Dist. 1992).

Plaintiff and the proposed Settlement Class’s claims are based upon the same common contention and course of conduct by Defendant: Plaintiff alleges that Defendant violated BIPA by collecting using a voice technology system without obtaining informed written consent. Thus,

Plaintiff asserts that this contention raises several issues of law and fact common to the Settlement Class, including: (1) whether Defendant collected, captured, or otherwise obtained Plaintiff and the class's biometric identifiers or information (as defined by 740 ILCS 14/10); (2) whether Defendant properly informed Plaintiff and the class of its purposes for allegedly collecting, using, and storing their biometric information, 740 ILCS 14/15(b); (3) whether Defendant obtained a written release to allegedly collect, use, and store Plaintiff's and the class's biometric information, *id.*; (4) whether Defendant had a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying alleged biometric information, 740 ILCS 14/15(a); (5) and whether Defendant's alleged violations of BIPA were committed negligently, 740 ILCS 14/20 (an aggrieved party may recover damages "against a private entity that negligently violates a provision of this Act . . ."). Since Plaintiff submits that each of these questions will prove to have a common, class-wide answer, the commonality and predominance requirements are satisfied.

**C. The Adequacy Requirement is Satisfied.**

The third prerequisite is that "[t]he representative parties will fairly and adequately protect the interests of the class." 735 ILCS 5/2-801(3). To represent a class, a class representative must (1) be a member of the class and (2) establish that they are not seeking relief potentially antagonistic to the absent class members. *Ramirez v. Smart Corp.*, 371 Ill. App. 3d 797, 810 (2007), *overruled on other grounds by McIntosh v. Walgreens Boots All., Inc.*, 2019 IL 123626, 135 N.E.3d 73. Attorneys seeking to represent the proposed class must also be adequate. *Id.* Counsel is deemed adequate if they are "qualified, experienced and generally able to conduct the proposed litigation." *Id.*

Both Plaintiff and proposed Class Counsel will adequately represent the Settlement Class. Plaintiff is a class member who contend he suffered the same alleged injury as every other member

and has interests in redressing Defendant's alleged violations of BIPA that are identical to the interests of all other Class Members. Thus, Plaintiff does not have any interests antagonistic to those of the proposed Settlement Class—their pursuit of this litigation under this minimally-tested and still-evolving statutory regime should be clear evidence of that.

Likewise, proposed Class Counsel have experience in litigating class actions of similar size, scope, and complexity to the instant action. Plaintiff asserts that proposed Class Counsel is made up of experienced class action attorneys who have put ample time and resources behind the prosecution of the claims in this case and who have already prosecuted many cases under BIPA.

Proposed Class Counsel Fish Potter Bolaños, P.C. is an experienced class action and employment law firm. *See* Declaration of Mara Baltabols (“Baltabols Decl.”), attached hereto as Exhibit 3. With respect to BIPA litigation, its attorneys have been involved in over 100 cases and have helped recover tens of millions of dollars for Illinois residents for biometric-related litigation. *See, e.g., Crumpton v. Octapharma Plasma*, 19-cv-8402 (N.D. Ill.) (\$9.9 million); *Philips v. Biolife Plasma*, 2020 CH 5758, (Cir. Ct. Cook Cnty.) (\$5.98 million); *O’Sullivan, et. al. v. WAM Holdings, Inc.*, 2019-CH-11575 (Cir. Ct. Cook Cnty.) (\$5.85 million); *Davis v. Heartland Emp. Servs.*, No. 19-cv-00680, dkt. 130 (N.D. Ill.) (\$5.4 million); *Johnson v. Resthaven/Providence Life Servs.*, 2019-CH-1813 (Cir. Ct. Cook Cnty.) (\$3 million); *Burlinski v. Top Golf USA*, No. 19-cv-06700, dkt. 103 (N.D. Ill.) (\$2.6 million); *Diller v. Ryder Integrated Logistics*, 2019-CH-3032 (Cir. Ct. Cook Cnty.) (\$2.25 million); *Jones v. Rosebud Rests., Inc.*, 2019 CH 10620 (Cir. Ct. Cook Cnty.) (\$2.1 million).

Plaintiff will fairly and adequately protect the interests of the class, and the Settlement Class is amply represented by qualified counsel, therefore, the adequacy requirement is satisfied.

#### **D. The Appropriateness Requirement is Satisfied.**

The fourth requirement is that a “class action is an appropriate method for the fair and efficient adjudication of the controversy.” 735 ILCS 5/2-801(4). In making that determination, courts consider “whether a class action can best secure the economies of time, effort, and expense or accomplish the other ends of equity and justice that class actions seek to obtain.” *Ramirez*, 378 Ill. App. 3d at 56. Importantly, “[w]here the first three requirements for class certification have been satisfied, the fourth requirement may be considered fulfilled as well.” *Id.*

Plaintiff contends that a class action is the most appropriate method of resolving this controversy because it allows the Court to swiftly evaluate common issues surrounding Defendant’s alleged voice technology practices in a single proceeding, generating a uniform result that will apply to all similarly situated persons. *Suchanek v. Sturm Foods, Inc.*, 764 F.3d 750, 759 (7th Cir. 2014) (quoting *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 615 (1997)). A class action is appropriate here because it allows the Class Members to aggregate relatively modest individual claims potentially worth just \$1,000 in statutory damages. *See* 740 ILCS 14/20(1). By comparison, the cost of litigating BIPA claims on an individual basis would be prohibitively expensive. *See Cruz*, 383 Ill. App. 3d at 780.

#### **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT.**

A class action settlement should be approved when it is fair and reasonable and in the best interests of all those affected by it. *GMAC Mortgage Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 493 (1st Dist. 1992). The trial court’s decision may be reversed only on a clear showing that the trial court was guilty of an abuse of discretion. *Steinberg v. System Software Assoc., Inc.*, 306 Ill. App. 3d 157, 169 (1st Dist. 1999).

Illinois courts recognize that “[a] settlement compromising conflicting positions in class action litigation serves the public interest.” *Langendorf v. Irving Trust Co.*, 244 Ill. App. 3d 70, 78

(1st Dist. 1992). “The strength of plaintiff’s case on the merits balanced against the settlement amount is the most important factor in determining whether a settlement should be approved.” *Steinberg*, 306 Ill. App. 3d at 170. Here, although Plaintiff were confident that they would prevail on the merits, Plaintiff nevertheless recognizes that absent the Settlement, the Settlement Class may have been deprived of any potential relief.

Defendant has a number of arguments against liability. In light of the significant potential statutory damages at issue, Defendant would likely be motivated to appeal adverse decisions on the merits and class certification.

Plaintiff and proposed Class Counsel believe the Settlement represents an excellent result for the Class. Class Members will receive a substantial check without the need to submit a claim form. Some other BIPA cases have been for zero cash and given the class only credit monitoring. *See, e.g., Carroll v. Crème de la Crème, Inc.*, 2017-CH-01624 (Cir. Ct. Cook Cty. Jun. 6, 2018). Others have required class members to make claims in order to receive relief that is capped at a lower amount, with the inevitable remaining settlement funds reverting to the defendant. *E.g., Marshall v. Lifetime Fitness, Inc.*, 2017-CH-14262 (Cir. Ct. Cook Cty.) (\$270 per claimant with credit monitoring, reverting funds to defendant).

## **VI. THE PROPOSED NOTICE PLAN SHOULD BE APPROVED**

In Illinois, “whether notice is to be given at all and the kind of notice which may be required are matters for a trial court’s discretion.” *Carrao v. Health-Care Service Corp.*, 118 Ill. App. 3d 417, 4290 (1st Dist. 1983). Section 2-803 of the Code of Civil Procedure provides:

Upon determination that an action may be maintained as a class action, or at any time during the conduct of the action, the court in its discretion may order such notice that it deems necessary to protect the interests of the class and the parties.

The Parties propose to notify the Settlement Class by U.S. Mail and email, where email addresses are available. Class counsel will also maintain a Settlement Website with a detailed

Notice and relevant documents. The Notice plan thus effectuates direct notice to all Class Members reasonably identified by Defendant's records and fully apprises Class Members of their rights. It comports with the requirements of due process and Section 5/2-801. *See, e.g., Currie v. Wisconsin Cent., Ltd.*, 2011 IL App (1st) 103095, ¶ 55.

The class Notice is attached to the Settlement as Exhibit A informing the Settlement Class about the Settlement terms, providing the website with information on the Settlement, and identifying the relevant dates. In the context of a proposed Settlement, the notice need not contain every term of the proposed settlement so long as it contains information about how to obtain the terms and fairly summarizes them. *GMAC Mortgage*, 236 Ill. App. 3d at 492.

## **VII. CONCLUSION**

WHEREFORE, Plaintiff respectfully requests that the Court preliminarily approve the Parties' proposed Settlement, approve and order the dissemination of the class Notice, and set a date for the final approval hearing, which will be noticed in the class Notice. A proposed Order Preliminarily Approving Class Action Settlement is attached hereto as Exhibit 2.

Dated: December 23, 2022

Respectfully submitted,

Ricky Jones, individually and on behalf of  
all others similarly situated,

/s/ Mara Baltabols

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*Attorneys for Plaintiff and the Settlement Class*

**CERTIFICATE OF SERVICE**

I, Mara Baltabols, an attorney, hereby certify that the foregoing was served on all counsel of record through service generated by the Court's e-filing system and via electronic mail on December 23, 2022.

/s/ Mara Baltabols

Hearing Date: 1/3/2023 9:30 AM - 9:35 AM  
Location: <<CourtRoomNumber>>  
Judge: Calendar, 8

FILED  
12/27/2022 12:00 AM  
IRIS Y. MARTINEZ  
CIRCUIT CLERK  
COOK COUNTY, IL  
2022CH00606  
Calendar, 8  
20793830

FILED DATE: 12/27/2022 12:00 AM 2022CH00606

# EXHIBIT 1

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement” or “Settlement Agreement”) is entered into by and between Plaintiff Ricky Jones (“Plaintiff”) individually and on behalf of the Settlement Class, and Defendant Whole Foods Market Group, Inc. (“Defendant”) and in the case of *Ricky Jones v. Whole Foods Market Group, Inc.*, Case No. 22-CV-01389, currently pending in United States District Court for the Northern District of Illinois, Eastern Division, Cook County, Illinois. Plaintiff and Defendant are each referred to as a “Party” and are collectively referred to herein as the “Parties.”

### **I. FACTUAL BACKGROUND AND RECITALS**

1. On January 25, 2017, Plaintiff filed a class action complaint against Defendant alleging violations of the Illinois Biometric Information Privacy Act, 740 ILCS § 14/1, *et seq.* (“BIPA”) in the United States District Court for the Northern District of Illinois, Eastern Division, Cook County, Illinois with respect to its alleged use of voice technology.

2. Following arms-length negotiations, the Parties now seek to enter into this Settlement Agreement. Plaintiff and Class Counsel 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 Plaintiff and the Settlement Class recognizing: (i) the existence of complex and contested issues of law and fact; (ii) the risks inherent in litigation; (iii) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement; and (iv) 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.

3. Defendant denies all allegations of wrongdoing or liability for the claims asserted in the Action. Neither the fact of Settlement, nor the Settlement Agreement, nor any other Settlement documents, including this Settlement Term Sheet and communications in relation to the Settlement, shall be offered, used or received in any other case or proceeding for any purpose, whether as an argument, admission, concession, evidence or otherwise, including, but not limited to, relating to the validity of any claim or defense asserted in the Action, the truth of any fact alleged by any Party, or the appropriateness of class certification, and/or as evidence of any admission by Defendant of any liability with respect to any claim for damages or other relief, or of any admission by Named Plaintiff that he would not have prevailed on liability on any of his claims. Any representation that could be construed as a stipulation or admission by Defendant or Named Plaintiff contained in any document pertaining to the Settlement is made for settlement purposes only. In the event the Court does not enter Final Approval of the Settlement, nothing contained herein shall be construed as a waiver by Defendant of any arguments against class certification, liability, and relief in this Action or any other case or proceeding, or by Named Plaintiff of his contention that class certification is appropriate in the Action or in any other case or proceeding. Defendant does not consent to certification of the

Settlement Class for any purpose other than to effectuate the Settlement. If the Court does not enter Final Approval, or if for any other reason Final Approval of the Settlement does not occur, including, without limitation, because the Settlement Agreement is lawfully terminated, is successfully objected to, or successfully challenged on appeal, any certification of any Settlement Class will be vacated and deemed null and void, the Parties will be returned to their positions with respect to the Action as if the Settlement Agreement had not been entered into, and the fact of certification shall not be cited to by the Parties, used on behalf of any Party for any purpose, or be admissible in any proceeding for any purpose or with respect to any issue, substantive or procedural, including, but not limited to, whether any group of individuals exists to maintain a class action under Illinois law, Rule 23 of the Federal Rules of Civil Procedure, or comparable state laws or rules.

4. The Parties are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in their respective best interests considering the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement.

5. 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 Underlying Action be settled and compromised, and that the Releasors release the Released Parties of the Released Claims, without costs as to Released Parties, Plaintiff, 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:

6. “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.

7. “Voice Technology System” shall mean the voice technology allegedly used by Defendant in Illinois at any time from January 25, 2017 to date the preliminary approval order is entered.

8. “Class,” “Settlement Class,” “Class Member,” or “Settlement Class Member” shall mean all persons with last known addresses in Illinois employed by Defendant, Whole Foods Market Group, Inc. (“Defendant”), at its distribution center located at 716 East 111<sup>th</sup> St., Chicago, IL 60628 from whom it allegedly collected, captured, purchased, received through trade, or otherwise obtained any information which is or could be covered by the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.* (“BIPA”), including but not limited to any retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry, and/or any information, regardless of how it is captured,

converted, stored, or shared, based on an individuals' biometric identifier used to identify an individual based on any retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry, in Illinois at any time from January 25, 2017 through the date of preliminary approval without first executing a written release ("the Settlement Class" or "Settlement Class Members").

9. "Class Counsel" shall mean David Fish, Mara Baltabols, or any other attorney from Fish Potter Bolaños, P.C.

10. "Counsel" or "Counsel for the Parties" means both Class Counsel and Defendant's Counsel, collectively.

11. "Court" shall mean the United States District Court for the Northern District of Illinois, Eastern Division, the Circuit Court of Cook County, or any other court presiding over the Action

12. "Defendant" shall mean Whole Foods Market Group, Inc.

13. "Defendant's Counsel" shall mean Joel Griswold or another attorney from the law firm of Baker & Hostetler LLP.

14. "Effective Date" means the date on which the Final Order and Judgment becomes "Final," which shall be one business day after the latest of the following events: (a) the date upon which the time expires for filing or noticing any appeal of the Court's Final Approval Order; (b) if there is an appeal or appeals, the date of completion, in a manner that finally affirms and leaves in place the Final Order and Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (c) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari.

15. "Fee Award" means the amount of attorneys' fees and reimbursement of expenses awarded by the Court to Class Counsel.

16. "Fee and Expense Application" shall mean the motion to be filed by Class Counsel, in which they seek approval of an award of attorneys' fees, costs, and expenses.

17. "Final Approval Hearing" means the hearing before the Court where the Plaintiff will request a judgment to be entered by the Court approving the Settlement Agreement, approving the Fee Award, and approving the Service Award to the Class Representative.

18. "Final Approval Order" shall mean an order that is entered by the Court and in a form that is mutually agreeable to the Parties, approves the Settlement Agreement as

fair, reasonable, and adequate and in the best interests of the Class as a whole, dismisses the Action in its entirety and with prejudice and makes such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Agreement.

19. “Service Award” shall have the meaning ascribed to it as set forth in Section XV of this Agreement.

20. “Underlying Action,” “Action,” or “Litigation” shall mean the lawsuit styled *Ricky Jones v. Whole Foods Market Group, Inc.*, currently pending in the Court.

21. “Notice” shall mean the direct notice of this proposed Settlement, which is to be provided substantially in the manner set forth in this Agreement and Exhibit A and is consistent with the requirements of Due Process.

22. “Objection/Exclusion Deadline” means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a person within the Settlement Class must be postmarked and/or filed with the Court, which shall be designated as a date approximately 45 days after entry of the Preliminary Approval Order, or such other date as ordered by the Court.

23. “Parties” shall mean the Defendant and Plaintiff, collectively.

24. “Plaintiff” or “Class Representative” shall mean the named class representative, Ricky Jones, and their heirs, successors and assigns.

25. “Preliminary Approval Order” shall mean the Court's Order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing notice of the Settlement to the Settlement Class substantially in the form of the Notice set forth in this Agreement.

26. “Related Actions” shall mean any proceedings, other than the Underlying Action, that allege that Defendant violated BIPA or any related statutes or common law claims, that were or could have been brought by a Plaintiff who would be a Class Member.

27. “Released Claims” shall mean all claims, suits, actions, controversies, demands, and/or causes of action arising out of, related to, or connected with the Class Action Complaint in this lawsuit, including allegations that Defendant improperly collected, captured, stored, used, possessed, transmitted, or disclosed workers’ biometric identifiers and information in connection with the use of the Voice Technology System since January 25, 2017, including but not limited to claims arising under the Biometric Information Privacy Act, and any related local, state, or federal law claims, as well as related claims for liquidated damages, penalties, attorneys' fees and costs, expenses, and interest.

28. “Released Parties” shall refer, jointly and severally, and individually and collectively to, Defendant, including its predecessors, successors and assigns, and Defendant’s current and former, direct and indirect, owners, parents, subsidiaries, divisions, holding companies, principals, members, trustees, administrators, executors, officers, directors, managers, shareholders, employees, board members, partners, limited partners, attorneys, accountants, financial and other advisors, investment bankers, insurers, reinsurers, underwriters, lenders, benefit plans, estates, trusts, beneficiaries, landlords, vendors, licensees, lessors, lessees, sub-lessees, tenants, franchisees, franchisors, and joint venturers.

29. “Releasors” shall refer, jointly and severally, and individually and collectively, to the Named Plaintiff, Settlement Class members, and to each of their heirs, spouses, executors, administrators, beneficiaries, conservators, assigns and anyone claiming by, through, under, in concert with, or on behalf of them.

30. “Settlement Administrator” means, subject to Court approval and approval of Defendant (which will not unreasonably be withheld), the entity selected and supervised by the Parties’ Counsel to administer the Settlement.

31. “Gross Settlement Fund” The Gross Settlement Fund means a cash settlement fund from which the Settlement Administrator will establish from funds by Defendant in the total amount of \$296,762.40 or a gross amount of \$899.28 per person based upon an estimated Total Class Size of 330 Settlement Class Members. If additional Class Members are located prior to the check void date, the Gross Settlement Fund will increase \$899.28 for each additional Class Member over 330.

### **III. SETTLEMENT CLASS CERTIFICATION**

32. For the purposes of the Settlement only, the Parties stipulate and agree that: (1) the Class shall be certified in accordance with the definition contained herein; (2) Plaintiff shall represent the Class for settlement purposes and shall be the Class representative; and (3) Plaintiff’s Counsel shall be appointed as Class Counsel.

33. Defendant does not consent to certification of the Class for any purpose other than to effectuate the Settlement. If the Court does not enter final approval of the Settlement, or if for any other reason final approval of the Settlement does not occur, is successfully objected to, or challenged on appeal, any certification of any Class will be vacated and the Parties will be returned to their positions with respect to the Action as if the Agreement had not been entered into. In the event that final approval of the Settlement is not achieved or the Settlement is not Final: (i) any Court orders preliminarily or finally approving the certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (ii) the fact of the settlement reflected in this Agreement, that Defendant did not oppose the certification of a Class under this Agreement, or that the Court preliminarily approved the certification of a Class, shall not be used or cited thereafter by any person or entity,

including in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class.

34. Subject to Court approval, the following Settlement Class shall be certified for settlement purposes only:

All persons with last known addresses in Illinois employed by Defendant, Whole Foods Market Group, Inc. (“Defendant”), at its distribution center located at 716 East 111<sup>th</sup> St., Chicago, IL 60628 from whom it allegedly collected, captured, purchased, received through trade, or otherwise obtained any information which is or could be covered by the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.* (“BIPA”), including but not limited to any retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry, and/or any information, regardless of how it is captured, converted, stored, or shared, based on an individuals’ biometric identifier used to identify an individual based on any retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry, in Illinois at any time from January 25, 2017 through the date of preliminary approval without first executing a written release.

35. Excluded from the Settlement Class are all persons who elect to exclude themselves from the Settlement Class and the legal representatives, heirs, successors or assigns of any such excluded persons, and the Court and staff to whom this case is assigned, and any member of the Court’s or staff’s immediate family.

36. Plaintiff will dismiss the action pending in the United States District Court for the Northern District of Illinois without prejudice and refile the action in Illinois State Court, where he will seek entry of a Preliminary Approval Order and entry of a Final Approval Order approving of this Settlement Agreement. If, for any reason, the Settlement is not approved, the Court does not grant preliminary and/or final approval, or a Final Settlement and resolution is not reached, Defendant’s agreement to certification of the Settlement Class shall not be used for any purpose, including in any request for class certification in the Underlying Action or any other proceeding.

#### **IV. SETTLEMENT OF UNDERLYING ACTION AND ALL CLAIMS AGAINST RELEASED PARTIES**

Subject to Final Approval of the Settlement by the Court, Releasors will, upon the Effective Date, fully and completely, finally and forever release, acquit, relinquish and completely discharge the Released Parties from any and all claims, suits, actions, controversies, demands, and/or causes of action, premised upon statute, contract, common law or otherwise, whether seeking liquidated or actual damages, penalties, specific performance, injunctive relief, declaratory relief, attorneys’ fees, costs, interest or any other relief whatsoever, against Defendant or other Released Parties that arise out of, relate to, or are connected with alleged violation of or non-compliance with BIPA, alleged

biometric identifiers, including, but not limited to any retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry, alleged biometric information, including, but not limited to, any information, regardless of how it is captured, converted, stored, or shared, based on an individuals' retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry used to identify an individual, or other alleged biometric data, whether pursuant to BIPA or any other federal, state or local law, including common law, regardless of whether such causes of action or claims are known or unknown, filed or unfiled, asserted or unasserted, and/or existing or contingent ("Released Claims"). All Settlement Class Participants are bound by the foregoing release whether or not their Settlement Award checks are timely cashed. The only Settlement Class Members not subject to the foregoing release are those who timely and validly exclude themselves from the Settlement.

As consideration for payment of the Service Award, the Named Plaintiff, on behalf of himself, his heirs, and assigns, hereby forever discharges and releases Released Parties, individually and collectively, from all Claims. Claims refer to and include any and all pending or future claims, charges, demands, causes of action, damages, complaints, expenses, and compensation which the Named Plaintiff now has or may in the future have, or which any person or entity may have on his behalf:

- (a) relating to or arising out of any matter or thing which has happened, developed, or occurred before the date of this Agreement;
- (b) relating to Named Plaintiff's work with Released Parties, end of his work relationship with Released Parties, and his other relationships and dealings with Released Parties,;
- (c) for retaliation of any kind;
- (d) for harassment of any kind;
- (e) arising out of or under the common law, contract, or tort; and
- (f) any other claims that may have arisen under any federal, state, or local employment law, including, but not limited to, claims arising under the BIPA, Uniform Trade Secrets Act, the Civil Rights Act of 1964 ("Title VII"), the Civil Rights Acts of 1866, 1871, and 1991, the Equal Pay Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Family and Medical Leave Act, the Fair Labor Standards Act, the Employee Retirement Income Security Act, the Rehabilitation Act, the Uniformed Services Employment and Reemployment Rights Act, Consolidated Omnibus Budget Reconciliation Act ("COBRA"), Davis-Beacon Act, Drug Free Workplace Act of 1988, Electronic Communications Privacy Act of 1986, Employee Polygraph Protection Act of 1988, Fair Credit Reporting Act, Federal Omnibus Crime Control and Safe Streets Act of 1968, the Hate Crimes Prevention Act of 1999, The Occupational Safety and Health Act, Omnibus Transportation Employee Testing Act of 1991, Privacy Act of 1993, The Sarbanes-Oxley Act, Veterans Reemployment Rights Act, Worker Adjustment and Retraining Notification Act ("WARN"), and any other federal, state, including Illinois statutory, or local statute, law, rule, regulation, or ordinance relating to employment, the creation of the employment relationship, employment discrimination, employment benefits, wage and hour, compensation, or employment law, privacy, and all other statutory and common law claims relating to his employment.

Named Plaintiff waives, discharges and releases Released Parties from any damages or relief of whatever nature or description, including, but not limited to, compensatory and punitive damages and equitable forms of relief, as well as any claim for attorneys' fees or costs, related to any Claims. **NAMED PLAINTIFF FURTHER ACKNOWLEDGES AND AGREES THAT THIS IS A GENERAL RELEASE & WAIVER AND THAT, BY SIGNING THIS AGREEMENT, HE IS SIGNING AND AGREEING TO SUCH A GENERAL RELEASE & WAIVER.**

**V. SETTLEMENT AMOUNT AND ALLOCATION**

**37. Establishment of Settlement Fund**

a. Within seven (7) days of the Effective Date, Defendant shall pay the total sum of the Settlement Fund to the Settlement Administrator. Provided that this Agreement is finally approved by the Court without material change, material amendment, or material modification, the Settlement Fund will be used to satisfy all payments contemplated by this Agreement in exchange for a comprehensive release and the covenants set forth in this Agreement, including, without limitation, a full, fair and complete release of all Released Parties from Released Claims, and dismissal of the Underlying Action with prejudice.

b. The funds provided by Defendant 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.

c. If a Final Approval Order is not entered by the Court finally approving the Settlement, or if this Settlement does not become Final, the Settlement Fund and interest earned thereon belongs to Defendant, less any Administrative Expenses paid to date. Plaintiff 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. The Settlement Fund shall be used to pay (i) Settlement Class Members; (ii) Service Award to the Class Representative; (iii) the Fee Award; and (iv) costs of administration of the Agreement to the Settlement Administrator, including without limitation payment of Administrative Expenses. Any remaining funds will be paid as provided for in paragraph 39(c) below.

e. Administrative Expenses, and any award of attorneys' fees or any other fees, costs, or benefits otherwise awarded in connection with the Settlement Agreement, shall be payable solely out of the Settlement Fund.

f. The Settlement Fund represents the total extent of the Released Parties' monetary obligations under the Settlement Agreement. Defendant's contribution to the Settlement Fund shall be fixed under this Section and be final. Released Parties shall have

no 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.

**38. Steps Necessary to Obtain Preliminary Approval by the Court**

**a. Unopposed Motion for Preliminary Approval of the Settlement by the Court.**

i. Plaintiff will file the Parties joint motion for an order conditionally certifying the Class for settlement purposes, giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the “Unopposed Motion for Preliminary Approval”).

ii. At the hearing on the Joint Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the Joint Motion for Preliminary Approval, and submit a proposed order granting conditional certification of the Class and preliminary approval of the Settlement; appointing the Class Representative and Class Counsel; approving the forms of notice to the Class of the Settlement; and setting the Final Approval Hearing.

iii. For the purposes of the Settlement and the proceedings contemplated herein only, the Parties stipulate and agree that the Class shall be conditionally certified in accordance with the definition contained above, that Plaintiff shall be conditionally appointed class representative for the Class, and that Plaintiff’s Counsel shall be conditionally appointed as counsel for the Class. Should the Court decline to preliminarily approve any aspect of the Settlement, the Parties shall attempt to renegotiate those aspects of the Settlement in good faith, with the mutual goal of attempting to reach an agreement as close to this Settlement as possible and will then submit the renegotiated Settlement to the Court for preliminary approval. If the Parties are unable to reach an agreement on a subsequent settlement or obtain preliminary approval of a Settlement after attempting to renegotiate, the Settlement will be null and void, and the Parties will have no further obligations under it, and the Parties will revert to their prior positions in the Action as if the Settlement had not occurred.

**39. Direct Checks Without a Claims Process.**

a. Settlement Class Members do not need to submit a claim form or any information to participate in the Settlement or to otherwise receive payments from the Settlement Fund. Payments to Settlement Class Members will be paid pro rata via direct checks from a Net Settlement Fund to all Settlement Class Members who do not timely opt out of the settlement. The Net Settlement Fund is the Gross Settlement Fund minus Court awarded amounts for Settlement Administration Expenses, Named Plaintiff’s Service Award, and Class Counsel’s attorneys’ fees and costs. Payment will be made via direct checks to Settlement Class Members.

b. The Settlement Administrator shall notify the Parties that Settlement Class Members have been paid within five (5) business days of the last such payment.

c. In the event that checks sent to Settlement Class Members are not cashed within 120 days from the date of issuance, whether because the checks were not received or otherwise, those checks will become null and void, and 50% of such funds shall be distributed *cy pres* to Prairie State Legal Services, and the other 50% shall be distributed to Defendant, subject to approval of the Court.

## **VI. PROSPECTIVE RELIEF**

40. Without admitting any liability or that it is required by law to do so, Defendant agrees to undertake the following practices, if any: Defendant agrees that, on or before the Effective Date, it shall implement procedures, if any, to comply with the BIPA should it continue to utilize the Voice Technology System in Illinois or unless/until the BIPA is found by a court or the legislature to no longer be in effect or to be otherwise unenforceable. Alternatively, Defendant agrees that, on or before the Effective Date, it shall discontinue the use of the Voice Technology System in the State of Illinois and implement procedures for the destruction of the biometric data previously collected in compliance with the BIPA.

## **VII. RELEASE**

41. 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, Released Parties shall be completely released, acquitted, and forever discharged from any and all Released Claims.

42. As of the Effective Date, and with the approval of the Court, all Releasers hereby fully, finally, and forever release, waive, discharge, surrender, forego, give up, abandon, and cancel any and all Released Claims against Released Parties. As of the Effective Date, all Releasers will be forever barred and enjoined from prosecuting any action against the Released Parties asserting any and/or all Released Claims.

43. Each Releaser 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.

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

44. This Settlement shall be subject to approval of the Court. The Parties shall have the right to withdraw from the Settlement if the Court does not approve the Settlement.

45. Plaintiff, through Class Counsel, shall submit this Agreement, together with its Exhibits, to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement, certification of the Settlement Class, appointment of Class Counsel and the Class Representative, and entry of the Preliminary Approval

Order, substantially in the form of Exhibit B, which order shall seek a Final Approval Hearing date and approve the Notices for dissemination in accordance with the Notice plan.

46. At the time of the submission of this Settlement Agreement to the Court as described above, the Parties shall request that, after Notice is given, the Court hold a Final Approval Hearing approximately ninety (90) days after entry of the Preliminary Approval Order and approve the settlement of the Underlying Action as set forth herein.

47. At least seven (7) days prior to the Final Approval Hearing, or by some other date if so directed by the Court, Plaintiff will move for: (i) final approval of the Settlement; (ii) final appointment of the Class Representative and Class Counsel; and (iii) final certification of the Settlement Class, including for the entry of a Final Order and Judgment identical in all material respects to the proposed Final Order and Judgment attached hereto as Exhibit C, and file a memorandum in support of the motion for final approval.

#### **IX. NOTICE TO PROPOSED SETTLEMENT CLASS MEMBERS**

##### **48. List or Other Means of Class Identification.**

Within fourteen (14) days after entry of the Preliminary Approval Order, Defendant will provide an Excel spreadsheet to the Settlement Administrator with names, last known addresses, and the last four digits of their social security numbers (if necessary to track down a class member) and last known phone numbers (if available) and last known email addresses (if available) of the Named Plaintiff and the Settlement Class Members. Defendant will provide an Excel spreadsheet to Plaintiff's counsel with the names and last known addresses of the Named Plaintiff and the Settlement Class members.

##### **49. Type of Notice Required**

a. The Notice, which shall be substantially in the form of Exhibit A hereto, shall be used for the purpose of prior to the Final Approval Hearing, informing proposed Settlement Class Members that there is a pending settlement and advise them regarding how to: (a) protect their rights regarding the settlement; (b) request exclusion from the Settlement Class and the proposed settlement, if desired; (c) object to any aspect of the proposed settlement, if desired; and (d) participate in the Final Approving Hearing, if desired. The Notice shall make clear the binding effect of the settlement on all persons who do not timely request exclusion from the Settlement Class.

b. Dissemination of the Notice shall be the responsibility of the Settlement Administrator. The text of the Notice shall be agreed upon by the Parties and shall be substantially in the forms attached as Exhibit A hereto.

c. Individual Notice (substantially in the form of Exhibit A shall) be sent via Direct mail, and via email where available Distribution shall be the responsibility of the Settlement Administrator. The text of the Notice shall be agreed upon by the parties.

## 50. Notice Deadline

a. Within 21 days of entry of the Preliminary Approval Order, the Settlement Administrator shall disseminate by U.S. Mail the Notice, and email where available, in the form of Exhibit A to Settlement Class Members identified on the Class List.

## X. EXCLUSIONS

### 51. Exclusion Period

a. Settlement Class Members will have up to and including forty-five (45) days following the Preliminary Approval Order to exclude themselves from the Settlement in accordance with this Section. If the Settlement is finally approved by the Court, all Settlement Class Members who have not opted out by the end of the Objection/Exclusion Deadline will be bound by the Settlement and will be deemed a Releasor as defined herein, and the relief provided by the Settlement will be their sole and exclusive remedy for the claims alleged by the Settlement Class.

### 52. Exclusion Process

a. A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice.

b. In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing the Settlement Class Member's name, address, and telephone number; the name and number of this case; a statement that the Settlement Class Member wishes to be excluded from the Settlement Class; and a signature. A request to be excluded that is sent to an address other than that designated in the Class Notice, or that is not postmarked within the time specified shall be invalid and the person serving such a request shall be considered a member of the Settlement Class and shall be bound by the Agreement, if approved.

c. Any member of the Settlement Class who elects to be excluded shall not: (i) be bound by any order or the Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement. A member of the Settlement Class who requests to be excluded from the Settlement Class also cannot object to the Settlement.

d. The request for exclusion must be personally signed by the person requesting exclusion. So-called "mass" or "class" exclusion requests shall not be allowed.

e. Within three (3) business days after the Objection/Exclusion Deadline, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel a written list reflecting all timely and valid exclusions from the Settlement Class with copies of each such request for exclusion.

f. A list reflecting all individuals who timely and validly excluded themselves from the Settlement shall also be filed with the Court at the time of the motion for final approval of the settlement.

## **XI. OBJECTIONS**

53. The Notices shall advise Settlement Class Members of their rights, including the right to be excluded from or object to the Settlement Agreement and its terms. The Notices shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing, only if, on or before the Objection/Exclusion Deadline approved by the Court, the person making an objection shall file notice of their intention to do so and at the same time: (i) file copies of such papers they propose to submit at the Final Approval Hearing with the Clerk of the Court; and (ii) send copies of such papers via United States mail, hand delivery, or overnight delivery to both Class Counsel and Defendant's Counsel. A copy of the objection must also be mailed to the Settlement Administrator at the address that the Settlement Administrator will establish to receive requests for exclusion or objections, and any other communication relating to this Settlement.

54. Any Settlement Class Member who intends to object to this Settlement must include in any such objection: (i) their full name, address, and current telephone number; (ii) the case name and number of this Underlying Action; (iii) the date range during which they were employed by Defendant; (iv) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (v) if applicable, the identification of any other objections they have filed, or has had filed on their behalf, in any other class action cases in the last four years; and (vi) the objector's signature. If represented by counsel, the objecting Settlement Class Member must also provide the name and telephone number of their counsel. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, they must state as such in the written objection, and must also identify any witnesses they may call to testify at the Final Approval Hearing and all exhibits they intend to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection.

55. Any Settlement Class Member who fails to timely file and serve a written objection and notice of intent to appear at the Final Approval Hearing pursuant to this Agreement, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

56. The Parties will request that the Court, within its discretion, exercise its right to deem any objection as frivolous and award appropriate costs and fees to the Parties opposing such objection(s).

## **XII. FINAL APPROVAL HEARING**

57. The Parties will jointly request that the Court hold a Final Approval Hearing at least ninety (90) days after entry of the Preliminary Approval Order. At the Final Approval Hearing, the Parties will request that the Court consider whether the Settlement Class should be certified as a class for settlement and, if so; (i) consider any timely and properly-filed objections; (ii) determine whether the Settlement is fair, reasonable and adequate, was entered into in good faith and without collusion, and should be approved, and shall provide findings in connections therewith; and (iii) enter the Final Approval Order, including final approval of the Settlement Class and the Settlement Agreement, and a Fee Award.

## **XIII. FINAL APPROVAL ORDER**

58. The Parties shall jointly seek entry of a Final Approval Order, the text of which the Parties shall agree upon. The dismissal orders, motions or stipulation to implement this Section shall, among other things, seek or provide for a dismissal of the Underlying Action with prejudice and waiving any rights of appeal.

59. The Parties shall jointly submit to the Court a proposed order, substantially in the form attached hereto as Exhibit C, that, without limitation:

- a. Finally approves 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; and
- b. Dismisses, with prejudice, all claims of the Settlement Class against Defendant in the Underlying Action, without costs and fees except as explicitly provided for in this Agreement.

60. Class Counsel shall use their best efforts to assist Defendant in obtaining dismissal with prejudice of the Underlying Action and take all steps necessary and appropriate to otherwise effectuate all aspects of this Agreement.

## **XIV. TERMINATION OF THE SETTLEMENT**

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, material amendments, or material 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 canceled within ten (10) days of any of the following events:

- a. If three percent (3%) or more of the Settlement Class Members submit valid and timely requests for exclusion from the Settlement, Defendant may – at its sole discretion - revoke the Settlement Term Sheet and Settlement Agreement;
- b. This Settlement Agreement is changed in any material respect to which the Parties have not agreed in writing;
- c. The Court refuses to grant Preliminary Approval of this Agreement;
- d. The Court refuses to grant final approval of this Agreement in any material respect;
- e. The Court refuses to enter a final judgment in this Underlying Action in any material respect;
- f. The Settlement does not become Final.

62. In the event the Settlement Agreement is not approved or does not become Final, or the Settlement is terminated consistent with this Settlement Agreement, the Parties, pleadings, and proceedings will return to the *status quo ante* as if no settlement had been negotiated or entered into, the Settlement Fund and interest earned thereon will belong to Defendant less any Administrative Expenses paid to date; and the Parties will negotiate in good faith to establish a new schedule for the Underlying Action.

#### **XV. ATTORNEYS' FEES, COSTS AND EXPENSES, AND SERVICE AWARD**

63. Defendant agrees not to oppose Class Counsel's request for attorneys' fees plus their unreimbursed litigation costs in an amount not more than thirty-five percent (35%) of the Gross Settlement Fund. Any fees or costs not awarded are added to the Net Fund to be distributed to class members. This amount shall not be an additional expense of Defendant but shall be paid out of the Gross Settlement Fund.

64. Notwithstanding any contrary provision of this Agreement, the Court's consideration of the Fee Award is to be conducted separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement Agreement, and any award made by the Court with respect to Class Counsel's attorneys' fees or expenses, or any proceedings incident thereto, including any appeal thereof, shall not operate to terminate or cancel this Agreement or be deemed material thereto.

65. Class Counsel shall provide the Settlement Administrator with its completed IRS Form W-9 at least seven (7) business days prior to the payment of the Fee Award is due. Within fourteen (14) days after the Effective Date, the Settlement Administrator shall pay to Class Counsel from the Settlement Fund the amount awarded by the Court in the Fee Award. Any payment of the Fee Award shall be paid via paper check or by electronic wire transfer to an account designated by Class Counsel.

66. Prior to or at the same time as Plaintiff seeks final approval of the Settlement Agreement, Class Counsel shall move the Court for a Service Award for the Class Representative in an amount not to exceed Five Thousand Dollars and Zero Cents (\$5,000.00), and Defendant agrees that it will not oppose such a request. This amount shall not be an additional expense of Defendant but shall be paid out of the Gross Settlement Fund. If the Court does not approve any Service Award for the Class Representative, or if the Court approves and Service Award in an amount less than Five Thousand Dollars and Zero Cents (\$5,000.00) for the Class Representative, any funds not awarded are to be added to the Net Settlement Fund and to be distributed to the Class Members.

67. In no event will Defendant's liability for attorneys' fees, expenses, and costs, settlement administration costs, and/or Service Award exceed its funding obligations set out this Agreement. Defendant shall have no financial responsibility for this Settlement Agreement outside of the Settlement Fund. Defendant shall have no further obligation for attorneys' fees or expenses to any counsel representing or working on behalf of either one or more individual Settlement Class Members or the Settlement Class. Defendant will have no responsibility, obligation or liability for allocation of fees and expenses among Class Counsel.

#### **XVI. MISCELLANEOUS 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 (i) acknowledge that it is their intent to consummate this Settlement Agreement, and (ii) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement. Class Counsel and Defendant's Counsel agree to cooperate with each other in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, and the Final Approval Order, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement.

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

71. 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, Released Parties, and Settlement Class Members any right or remedy under or by reason of this

Agreement. Each of the Released Parties 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.

72. The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully this Settlement Agreement, including its Exhibits, and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

73. Any headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

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

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

76. This Agreement may not be amended, modified, altered, or otherwise changed in any manner except by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

77. The Parties agree that Exhibits A through C to this Settlement Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

78. The Parties may agree, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of the Agreement.

79. Except as otherwise provided herein, each Party shall bear its own costs.

80. Plaintiff represents and warrant that he has not assigned any claim or right or interest therein as against the Released Parties to any other person or party.

81. The Parties represent that they have obtained the requisite authority to enter this Settlement Agreement in a manner that binds all Parties to its terms.

82. 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 Illinois Rules of Evidence Rule 408, and any other equivalent or similar rule of evidence, and shall not: (i) constitute, be construed, be offered,

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 Underlying Action 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 (ii) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue.

83. 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.

84. This Settlement Agreement, whether approved or not approved, revoked, or made ineffective for any reason, and any proceedings related to this Settlement Agreement and any discussions relating thereto shall be inadmissible as evidence of any liability or wrongdoing whatsoever and shall not be offered as evidence of any liability or wrongdoing in any court or other tribunal in any state, territory, or jurisdiction, or in any manner whatsoever. Further, neither this Settlement Agreement, the Settlement contemplated by it, nor any proceedings taken under it, will be construed or offered or received into evidence as an admission, concession or presumption that class certification is appropriate, except to the extent necessary to consummate this Agreement and the binding effect of the Final Order and Judgment.

85. 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: (i) to enforce the terms and provisions hereof or thereof; (ii) as may be specifically authorized by a court of competent jurisdiction after an adversary hearing upon application of a Party hereto; (iii) in order to establish payment, or an affirmative defense of preclusion or bar in a subsequent case; (iv) in connection with any motion to enjoin, stay or dismiss any other action; or (v) to obtain Court approval of the Settlement Agreement.

86. This Agreement may be executed in one or more counterparts exchanged by mail or PDF as an electronic mail attachment. All executed counterparts and each of them shall be deemed to be one and the same instrument, provided that counsel for the Parties to this Agreement all exchange signed counterparts.

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

88. Plaintiff and all other Class Members will be solely responsible for all taxes, interest, penalties, or other amounts due with respect to any payment received pursuant to the Settlement, and shall defend, indemnify, and hold harmless Released Parties in relation to any claim relating to the same.

89. Plaintiff acknowledges and warrants as true and correct that he has not been treated for any physical or mental injury in relation to his claims against Defendant and he is not a Medicare beneficiary as described under Section 1862(b) of the Social Security Act.

91. This Agreement shall be governed by and construed in accordance with the laws of the state of Illinois.

92. This Agreement is deemed to have been prepared by counsel for all Parties as a result of arms-length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Agreement and its Exhibits, it shall not be construed more strictly against one Party than another.

93. Unless otherwise stated herein, any notice required or provided for under this Agreement shall be in writing and shall be sent by electronic mail or hand delivery, postage prepaid, as follows:

<p>If to Class Counsel:</p> <p>David Fish Mara Baltabols Fish Potter Bolaños, P.C. 200 East Fifth Avenue, Suite 123 Naperville, Illinois 60563 admin@fishlawfirm.com</p>	<p>If to Defendant's Counsel:</p> <p>Joel Griswold Baker &amp; Hostetler LLP One North Wacker Drive, Suite 4500 Chicago, IL 60606 jcgriswold@bakerlaw.com</p>
--	---

94. This Agreement shall be deemed executed as of the date that the last party signatory signs the Agreement.

IN WITNESS HEREOF, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below.

**[SIGNATURES ON FOLLOWING PAGE]**

**FOR PLAINTIFF**

Ricky Jones

Date: 11/21/2022 21:47 UTC

**WHOLE FOODS MARKET GROUP, INC.**

By: [Signature]

Name: Pat Deilman

Title: S.V.P. Supply Chain + Retail Operations

Date: 12-1-2022

FILED DATE: 12/27/2022 12:00 AM 2022CH00606

Hearing Date: 1/3/2023 9:30 AM - 9:35 AM  
Location: <<CourtRoomNumber>>  
Judge: Calendar, 8

FILED  
12/27/2022 12:00 AM  
IRIS Y. MARTINEZ  
CIRCUIT CLERK  
COOK COUNTY, IL  
2022CH00606  
Calendar, 8  
20793830

FILED DATE: 12/27/2022 12:00 AM 2022CH00606

# EXHIBIT 2

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

RICKY JONES, individually and on behalf of  
all others similarly situated,

*Plaintiff,*

v.

WHOLE FOODS MARKET GROUP, INC,

*Defendant.*

Case No.: 22 CH 00606

**[PROPOSED] PRELIMINARY APPROVAL ORDER**

This matter having come before the Court on Parties' Joint Motion and Memorandum in Support of Preliminary Approval of Class Action Settlement (the "Motion"), the Court having reviewed in detail and considered the Motion, the Class Action Settlement Agreement ("Settlement Agreement") between Plaintiff, Ricky Jones ("Plaintiff" or "Class Representative") and Defendant, Whole Foods Market Group, Inc. ("Defendant") (together, "the Parties"), 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, as follows:

1. Capitalized terms used in this Order that are not otherwise defined herein have the same meaning assigned to them as in the Settlement Agreement.
2. The terms of the Settlement Agreement are preliminarily approved as fair, reasonable, and adequate. There is good cause to find that the Settlement Agreement was

negotiated at arms-length between the Parties, who were represented by experienced counsel.

3. For settlement purposes only, the Court finds that the prerequisites to class action treatment — including numerosity, commonality and predominance, adequacy, and appropriateness of class treatment of these claims — have been preliminarily satisfied.

4. The Court hereby conditionally certifies and for the purposes of settlement only, the following Settlement Class consisting of:

All persons with last known addresses in Illinois employed by Defendant, Whole Foods Market Group, Inc. (“Defendant”), at its distribution center located at 716 East 111<sup>th</sup> St., Chicago, IL 60628 from whom it allegedly collected, captured, purchased, received through trade, or otherwise obtained any information which is or could be covered by the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.* (“BIPA”), including but not limited to any retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry, and/or any information, regardless of how it is captured, converted, stored, or shared, based on an individuals’ biometric identifier used to identify an individual based on any retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry, in Illinois at any time from January 25, 2017 through the date of preliminary approval without first executing a written release.

5. For settlement purposes only, Plaintiff Ricky Jones is hereby appointed as the Class Representative.

6. For settlement purposes only, the following counsel are hereby appointed as Class Counsel:

David Fish  
Mara Baltabols  
Fish Potter Bolaños, P.C.  
111E. Wacker Dr., Suite 2300  
Chicago, Illinois 60601

7. The Court recognizes that, pursuant to the Settlement Agreement, Defendant retains all rights to object to the propriety of class certification in the Litigation in all other contexts and for all other purposes should the Settlement not be finally

approved. Therefore, as more fully set forth below, if the Settlement is not finally approved, and litigation resumes, this Court's preliminary findings regarding the propriety of class certification shall be of no further force or effect whatsoever, and this Order will be vacated in its entirety.

8. The Court approves, in form and content, the Notice, attached to the Settlement Agreement as Exhibit A finds that it meets the requirements of Due Process requirements under the U.S. and Illinois Constitutions.

9. The Court finds that the planned notice set forth in the Settlement Agreement constitutes the best notice practicable under the circumstances, where Class Members are current or former employees of Defendant and may be readily ascertained by Defendant's records, and satisfies fully 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, if agreed to in writing, 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. Analytics Consulting, LLC, or such other entity that the parties mutually agreed upon, is hereby appointed Settlement Administrator to supervise and administer the notice process, as well as to oversee the administration of the Settlement, as more fully set forth in the Settlement Agreement.

11. The Settlement Administrator may proceed with the distribution of Class Notice as set forth in the Settlement Agreement.

12. Settlement Class Members who wish to receive benefits under the Settlement Agreement do not need to take any affirmative action to claim their pro rata share of the Settlement Fund.

13. 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 hereinafter provided. 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.

14. Any person within the Settlement Class may request exclusion from the Settlement Class by expressly stating their request in a written exclusion request. Such exclusion requests must be received by the Settlement Administrator in written form, by first class mail, postage prepaid, and postmarked, no later than **[45 days from entry of the Preliminary Approval Order]**.

15. 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 their name, address, telephone number, the name and number of the case, a statement that they wish to be excluded from the Settlement Class, and must be personally signed by the person requesting exclusion. 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.

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

17. The Court preliminarily approves Prairie State Legal Services as the *cy pres* recipient, including the distribution of 50% of uncashed funds to Prairie State Legal Services and the remaining 50% to the Defendant as set forth in the Settlement Agreement.

18. Class Counsel may file any motion seeking an award of attorneys' fees in the amount of 35% of the Settlement Fund plus reasonable their costs and expenses, as well as an Incentive Award of Five Thousand Dollars and Zero Cents (\$5,000.00) for the Class Representative, no later than **[7 days prior to Final Approval Hearing]**.

19. 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 the amount of the attorneys' fees, costs, and expenses that Class Counsel intends to seek and the payment of the Incentive Award to the Class Representative, may do so, either personally or through an attorney, by filing a written objection, together with the supporting documentation set forth below in Paragraph 20 of this Order, with the Clerk of the Court, and served upon Class Counsel, Defendant's Counsel, and the Settlement Administrator no later than **[45 days from Entry of Preliminary Approval Order]**.

20. 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) their full name, address, and telephone number; (ii) the case name and number of this Litigation; (iii) the date range during which they were employed 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 they have filed, or have had filed on their 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 the Incentive Award, and to the Final Approval Order and the right to appeal same.

21. A Settlement Class Member who has not requested exclusion from the Settlement Class and who has properly submitted a written objection in compliance with the Settlement Agreement 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 Plaintiff's Counsel's Fee and Expense Application and/or the request for the Incentive Award to the Class Representative 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 their

intention to appear at the Final Approval Hearing on their own behalf or through counsel, such Settlement Class Member must also include in their written objection the identity of any witnesses they may call to testify, and all exhibits they intend to introduce into evidence at the Final Approval Hearing, which shall be attached.

22. 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 their 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.

23. All papers in support of the final approval of the proposed settlement shall be filed no later than seven (7) before the Final Approval Hearing.

24. A hearing (the “Final Approval Hearing”) shall be held before the Court on **DATE** (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 have been met;

(b) to 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 the Incentive Award to the Class Representative;

(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 Plaintiff 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:

Class List Sent to Administrator: 14 days after entry of preliminary approval order  
Notice to be completed by: 21 days after entry of preliminary approval order  
Objection Deadline: 45 days after entry of preliminary approval order  
Exclusion Request Deadline: 45 days after entry of preliminary approval order  
Final Approval Motion: 7 days before Final Approval Hearing  
**Final Approval Hearing:** \_\_\_\_\_, **2023 at 9:00 a.m.**

IT IS SO ORDERED.

ENTERED:

\_\_\_\_\_

\_\_\_\_\_

Date

Hearing Date: 1/3/2023 9:30 AM - 9:35 AM  
Location: <<CourtRoomNumber>>  
Judge: Calendar, 8

FILED  
12/27/2022 12:00 AM  
IRIS Y. MARTINEZ  
CIRCUIT CLERK  
COOK COUNTY, IL  
2022CH00606  
Calendar, 8  
20793830

FILED DATE: 12/27/2022 12:00 AM 2022CH00606

# EXHIBIT 3

## DECLARATION OF MARA BALTABOLS

I swear under penalty of perjury that the following information is true:

1. My name is Mara Baltabols. I am over the age of twenty-one and I am competent to make this Declaration and I have personal knowledge of the matters set forth herein.

2. I am one of the attorneys from the law firm Fish Potter Bolaños, P.C. representing Plaintiff and the putative class.

3. I have extensive experience representing consumers, and employees in labor and employment disputes. I have handled disputes with the Equal Employment Opportunity Commission, and in the state and federal courts in Illinois. I have litigated multiple cases in the United States District Court for the Northern District of Illinois.

4. I have lectured at educational seminars for lawyers and other professionals. I was a featured speaker for a CLE sponsored by the Chicago Bar Association on issues related to consumer law. I was a panel speaker at a CLE organized by the National Association of Consumer Bankruptcy Lawyers on effective adversary proceedings and litigation of consumer law cases.

5. I have actively litigated class action cases brought pursuant to the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1 et seq. since March 2019. I have litigated consumer class action cases since October 2017, including cases filed pursuant to the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, et seq. and the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. 1692 et seq.

6. Fish Potter Bolaños, P.C. has been found adequate counsel in multiple BIPA class action cases. Our law firm’s resume is attached hereto.

7. I have served as counsel in dozens of claims brought under BIPA and helped to recover millions of dollars for my clients in these cases. As a result, I am very familiar with the

risks, defenses, strengths, and weaknesses of these cases. I am familiar with the amounts at which other BIPA cases have settled in the state of Illinois.

8. I have been involved in this litigation from the start. The settlement in this case is particularly appropriate and fair given the potential defenses that are available to the Defendant, uncertainty with pending appeals, size of the class, and several other factors that I consider when making settlement decisions.

9. The proposed Settlement Agreement provides an excellent result for the Class Members. It provides Class members a definite recovery and was entered into at a time when the outcome was uncertain. The Settlement Agreement entered into in this case represents a reasonable compromise of a disputed claim. Given the uncertainty relating to the law at issue at the time of the negotiations, including the statute of limitations and workers compensation preemption and what constitutes a biometric identifier, I believe it to be a more than fair outcome for the Class.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies that the statements set forth in this instrument are true and correct. FURTHER AFFIANT SAYETH NOT.

\_\_\_\_\_/s/ Mara Baltabols\_\_\_\_\_

Dated: December 23, 2022

## FIRM OVERVIEW

The Fish Potter Bolaños, P.C. has experience representing employees and employers in labor and employment disputes, including before the Illinois Department of Labor, the United States Department of Labor, the Illinois Department of Human Rights, the National Labor Relations Board, the EEOC, and in the state and federal courts in Illinois.

Our efforts have resulted in numerous favorable outcomes for our clients. Our attorneys are known for their knowledge of labor and employment matters and have been asked to present and publish in various classrooms and on-line publications to educate others on how this area of the law works. We also have an active *pro bono* practice and provide employment counseling for no charge to dozens of low income and elderly clients each year through a partnership with Prairie State Legal Services.

## ATTORNEY PROFILES

### MARA BALTABOLS

Mara is an accomplished civil litigator and class action attorney with a wide-range of experience litigating in state and federal court. Mara was recognized as an Illinois Super Lawyer Rising Star in Civil Defense Litigation in 2013, and in Consumer Law in 2016-2019. Mara is a strong believer in taking the best cases to trial. She served as a primary attorney in a case brought by a senior citizen against a major loan servicer, *Hammer v. RCS*, that resulted in a \$2,000,000

jury verdict upheld on post-trial motions. She was a featured speaker at NACBA's 23rd Annual Convention discussing effective adversary proceedings and successfully preparing cases for trial.

Mara previously worked as an attorney at Bock, Hatch, Lewis & Oppenheim, LLC (f/k/a Bock & Hatch, LLC) and at Sulaiman Law Group, Ltd. d/b/a Atlas Consumer Law.

Mara obtained her J.D. from the University of South Carolina in 2009, and her undergraduate degree from the University of Colorado at Boulder in 2003. Mara is a member of the Illinois Bar and admitted to practice in the Northern and Southern federal district courts in Illinois. She is also admitted to the Eastern District of Wisconsin and Eastern District of Michigan.

#### **MARIA DE LAS NIEVES BOLAÑOS**

Ms. Bolaños was influenced from a young age by the work and activism of her single mother who worked to provide health care and educational services to Central Washington's Yakima Valley, including through work with migrant farmworkers and community organizations. It was this background that created Ms. Bolaños' interest in employment law and drew her to her first legal job with mentor and workers' rights activist Robin Potter, who later became her law partner.

Ms. Bolaños represents workers in wage and hour, False Claims Act, and employment discrimination and retaliation and litigation. She has significant litigation experience at the State and Federal level, as well as with local administrative agencies, including Equal Employment Opportunity Commission, the Illinois Department of Human Rights and the Illinois Education

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Labor Relations Board. Ms. Bolaños' experience includes representation of single plaintiffs, class and large class action cases with exceptional results, including a \$14 million dollar settlement in a class action sexual harassment case in *Brown, et al. v. Cook County, et al.*, No. 17-cv-8085 (N.D. Ill. 2020).

Ms. Bolaños is a 2009 graduate of DePaul University College of Law. She serves on the Executive Board of the National Employment Lawyers Association (NELA) and is VP of Diversity, Equity, and Inclusion on its Executive Committee. She also chairs NELA's Low Wage Worker Practice Group and serves on its Legislative Action Committee and is a member of NELA's Illinois affiliate, the Illinois State Bar Association, and the National Lawyers Guild's Chicago Labor and Employment Committee. Ms. Bolaños serves on the ARISE Chicago Legal Advisory Board and serves on the Board for In These Times Magazine.

Ms. Bolaños frequently lectures on various employment law matters, including NELA's Annual Conventions, NELA Illinois' Seventh Circuit Conference, the Decalogue Society, Illinois Legal Services Committee for Immigrants, and a variety of other organizations. Ms. Bolaños co-authored a brief on behalf of *amici curiae* Steve Viscelli, Domingo Avalos, Gabriel Procel, Brion Gray, James Zuber, Hector Zelaya, Desiree Ann Wood, the Wage Justice Center and Real Women in Trucking, Inc., in the case, *New Prime Inc. v. Oliveira*, 139 S.Ct. 532, 202 L.Ed. 2d 536 (2019).

## **ALENNA BOLIN**

For thirty years, Ms. Bolin has advocated for employees from all walks of life and diverse backgrounds, in workplace civil rights, FMLA, sexual harassment, discrimination,

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retaliation and retaliatory discharge, and related employment matters. Her creative litigation strategies and advanced writing abilities combine to make her a skilled advocate for her clients. She treats clients with respect and compassion while guiding them through the legal process.

She has served as Of Counsel to the firm (formerly Potter Bolaños LLC and Robin Potter & Associates) since 2010.

Ms. Bolin previously practiced in the areas of civil rights, contracts, securities, commodities, and fraud, in addition to employment law. She was part of the two-lawyer trial team that won a \$500,000 jury verdict on workplace intentional infliction of emotional distress, a verdict that was later upheld on appeal in *Naeem v. McKesson Drug Co.*, 444 F.3d 59 (7<sup>th</sup> Cir. 2006). She was extensively involved in researching and drafting the winning briefs in *Walters v. Metropolitan Educational Enterprises, Inc.*, 519 S.Ct. 202 (1997), in which the U.S. Supreme Court issued a decision favorable to employees. More recently, she participated in case development and discovery on the legal team that achieved a \$14 million dollar settlement in a class action sexual harassment case in *Brown v. Cook County, et al.*, No. 17-cv-8085 (N.D. Ill. 2020). She has served as a contributing author for the Midwinter Report of FMLA Cases, published by the FMLA subcommittee of the Section of Labor and Employment Law of the American Bar Association.

Ms. Bolin received her J.D. from the University of California, Davis, School of Law, and her B.A., *cum laude*, from Northern Illinois University. During law school, she authored an article that won awards for excellence in writing and was published as the Pease Environmental

Law Review. Along with her J.D., she received a Public Interest Law Program Certificate. Ms. Bolin is an active member of the National Employment Lawyers Association.

### **PATRICK COWLIN**

Mr. Cowlin is an experienced attorney who primarily represents employees in wage and hour, discrimination, disparate impact, harassment, retaliation, FMLA, and other employment and *qui tam* cases. He has successfully litigated and negotiated cases involving individual plaintiffs, as well as class actions and collective actions. He has also represented union members in contract arbitration and administrative proceedings, and public school parents and students in class litigation.

Mr. Cowlin was recognized as a top rated employment litigation attorney in Illinois from 2017-2021, earning a “Rising Star” designation from Illinois Super Lawyers. He graduated with a B.B.A. in Finance from University of Wisconsin-Madison and graduated *cum laude* from DePaul University College of Law in 2012.

Mr. Cowlin is admitted to the Illinois Bar and the U.S. District Court for the Northern District of Illinois. He is a member of the National Employment Lawyers Association (“NELA”), NELA-Illinois, and the National Lawyers Guild. He is a part of NELA-Illinois’ Legislative Action Committee, which works to ensure Illinois Law appropriately protect employees’ rights.

### **DAVID FISH**

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Mr. Fish graduated #2 in his law school class from Northern Illinois University College of Law after graduating from Illinois State University. Prior to starting his own firm, Mr. Fish was employed by larger law firms. (Including, Jenner & Block in Chicago, Illinois as a summer associate and Klein, Thorpe & Jenkins/Collins Law). He is a member of the National Employment Lawyers Association which is a group of employment lawyers.

Mr. Fish has, on several occasions, lectured at educational seminars for lawyers and other professionals. He has moderated a continuing legal education panel of federal magistrates and judges on the Federal Rules of Civil Procedure, he has presented before the Illinois State Bar Association on electronic discovery rules, and he testified before the United States Judicial Conference in Dallas, Texas regarding electronic discovery issues.

Mr. Fish's publications include: "[Enforcing Non-Compete Clauses in Illinois after Reliable Fire](#)", [Illinois Bar Journal](#); "[Top 10 wage violations in Illinois](#)", [ISBA Labor and Employment Newsletter](#) (August, 2017); "[Physician Non-Complete Agreements in Illinois: Diagnosis—Critical Condition; Prognosis- Uncertain](#)" [DuPage County Bar Journal](#) (October 2002); "Are your clients' arbitration clauses enforceable?" [Illinois State Bar Association, ADR Newsletter](#) (October 2012); "[The Legal Rock and the Economic Hard Place: Remedies of Associate Attorneys Wrongfully Terminated for Refusing to Violate Ethical Rules](#)", [of W. Los Angeles Law Rev.](#) (1999); "[Zero-Tolerance Discipline in Illinois Public Schools](#)" [Illinois Bar Journal](#) (May 2001); "[Ten Questions to Ask Before Taking a Legal-Malpractice Case](#)" [Illinois Bar Journal](#) (July 2002); "[The Use Of The Illinois Rules of Professional Conduct to Establish The Standard of Care In Attorney Malpractice Litigation: An Illogical Practice](#)", [Southern](#)

Illinois Univ. Law Journal (1998); “[An Analysis of Firefighter Drug Testing under the Fourth Amendment](#)”, International Jour. Of Drug Testing (2000); “[Local Government Web sites and the First Amendment](#)”, Government Law, (November 2001, Vol. 38).

## **KIMBERLY HILTON**

Ms. Hilton has worked in the legal field for over twenty years as an attorney, legal assistant, a paralegal, and a law clerk. Ms. Hilton’s primary focus throughout her career has been in the area of labor and employment. Ms. Hilton has litigated in the state and federal courts and before agencies such as the Illinois Department of Human Rights, the Equal Employment Opportunity Commission, the Illinois Human Rights Commission and the American Arbitration Association.

Ms. Hilton graduated *cum laude* from The John Marshall Law School, Chicago, Illinois in 2010. Ms. Hilton received her Bachelor of Arts in English and Political Science from Cornell College, Mt. Vernon, Iowa in 2003. During law school, Ms. Hilton worked as a judicial extern for the Illinois Appellate Court, First District in Chicago, wrote and edited articles for The John Marshall Law Review and participated in John Marshall’s Moot Court program.

Ms. Hilton is a member of the National Employment Lawyers Association – Illinois and the Illinois State Bar Association. Ms. Hilton has also presented two CLE classes for the DuPage County Bar Association one about the EEOC and IDHR claim procedure and the other about COVID-19 and the new laws that were enacted in light of the pandemic.

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**JAMES GREEN**

Mr. Green represents individuals denied workers' compensation, social security or other disability benefits and unions and union members in labor negotiations and arbitrations, unfair labor practices and dismissal cases.

For more than thirty years Mr. Green as successfully represented hundreds of individuals in claims for Workers' Compensation benefits. He has assisted injured workers in a wide range of employment settings, including airline industry, health care institutions and public schools to obtain the full benefits they are entitled to receive under the Illinois Workers' Compensation Statute. He also represents clients who have been denied Social Security Disability Benefits. He is available to assist claimants in guiding them through the entire maze of the bureaucratic process from filing an application to representing them in a hearing before an Administrative Law Judge, if their claims are denied.

Mr. Green has worked closely with the Chicago Teachers Union for the last ten years. He has represented it in labor arbitrations and unfair labor practice charges before the Illinois Labor Relations Board and individual teachers in statutory dismissal hearing and in workers' compensation claims. He previously serves as the General Counsel for Teamsters Local 726 from 1994-2009, negotiating contracts and representing the Union in all aspects of its operations.

Mr. Green has deep roots in the labor movement prior to practicing law. He began his career organizing child-care workers in Chicago, then worked as a staff director of a local union, managed a Health, Welfare and Pension fund for the Midwest Region for the International Ladies Garment Workers Union.

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Mr. Green is an active member of the Chicago Bar Association, the Workers' Compensation Lawyers' Association and the AFL-CIO Union Labor Alliance. Mr. Green graduated *cum laude* from the John Marshall Law School.

### **JOHN KUNZE**

John C. Kunze graduated from The University of Illinois Champaign-Urbana with a Bachelor of Arts Degree in History. Mr. Kunze graduated *cum laude* from The John Marshall Law School in Chicago, Illinois. While at John Marshall John was a member of Law Review, co-founded The Video Game Law Society, and was the founding editor of the Society's Newsletter.

Mr. Kunze is a member of the National Employment Lawyers Association and the Illinois State Bar Association.

### **SETH MATUS**

For more than twenty years, Mr. Matus has worked as a lawyer serving businesses ranging from start-ups and family companies to high tech firms, professional organizations, retailers and temporary labor services. Mr. Matus has repeatedly saved employers facing class-action overtime lawsuits from multi-million dollar liability and obtained favorable outcomes for general contractors entangled in complex construction disputes.

Mr. Matus is a leader in developing and implementing innovative policies and procedures to protect confidential information and trade secrets and in ensuring that businesses comply with applicable law after breaches involving personal data. He has been certified as an information

privacy professional in US private-sector law by the International Association of Privacy Professionals and has presented several seminars on information privacy topics to business owners and human resources professionals. Mr. Matus also presented a CLE to the DuPage County Bar Association about the laws enacted in response to the COVID-19 pandemic and the implications for small businesses in response.

Mr. Matus received his JD from the University of Colorado in 1996 and his B.A. from Rutgers in 1992. He is a member of the Illinois, Colorado, New Mexico bars.

#### **THALIA PACHECO**

Thalia serves as the leader of our employment discrimination department where she litigates the rights of workers. She received her B.A. from Northern Illinois University (DeKalb, Illinois) and received her J.D. from DePaul University College of Law (Chicago). At DePaul, Thalia was the Editor-in-Chief of the Journal of Women, Gender & Law.

While attending law school, Thalia focused her studies in labor and employment law and interned at C-K Law Group: The Law Offices of Chicago-Kent in its Plaintiff's Employment Law Clinic and Chicago Public Schools in its Labor and Employee Discipline Department. Thalia has worked at a number of Chicago employment law firms in the area, including Siegel and Dolan, The Case Law Firm, and employment defense firm Franczek PC. Thalia is a member of the Hispanic Lawyers Association of Illinois and the American Bar Association. Thalia is fluent in Spanish. Thalia has presented a CLE for the DuPage County Bar Association about the leave laws related to the COVID-19 pandemic.

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**ROBIN POTTER**

Robin Potter moved to Chicago in 1978, where she has built a nationwide private practice trying and litigating Labor & Employment, Discrimination, Sex Harassment, Whistleblower, Wage & Hour and False Claims Act (FCA) individual and class action cases. Her FCA cases have returned ten of millions of dollars to the U.S. treasury and private carriers. She has been proud to serve as counsel to the Chicago Teacher's Union, union members and leadership working to reform their unions and increase democracy equity and justice in the workplace.

Robin served as a government supervisor in overseeing and conducting elections in the Laborers' International Union (LIUNA). She was also the court-appointed Claims Administrator in *Smith v. NIKE*, Case No. 03 C 9110 (N.D. Ill., J. Shadur), a class action race discrimination case and was the Special Master in *EEOC v. The Dial Corporation*, Case No. 99 C 3356 (N.D.IL.), a pattern and sexual harassment case.

Robin has frequently lectured, including at the following venues: American Bar Association Midyear, annual, labor & employment, and EEOC meetings; Illinois State Bar Association (Labor Section); National Employment Lawyers' Association, Association of Trial Lawyers of America (Civil Rights and Individual Employee Rights Sections); the Taxpayers Against Fraud (lawyers representing plaintiffs in Qui Tam litigation); the American Federation of Teacher and American Federation of Labor Lawyers' Coordinating Committee; and the Practicing Law Institute.

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In 2013, the National Lawyers' Guild, Chicago honored Robin and her firm's co-recipients of the Arthur Kinoy People's Law Award, "in recognition of tireless advocacy on behalf of the Chicago Teachers Union and Chicago Public School students, parents, and employees." Also in 2016, Robin was a finalist for the Public Justice Trial Lawyer of the Year Award for "outstanding contribution to the public interest" for her work in the case *United States and State of Illinois, ex rel Absher v. Momence Meadows Nursing Center, Inc.* The Chicago Democratic Socialists of America honored Robin at their 2014 Debs-Thomas-Harrington Dinner for her work supporting the labor movement and employees' rights.

Robin helped found the Nation Employment Lawyers Association and its Illinois chapter, NELA-Illinois, and remains an active member of both organizations. She is also a member of Taxpayers Against Fraud, the Chicago Bar Association, and the American Bar Association Litigation and Labor and Employment Section. She is on the Board of Directors of Advocates for Justice, a New York City based group engaged in nationwide advocacy and litigation, in public education and other areas of law reform.

Robin is a 1977 graduate of the University of Iowa Law School.

#### **SANDY ALPERSTEIN**

Sandy holds a B.A. in English from the University of Florida and is graduate of the University of Chicago Law School (*cum laude*, 1990). Sandy was a Staff Member of the Law Review and is admitted to the Illinois State Bar and the Northern District of Illinois. Sandy has represented clients in varied settings such as large law firms (Mayer, Brown), in-house (UARCO

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Incorporated), smaller boutique law firms, and in her own private practice. Sandy is an active volunteer in the disability community, participating in special education law and policy advocacy on the federal, state, and local levels.

### **ROGELIO DELATORRE**

Mr. Delatorre is a second year law student from Chicago-Kent College of Law. Mr. Delatorre is a first-generation Mexican-American whose parents are originally from Mexico but settled in the Chicagoland area. As a student, Mr. Delatorre is a member of the Hispanic Lawyers Association of Illinois, the Bar Representative on the Chicago-Kent Hispanic=Latinx Law Student Association Executive Board, the Treasurer of the Chicago-Kent Student Humanitarian Network, and a member of Chicago-Kent's Student Alumni Board. Additionally, Mr. Delatorre is the Vice-Chair of Communications of the Hispanic National Bar Association – Law Student Division.

Mr. Delatorre graduated with his Bachelor's Degree from Benedictine University where he majored in Accounting and obtained a minor in Political Science. Mr. Delatorre is also an alumnus of the Emma Bowen National Foundation, a national organization that provides diverse students with internships in the media industry.

Mr. Delatorre is fluent in Spanish. He is passionate about helping diversify the legal profession, helping the Latinx Community, and helping others in the process.

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**ASHLEY FEENY**

Ms. Feeny has five years of legal assistant/paralegal experience. She graduated from Saint Xavier University in 2015 with a bachelor's degree in Criminal Justice and a minor in Middle Eastern Studies. She has experience in Real Estate Law, Class Actions, EEOC, NLRB and IDHR cases.

**JESSICA HOWARD**

Jessica is a paralegal who assists with our Workers' Compensation Cases, Social Security, and Employment Law Teams. Jessica also has a background in professional writing.

**NICOLE SANDERS**

Nicole is an experienced legal assistant/paralegal with over 28 years' experience in the legal field. Nicole has helped attorneys and clients in many different areas of the law including: employment law, personal injury, workers' compensation, real estate, divorce, and estate planning. She currently serves to support our employment attorneys and litigators.

**REPRESENTATIVE CASES**

Some examples of class, collective, and/or employment litigation in which Fish Potter Bolaños, P.C. (or our prior firms, The Fish Law Firm PC, Potter Bolaños, LLC, and Robin Potter & Associates) has served as counsel include:

- a. *Brown v. Cook County*, No. 17-C-8085, 332 F.R.D. 229 (N.D.Ill.) (\$14 million sexual harassment recovery for class of 532 assistant public defenders and law

clerks certified in suit alleging hostile work environment due to egregious harassment by pre-trial detainees).

- b. *U.S.A. ex rel. Lokesh Chandra, M.D. v. Sushil A. Sheth, M.D.*, Case No. 06 C 2191 (N.D. Ill.) (False Claims Act case; \$20 million settlement with the United States government).
- c. *Nelson v. UBS Global Management*, No. 03-C-6446, 04 C 7660 (N. D. Ill.) (ERISA class action on behalf of thousands of BP Amoco employees who had Enron debt purchased as part of their money market fund; recovery of approximately \$7 million).
- d. *Franzen v. IDS Futures Corporation*, 06 CV 3012 (N. D. Ill. 2006) (recovery of millions of dollars for more than 1,000 limited partners in an investment fund that lost value as a result of the Refco bankruptcy).
- e. *Kuhl v. Guitar Center*, Case No. 07 C 214 (J. Gottschall) (nation-wide FLSA and Rule 23 class for commissioned sales force; class settlement of \$2,870,000 - 9000 class members)
- f. *Pope v. Harvard Bancshares*, 06 CV 988, 240 F.R.D 383 (N. D. Ill. 2006) (class action recovery of \$1.3 million for former shareholders of community bank who had stock repurchased in a reorganization).
- g. *Johnson v Resthaven/Providence Life Services*, 2019CH1813 (Cook County, IL) (\$3 million class action recovery under Biometric Information Privacy Act)

- h. *Cesarz et al v. Wynn Las Vegas LLC et al*, 2:13-cv-00109 (Nevada)(\$5.6 million FLSA settlement against Wynn Las Vegas casino workers)
- i. *Barnes v. Aryzta, LLC*, 288 F. Supp. 3d 834 (N.D. Ill and Cook County)(\$2.9 million class action recovery under BIPA)
- j. *Cruz v. Unilock Chicago, Inc.*, (J. Colwell) 383 Ill. App. 3d 752; 892 N.E.2d 78; 322 Ill. Dec. 831 (1st Dist. 2008)(certified class of 300 plant employees under IMWL and IWPCA; class-wide settlement of \$1,600,000)
- k. *Canas v. Smithfield Foods*, 2020CV4937(\$7.75 million recovery under FLSA and IMWL for COVID-19 pandemic related bonuses)
- l. *Pietrzycki v. Heights Tower Serv., Inc.*, 197 F. Supp. 3d 1007 (N.D. Ill. 2016)(finding Fish appropriate to represent Class in wage and hour claims relating to overtime; case ultimately resolved on a class wide basis prior to trial).
- m. *WAM Holdings, Inc d/b/a All Star Management, Inc./Wendy's*, Cook County, Case No. 2019-CH-11575 (\$5.85 million class action recovery under the Biometric Information Privacy Act)
- n. *Balonek et al v. Safeway et al.*, No. 14-cv-01457 (N.D.Ill.) (class action settlement under FLSA and IMWL for \$1.7 million on behalf of General Merchandise Managers and Assistant General Merchandise managers who worked in Illinois at Dominick's)

- o. *Ralph/Memoli v. Get Fresh Produce Inc.*, 2019CH2324 (\$675,000 settlement on a class wide basis for claims under Biometric Information Privacy Act)
- p. *Parker v. DaBecca Natural Foods*, 2019CH1845 (\$999,975 settlement on a class wide basis for claims under Biometric Information Privacy Act)
- q. *Blount v. Stroud, et al.*, 01 L 2330 (Cook County, IL)(\$3.1 million verdict for retaliatory discharge and retaliation under 42 U.S.C. §1981, November 2005; 376 Ill. App. 3d 935, 877 N.E.2d 49 (1st Dist. 2007)(verdict rev'd. on IDHR preemption grounds); PLA recon. granted to Illinois Supreme Court - 232 Ill. 2d 302, 904 N.E.2d 1 (2008)(reversing and remanding to Appellate Court), 395 Ill. App. 3d 8; 915 N.E.2d 925; 2009 Ill. App. LEXIS 553; 333 Ill. Dec. 854; 106 Fair Empl. Prac. Cas. (BNA) 1163 (1st Dist. - Oct. 6, 2009);(denying remaining post-trial appeals and reinstating jury verdict); Rehearing den., 2009 Ill. App. LEXIS 1051 (Ill. App. Ct. 1st Dist., Oct. 2, 2009); defense appeal denied 2010 Ill. LEXIS 160 (Ill., Jan. 27, 2010); cert den., 131 S. Ct. 503 (2010)(initial fee petition in amount of \$1,156,589 granted)
- r. *Day v. NuCO2 Mgmt., LLC*, 1:18-CV-02088, 2018 WL 2473472, at \*1 (N.D. Ill. May 18, 2018)(serving as the collective's co-counsel in a \$900,000 settlement under FLSA)
- s. *USA ex rel. Dr. Raymond Pollak v. University of Illinois, et al.*, Case No. 99 C 710 (Intervened False Claims Act; partial settlements in 2003 of \$2.4 million on Medicare and Medicaid fraud, false hospitalizations in liver transplant).

- t. *Mello et al v. Krieger Kiddie Corporation*, 15-cv-5660 (collective and putative class action alleging claims under FLSA, IMWL, IWPCA).
- u. *Bell v. UPS, Case No. 94 CH 1658 (Cook Co.)*(\$7.25 million settlement of class action overtime case for 3000+ Illinois package car drivers)
- v. *Sotelo v. DirectRevenue*, No. 05-2562 (N.D. Ill. filed Apr. 29, 2005)(class action alleging that company placed “spyware” on consumers’ computers; resulted in a settlement that mandated significant disclosures to computer users before unwanted software could be placed on their computers, see also Julie Anderson, *Sotelo v. Directrevenue, LLC: Paving the Way for Spyware-Free Internet*, 22 Santa Clara High Tech. L.J. 841 (2005).
- w. *LaPlaca v. Malnati et al.*, No. 15-cv-1312 (N.D.Ill.) (Class action on behalf of restaurant employees, \$850,00 court-approved settlement).
- x. *Sharples et al v. Krieger Kiddie Corporation*, 2013 CH 25358 (Cir. Court Cook County) (Illinois Wage Payment and Collection Act IWPCA class action claims; final approval of class wide settlement).
- y. *Kusinski v. MacNeil Automotive Products Limited*, 17-cv-03618 (class and collective claims under the FLSA and the IMWL; final approval of class settlement entered);
- z. *Gabryszak v. Aurora Bull Dog Co.*, 427 F. Supp. 3d 994 (N.D. Ill. 2019)(obtaining partial summary judgment for Collective under FLSA in a tip credit case for servers).