

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

JORGE GONZALEZ, on behalf of himself	)	
and all other persons similarly situated,	)	
known and unknown,	)	
	)	Case No. 1:20-cv-04354
Plaintiff,	)	
	)	Judge Thomas M. Durkin
v.	)	
	)	Magistrate Judge Heather K. McShain
RICHELIEU FOODS, INC.,	)	
	)	
Defendant.	)	

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT  
OF HIS UNOPPOSED MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT**

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Settlement Class Members*

## **I. Introduction**

On July 20, 2021, this Court granted preliminary approval of the Parties' \$876,750.00 non-reversionary class action Settlement<sup>1</sup> under the Biometric Information Privacy Act ("BIPA"). ECF No. 31. Following preliminary approval, the Settlement Administrator notified Settlement Class Members of their rights in the Settlement, including the right to submit a claim for payment, request exclusion, or submit an objection. In response, nearly 30 percent of Settlement Class Members submitted claims for payment. To date, not a single Settlement Class Member objected to the Settlement or requested exclusion from it. If the Court grants final approval of the proposed Settlement as presented, each Settlement Class Participant will receive an estimated \$2,474.60. The successful notice process, high claims rate, and absence of objections and exclusions support final approval of the Settlement.

## **II. Legal Background and Procedural History**

Plaintiff set forth the legal background and procedural history of this case in his previous Settlement approval filing, ECF No. 27 at § II., and in Section I. of the Parties' Settlement Agreement, which is attached here as Exhibit 1.

## **III. Summary of Settlement Terms**

The terms of the Settlement are briefly summarized here:

### **A. Class Definition** (Ex. 1, Settlement Agreement, § III)

The Settlement Class Representative seeks final approval of the following class:

All of Defendant's workers, including direct employees and temporary staffing agency workers, who, without first executing a written release, enrolled in or used a finger-scan timekeeping system while working for Defendant in Illinois between June 5, 2015 and preliminary approval, excluding Defendant's employees who are or were union members ("the Settlement Class" or "Settlement Class Members").

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<sup>1</sup> Capitalized terms not defined here are defined in the Parties' Settlement Agreement, which is attached here as Exhibit 1.

See ECF No. 31, Preliminary Approval Order ¶ 4; *see also* Ex. 1, Settlement Agreement, § III. There are 777 Settlement Class Members.<sup>2</sup> Ex. 2, Declaration of Due Diligence (“Settlement Administrator Decl.”) ¶ 6.

**B. Settlement Fund; Allocation of the Fund; Payments to Class Members**  
(Ex. 1, Settlement Agreement, § IV.2)

While denying all liability and wrongdoing, Defendant has agreed to pay a “Gross Fund” of \$876,750.00 to resolve the claims in this case on a class action basis. None of the Gross Fund shall revert back to Defendant. The “Net Fund” is the Gross Fund minus the following deductions, which are subject to Court approval: Settlement Class Counsel’s attorney fees and costs; the Settlement Administrator’s costs; and the Settlement Class Representative’s Service Award. Plaintiff requested these deductions from the Gross Fund by separate filing during the Notice period. *See* ECF No. 35. The Net Fund shall be distributed pro rata to Settlement Class Members who timely return valid claim forms (“Settlement Class Participants”). If the Settlement is approved as presented, each Settlement Class Participant will receive an estimated \$2,74,60.

**C. Uncashed Checks Will Be Distributed to the Unclaimed Property Division**  
(Ex. 1, Agreement, § IV.9)

Settlement Class Participants will have 150 days to cash their settlement payments. Funds from checks not cashed by the deadline will be distributed to the Unclaimed Property Division of the Illinois Treasurer’s Office. This will enable Settlement Class Participants to request their settlement payments if they miss the check cashing deadline. *See* <https://icash.illinois.treasurer.gov/app/faq-general> (last visited Dec. 14, 2021) (Illinois “serves as a custodian of the assets [of unclaimed property] and never takes ownership of them.”).

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<sup>2</sup> Initially, Defendant estimated there were 835 Settlement Class Members, but the final class size, after the Settlement Administrator received the class lists and removed duplicates, decreased to 777. Ex. 2, Settlement Administrator Decl. ¶ 6. The Gross Fund is unaffected by the class-size reduction.

**D. Defendant's Representations of Compliance with BIPA**  
(Ex. 1, Settlement Agreement, § IV.16)

Defendant represents that since July 29, 2020, Defendant has maintained BIPA consents and policies and does not retain any finger scan data for separated Illinois employees.

**E. Release of Claims** (Ex. 1, Settlement Agreement, § IV.3)

Subject to final approval by the Court of the Settlement, Settlement Class Members who do not timely and validly exclude themselves from the Settlement will release the Released Parties<sup>3</sup> from all claims reasonably arising out of allegations in the Class Action Complaint in this lawsuit, including but not limited to allegations that Defendant improperly collected, stored, disclosed, or used Illinois employees' biometric identifiers and/or information obtained from its time clocks, including but not limited to claims arising under the BIPA, and all other federal, state, and local law, including the common law, as well as related claims for liquidated damages, penalties, attorneys' fees and costs, expenses, and interest.

**F. Settlement Administration** (Ex. 1, Settlement Agreement, § IV.4.)

Analytics Consulting, LLC ("Settlement Administrator") has administered the Notice and claims process and will administer the remainder of the Settlement. The Settlement Administrator's costs are \$14,278. Ex. 2, Settlement Administrator Decl. ¶ 18. Plaintiff previously requested that the Court award the Settlement Administrator these costs. ECF No. 35.

**G. Attorney Fees, Costs, and Service Award**

Consistent with the Settlement Agreement and Notice to Settlement Class Members, on November 5, 2021, Plaintiff filed a motion for attorney fees (\$284,991), litigation costs

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<sup>3</sup> The term "Released Parties" means Defendant and its current and former owners, affiliates, parents, subsidiaries, divisions, officers, directors, shareholders, agents, employees, attorneys, insurers, benefit plans, predecessors, successors, and Defendant's timekeeping vendor, Ceridian HCM, Inc. and its affiliates.

(\$5,772.28), and Plaintiff's Service Award (\$7,500). ECF No. 35. Consistent with Rule 23(h) of the Federal Rules of Civil Procedure, Plaintiff filed this motion during the Notice period and the Settlement Administrator posted the filing at the settlement website so that Settlement Class Members could review it when deciding whether to object, request exclusion, submit a claim, or do nothing. See <https://richelieufingerscansettlement.com/important-case-documents/>.

#### **H. The Notice and Claims Process Was Successful**

(Ex. 2, Settlement Administrator Decl.)

The Settlement Administrator implemented Plaintiff's robust class notice program to ensure that Settlement Class Members learned of their rights in the Settlement.

Of the 777 Settlement Class Members, the Settlement Administrator was provided or obtained mailing addresses for 635. Ex. 2, Settlement Administrator Decl. ¶¶ 6-7. Of these, the Settlement Administrator successfully mailed Notice, including after skip tracing and re-sending undeliverable Notices, to all but 72. *Id.* at ¶ 12. The Settlement Administrator was provided or obtained email addresses for 473 Settlement Class Members. *Id.* at ¶ 7. Of these, the Settlement Administrator successfully delivered email notice communications to 420. *Id.* at ¶ 11. The Settlement Administrator was provided 650 phone numbers for Settlement Class Members. *Id.* Of these, the Settlement Administrator successfully delivered text message notice communications to 518. *Id.* Of the 638 Settlement Class Members<sup>4</sup> with a mailing address, email address, or a phone number, the Settlement Administrator delivered at least one form of Notice to each. *Id.* at ¶ 12.

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<sup>4</sup> The Settlement Class Members without contact information (and also without social security numbers) are individuals who worked for Defendant through third-party temporary staffing agencies. Ex. 3, Werman Decl. ¶ 13. Settlement Class Counsel obtained names of these workers from Defendant and then served subpoenas on the staffing agencies. *Id.* One agency was no longer operating and corporate entity under which it operated was revoked. Although Settlement Class Counsel still attempted to serve a subpoena on that agency, it was unsuccessful and so no contact information was obtainable. *Id.* While the remaining four agencies provided subpoena responses, they were still unable to provide contact information for each Settlement Class Member identified. *Id.*

Because the Notice process resulted in direct notice to 82% of Settlement Class Members (638 of 777), it was reasonable. *See* Federal Judicial Center, Judges' Class Action Notice & Claims Process Checklist & Plain Language Guide, at 3 (2010), available at <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf> (a class notice plan that reaches at least 70% of the class is reasonable).

Thirty days before the ninety-day deadline for claims, objections, and exclusions, the Settlement Administrator also delivered reminder email and text message notice communications to Settlement Class Members who had not yet returned a claim form. *Id.* at ¶ 16. The Settlement Administrator also established a settlement website, [www.RichelieuFingerScanSettlement.com](http://www.RichelieuFingerScanSettlement.com), with the Notice and Claim Form, a mechanism to submit electronic claims, answers to frequently asked questions, case documents, important dates, and information for how to contact the Settlement Administrator and Settlement Class Counsel. *Id.* at ¶ 10.

Prior to the Notice distribution, the Settlement Administrator engaged a professional translation service to translate into Spanish the Notice, claim form, toll free phone message, settlement website, notice emails, and text messages to Settlement Class Members. *Id.* at ¶¶ 9-10.

The objection and exclusion deadline was December 5, 2021. *Id.* at ¶¶ 14-15. To date, the Settlement Administrator has received no objections or exclusions. *Id.* The claims deadline was also December 5, 2021. *Id.* at ¶ 13. By the deadline, 225 Settlement Class Members submitted timely valid claims. *Id.* After the deadline, three additional Settlement Class Members submitted otherwise valid claims, which the Parties agreed to accept. *Id.* Of the 777 Settlement Class Members, 29.34% of them submitted claims. *Id.* This claims rate far exceeds the median rate in class settlements. *See* Federal Trade Commission, Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns, p. 11 (Sept. 2019), available at <https://www.ftc.gov/>

[system/files/documents/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns/class\\_action\\_fairness\\_report\\_0.pdf](#) (median claims rate for settlements studied was 9%). Plaintiff requests, with no objection from Defendant, that the Court accept the 3 late claims that are otherwise valid, except for being submitted after the deadline.

#### **IV. The Court Should Grant Final Approval**

Federal Rule of Civil Procedure 23(e) governs court approval of class action settlements and mandates that “claims, issues, or defenses of a certified class...may be settled...only with the court’s approval . . . after a hearing and only on finding that it is fair, reasonable, and adequate[.]” Fed. R. Civ. P. 23(e); *Am. Int’l Grp., Inc. v. ACE INA Holdings, Inc.*, No. 07 CV 2898, 2012 WL 651727, at \*1 (N.D. Ill. Feb. 28 2012); *Uhl*, 309 F.3d at 986. Rule 23(e)(2) sets out that a court must consider whether (1) the class representative and class counsel have adequately represented the class; (2) the settlement was negotiated at arm’s length; (3) the settlement treats class members equitably relative to each other; and (4) the relief provided for the class is adequate. Fed. R. Civ. P. 23(e)(2) (eff. Dec. 1, 2018); *see, e.g., Snyder v. Ocwen Loan Servicing, LLC*, No. 14 c 8461, 2019 WL 2103379, at \*4 (N.D. Ill. May 14, 2019).

As the Advisory Committee for the 2018 amendments to Rule 23 recognized that “each circuit has developed its own vocabulary for expressing these concerns[.]” the Court should also take into account the factors set out by the Seventh Circuit. These factors are: “(1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to the settlement; (5) the opinion of competent counsel; and (6) stage of the proceedings and the amount of discovery completed.” *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863 (7th Cir. 2014) (“Wong factors”).

Courts in the Seventh Circuit continue to analyze the *Wong* factors in tandem with the Rule 23(e)(2) factors to ensure that a settlement is fair, reasonable, and adequate. *See, e.g., In re NCAA Student-Athlete Concussion Injury Litig.*, 332 F.R.D. 202, 217 (N.D. Ill. 2019); *Charvat v. Valente*, No. 12-CV-05746, 2019 WL 5576932, at \*5 (N.D. Ill. Oct. 28, 2019); *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 WL 6606079, at \*2 (S.D. Ill. Dec. 16, 2018). “‘The most important factor relevant to the fairness of a class action settlement is the strength of plaintiff’s case on the merits balanced against the amount offered in the settlement.’” *Wong*, 773 F.3d at 863-64 (7th Cir. 2014) (quoting *In re Gen. Motors Corp. Engine Interchange Litig.*, 594 F.2d 1106, 1132 n.44 (7th Cir. 1979)). The following discussion, beginning with the *Wong* factors, demonstrates that the Settlement is fair, reasonable, adequate, and deserving of final approval.

**A. Wong Factors 1 & 2: Strength of the Case for Plaintiff and the Settlement Class on the Merits, Balanced Against the Extent of the Settlement Offer, As Well As the Complexity, Length, and Expense of Further Litigation**

Plaintiff claims that he and potential class members are entitled to \$1,000 per violation if they are able to prove Defendant’s alleged violations of BIPA were “negligent.” 740 ILCS 14/20(1).<sup>5</sup> Plaintiff alleged three violations of BIPA. ECF No. 1-2, Compl. ¶¶ 41-62; 740 ILCS 14/15(a), (b), and (d). The Settlement represents a gross recovery of approximately \$1,128 per Settlement Class Member and a net recovery of approximately \$2,474.60 per Settlement Class Participant, if the Court permits payment of late claims. The recovery compares favorably with other similar BIPA class settlements where Illinois state and federal courts have granted preliminary and final approval:

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<sup>5</sup> While BIPA allows recovery of \$5,000 for “intentional” or “reckless” violations, 740 ILCS 14/20(2), Plaintiff does not believe he had a reasonable chance of proving intentional or reckless conduct. Defendant did not have actual knowledge of BIPA’s obligation until this lawsuit was filed. Defendant began complying with BIPA promptly after Plaintiff sued Defendant.



**BIPA SETTLEMENT CHART**

<b>Case</b>	<b>Judge</b>	<b>Class Size</b>	<b>Per Class Member</b>	<b>Attorney Fees</b>	<b>Service Award</b>
<i>Jones v. CBC Rest. Corp.</i> , 1:19-cv-06736 (N.D. Ill. Oct. 22, 2020)	Alonso	4,053	\$800 gross; no claims process	\$1,054,966 (32.5% fund)	\$7,500
<i>Dixon v. The Wash. &amp; Jane Smith Home</i> , 1:17-cv-8033 (N.D. Ill. Aug. 20, 2019)	Kennelly	1,378	\$1,085 or \$768 gross; no claims process <sup>6</sup>	\$451,548 (1/3rd of fund)	\$10,000
<i>Martinez v. Nando's Rest. Grp., Inc.</i> , 1:19-cv-07012 (Oct. 27, 2020 N.D. Ill.)	Ellis	1,787	\$1,000 gross; no claims process	\$595,666.67 (1/3rd of fund)	\$7,500
<i>Lane v. Schenker, Inc.</i> , 3:19-cv-00507-NJR (Nov. 17, 2020 S.D. Ill.)	Rosenstengel	316	\$1,000 gross; no claims process	\$105,333.33 (1/3rd of fund)	\$7,500
<i>Thome v. NovaTime Tech., Inc.</i> , 1:19-cv-06256 (March 8, 2021 N.D. Ill.)	Kennelly	68,213	\$365 net per claimant <sup>7</sup>	\$1,365,300 (1/3rd of fund)	\$7,500
<i>Lopez-McNear v. Superior Health Linens, LLC</i> , 19-cv-2390 (Apr. 27, 2021 N.D. Ill.)	Pallmeyer	790	\$1,000 gross; no claims process	\$265,717.22 (35% of fund after admin. deduction)	\$5,000
<i>Bedford v. Lifespace Communities, Inc.</i> , 1:20-cv-04574 (May 12, 2021 N.D. Ill.)	Shah	851	\$1,150 gross; no claims process	\$328,954.05 (33.3% of fund)	\$10,000

<sup>6</sup> A total of 837 class members in the potential two-year potential limitations period received the larger number (\$1,085.00 gross) and a total of 541 class members outside of the potential two-year but inside the potential five-year limitations period received the smaller award (\$768.12 gross).

<sup>7</sup> In the final approval motion, Plaintiff reported the claims rate was 10 percent. The settlement also allows Plaintiff to seek additional settlement funds based on an insurance policy assignment that the Defendant provided Plaintiff.

Case	Judge	Class Size	Per Class Member	Attorney Fees	Service Award
<i>Burlinski v. Top Golf USA Inc.</i> , 1:19-cv-06700 (Oct. 13, 2021 N.D. Ill.)	Chang	2,602	\$1,012 gross; no claims process	\$865,345 (1/3rd of fund after <i>Redman</i> deductions)	\$7,500 each
<i>Davis v. Heartland Employment Services, LLC</i> , 19-cv-00680 (Oct. 25, 2021 N.D. Ill.)	Valderrama	11,048	At least \$689 per claimant	\$1,777,110 (1/3rd of fund after <i>Redman</i> deductions)	\$10,000 each

The Settlement also represents a meaningful recovery when compared against average recoveries in class action settlements. *See In re Ravisent Techs., Inc. Sec. Litig.*, 2005 WL 906361, at \*9 (E.D. Pa. Apr. 18, 2005) (approving settlement, which amounted to 12.2% of damages, and citing a study by Columbia University Law School, which determined that “since 1995, class action settlements have typically recovered between 5.5% and 6.2% of the class members’ estimated losses.”) (internal citations omitted).

The Settlement here is also strong because Defendant could have obtained a victory or greatly reduced the potential class recovery based on its defenses in the lawsuit, including:

- (1) that Plaintiff’s damages claims were barred by the exclusivity provisions of the Workers’ Compensation Act, an issue which is currently on appeal before the Illinois Supreme Court;<sup>8</sup>
- (2) that Defendant’s biometric timekeeping system does not collect biometric identifiers or biometric information as defined by BIPA;
- (3) that any biometric data collected from Defendant’s timekeeping system was in the sole possession of Defendant’s timekeeping vendor and so Defendant could never have

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<sup>8</sup> *McDonald v. Symphony Bronzeville Park, LLC*, Case No. 126511 (Ill.) (petition for leave to appeal accepted on January 26, 2021).

collected, possessed, or disclosed the data;

(4) that the statute of limitations under BIPA is one year instead of five years;<sup>9</sup> and

(5) that any liquidated damages imposed would be excessive in light of the alleged harm and so would violate Defendant's due process rights.

Regardless of the outcome of the above defenses, if the litigation had continued, it would have been complex, expensive, and protracted. The Parties would have completed written discovery and taken depositions of party witnesses. Plaintiff also would have obtained third-party discovery from the vendor of Defendant's timekeeping system. After that, Plaintiff would have served an expert witness report about how Defendant's timekeeping system collected biometric identifiers and/or biometric information covered by BIPA. This likely would have resulted in Defendant hiring its own expert witness. Following that additional discovery, Plaintiff would have filed a motion for class certification and Defendant likely would have moved for summary judgment. If the case proceeded through a judgement, the losing party likely would have appealed given the lack of controlling precedent on the key legal disputes.

**B. Wong Factors 3 & 4: Amount of Opposition to the Settlement and Reaction of Class Members to the Settlement**

The lack of opposition to a class action settlement "indicates that the class members consider the settlement to be in their best interest." *Am. Int'l Grp., Inc.*, 2012 WL 651727, at \*6. The objection deadline was December 5, 2021. Not a single person objected to the Settlement by that deadline or afterwards.<sup>10</sup> See Ex. 2, Settlement Administrator Decl. ¶ 15. This is powerful

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<sup>9</sup> After the Parties reached their settlement, the First District Appellate Court held that the five-year limitations period applies to BIPA claims under Sections 15(a), (b), and (e) and the one-year limitations period applies to claims under Section 15(c) and (d). *Tims v. Black Horse Carriers, Inc.*, Case No. 1-20-0563 (1st Dist) (Sept. 17, 2021). But given another ongoing appeal over the same issue, the Illinois Supreme Court is likely to be the ultimate decision-maker on this issue.

<sup>10</sup> If a Settlement Class Member submits a late objection before the final approval hearing, Settlement Class Counsel will file it with the Court.

evidence of the Settlement Class's support for the Settlement. *McDaniel v. Qwest Commc'ns Corp.*, No. CV 05 C 1008, 2011 WL 13257336, at \*4 (N.D. Ill. Aug. 29, 2011) (finally approving settlement with no objections and noting that "[a]n absence of objection is a 'rare phenomenon[]' and 'indicates the appropriateness of the request[]'" (citations omitted); *see also Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97 C 7694, 2001 WL 1568856, at \*3 (N.D. Ill. Dec. 10, 2001).

**C. Wong Factor 5: Opinion of Competent Counsel**

Plaintiff's counsel recommends this Settlement without hesitation. *See* Ex. 3, Werman Decl. ¶ 17. That recommendation is based on Settlement Class Counsel's substantial experience in class litigation, including dozens of similar BIPA class actions. *Id.* That knowledge and experience were applied in analyzing the possible recovery against the risk, cost and delay explained above. *Id.* Therefore, this factor weighs strongly in favor of approval. *See Gautreaux v. Pierce*, 690 F.2d 616, 631 (7th Cir. 1982) ("The court also was entitled to 'rely heavily on the opinion of competent counsel' advanced by the proponents") (citation omitted).

**D. Wong Factor 6: Stage of Proceedings and the Amount of Discovery Completed**

This case settled after initial written discovery and an additional informal exchange of information prior to mediation. The case was sufficiently advanced for Settlement Class Counsel to form a realistic assessment of the potential recovery against the risk of loss. In addition, because the Parties primarily disagreed over legal issues, not factual ones, additional discovery would not have enabled a more precise case valuation. *In re AT & T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 350 (N.D. Ill. 2010) ("the focus of this litigation appears to be more on legal than factual issues, and there is no indication that formal discovery would have assisted the parties in devising the Proposed Settlement Agreement").

**E. Alternatively, or Cumulatively, Approval Should Be Granted According to the Fed. R. Civ. P. 23(e)(2) Factors**

**1. Class Representative and Class Counsel have Adequately Represented the Class**

The first Rule 23(e)(2) factor, whether the class representative and class counsel have adequately represented the class, focuses on class counsel's and the class representatives' performance as it relates to the "conduct of the litigation and of the negotiations leading up to the proposed settlement." Fed. R. Civ. P. 23(e), Advisory Committee's Note to 2018 Amendment. This factor is generally satisfied where the named plaintiff participated in the case diligently, and class counsel fought vigorously in the litigation. *Snyder*, 2018 WL 4659274, at \*3. In considering this factor, courts are to examine whether the plaintiff and class counsel had adequate information to negotiate a class-wide settlement, taking into account the nature and amount of discovery completed, whether formally or informally. *Id.* at \*4. This inquiry is coextensive with the Seventh Circuit's direction to consider the "stage of the proceedings and the amount of discovery completed." *See Wong*, 773 F.3d at 863.

The knowledge and negotiating position, vigor, participation, and conduct of Plaintiff and Settlement Class Counsel have not changed since this Court granted preliminary approval. Plaintiff's interests have remained aligned with the Settlement Class through the Notice process and preparation for the final approval hearing. Without Plaintiff stepping up to represent the class and taking on these tasks as the lead plaintiff, including answering written discovery, the relief secured for the Settlement Class likely wouldn't have been possible. Given his efforts and aligned interest with the class, there can be no doubt that he has acted in the best interest of the Settlement Class and has adequately represented them.

Likewise, Settlement Class Counsel worked vigorously to protect the interests of the Settlement Class and ensure that the Settlement Class was represented. The considerable amount

of investigation and discovery completed by Settlement Class Counsel ensured that they had adequate information to assess the strength of the case and resolve the case through private mediation.

## **2. The Settlement Is the Product of Arm's-Length, Non-Collusive Negotiations**

Under Rule 23(e)(2), a proposed settlement is fair and reasonable when it is the result of arm's-length negotiations. *See Wong*, 773 F.3d at 864. The Parties reached a Settlement through mediation with retired Judge Stuart Palmer, an experienced BIPA mediator. The Settlement was as the result of non-collusive negotiations.

## **3. The Settlement Treats Members of Respective Settlement Class Equally**

Next, Rule 23(e)(2) requires the proposed settlement to treat class members “equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D). Given that the Settlement Class here has the same BIPA claims, the Settlement treats each of them identically and provides pro rata settlement payments to all Settlement Class Participants. *See Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 855 (1999) (where class members are similarly situated with similar claims, equitable treatment is “assured by straightforward pro rata distribution of the limited fund”).

## **4. Relief Secured for the Settlement Class Warrants Final Approval**

The final and most important factor under Rule 23(e)(2) examines whether the relief provided for the class is adequate. Fed. R. Civ. P. 23(e)(2)(C). In making this determination, Rule 23 instructs courts to take into account several sub-factors, including (i) the cost, risks, and delay of trial and appeal; (ii) the effectiveness of the proposed method of distributing relief to the class; and (iii) the terms of any proposed award of attorneys' fees, including timing of payment. *Id.* This analysis necessarily encompasses two of *Wong* factors. The first Seventh Circuit factor “[is the] most important factor relevant to the fairness of a class action settlement[,]” it is critically

important for a settlement to meet this standard. *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d at 958 (internal quotations omitted).

Defendant raised significant defenses in the lawsuit, which Plaintiff outlined in Section IV.A of this Memorandum, *supra*. Based on those defenses, Defendant could have defeated or greatly reduced any recovery in this lawsuit. Apart from the merits of Defendant's defenses, additional litigation would have carried expense and delay. Instead of further risks and delay, this Settlement offers substantial value relative to the strength of Plaintiff's claims.

The "effectiveness of [the]...method of distributing relief to the class" weighs strongly in favor of the adequacy of this Settlement under Rule 23(e)(2)(C)(ii) and the first Seventh Circuit factor. An effective distribution method "get[s] as much of the available damages remedy to class members as possible and in as simple and expedient a manner as possible." William B. Rubenstein, 4 *Newberg on Class Actions* § 13:53. This Settlement requires full distribution of the Net Fund directly to Settlement Class Members who submit valid claim forms, with no reversion. This is an optimal method of distributing relief to the class and fully satisfies Rule 23(e)(2)(C)(ii). The alternative – direct distribution to Settlement Class Members without a claims process – would result in distribution of less than the entire Net Fund since no contact information or social security numbers are available for 139 Settlement Class Members.

The final relevant sub-factor considers the adequacy of the relief provided to the class taking into account "the terms of [the] proposed award of attorney's fees, including timing of payment[.]" Fed. R. Civ. P. 23(e)(2)(C)(iii). As Settlement Class Counsel explained in their request for fees and costs, ECF No. 35, their request for one-third of the Gross Fund, after deducting administration costs and the Service Award, is in-line with the Seventh Circuit precedent and is equal to or below the fees awarded in other class settlements, including similar BIPA class

settlements. *See* BIPA Settlement Chart, at 8-9, *supra*. And the Settlement provides for payment of any attorney fees after final approval at the same time as payments to Settlement Class Members. Ex. 1, Settlement Agreement § IV.5.(m). Settlement Class Counsel received no special priority. As a result, Rule 23(e)(2)(C)(iii) supports final approval.

## **VI. Conclusion**

Because the Settlement makes significant monetary relief available to Settlement Class Members who might have recovered nothing without the Settlement, the Court should grant final approval and enter the proposed Final Approval Order, which will be submitted to the Court via its proposed order email address. The undersigned class counsel has met and conferred with counsel for Defendant, who does not oppose the relief sought herein.

Dated: January 14, 2022

Respectfully submitted,

/s/Douglas M. Werman  
*Attorney for Plaintiff*  
*and the Settlement Class*

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*Settlement Class*



**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that a true and correct copy of the foregoing was filed with the Court's CM/ECF filing system on January 14, 2022, which will serve a copy on all counsel of record.

/s/ Douglas M. Werman

# **EXHIBIT 1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

JORGE GONZALEZ, on behalf of himself	)	
and all other persons similarly situated,	)	
known and unknown,	)	
	)	Case No. 1:20-cv-04354
Plaintiff,	)	
	)	Judge Thomas M. Durkin
v.	)	
	)	Magistrate Judge Heather K. McShain
RICHELIEU FOODS, INC.,	)	
	)	
Defendant.	)	

**CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement (“Settlement” or “Settlement Agreement”) is made by Plaintiff Jorge Gonzalez (“Plaintiff” or “Settlement Class Representative”), individually and on behalf of the Settlement Class Members he seeks to represent (“Settlement Class” or “Settlement Class Members,” as defined below), and Defendant Richelieu Foods, Inc. (“Richelieu”) (Plaintiff and Richelieu are collectively referred to as the “Parties”), in the above-captioned action (“Action”).

**I. PROCEDURAL HISTORY**

On June 5, 2020, Plaintiff filed this lawsuit in the Circuit Court of Cook County, Chancery Division, alleging that Richelieu violated the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*, by requiring him and other workers at Richelieu to use a biometric timekeeping system as part of their jobs. In particular, Plaintiff alleged that Richelieu violated BIPA in three ways: (1) collecting biometric fingerprint identifiers and information from him and other employees without following BIPA’s informed written consent procedures; (2) possessing biometric identifiers and information without establishing and following a publicly available data

retention schedule and destruction policy; and (3) disclosing biometric identifiers and information from him and other workers to Richelieu's timekeeping vendor without consent.

Richelieu removed this case to the United States District Court for the Northern District of Illinois based on traditional diversity jurisdiction and the Class Action Fairness Act. The case was assigned to Judge Durkin.

On August 26, 2020, Richelieu filed its Answer and Affirmative Defenses, in which it denied the material allegations of the Class Action Complaint and asserted seven affirmative defenses that could bar or greatly reduce any recovery in the Action. On November 5, 2020, Richelieu filed a Motion to Stay Pending Ruling from the Illinois Appellate Court in *Tims v. Black Horse Carriers, Inc.*, which will consider whether a one-year or five-year statute of limitations period applies to BIPA claims. The same day, the Court denied the Motion to Stay *sua sponte*.

The Parties served initial disclosures and served and responded to initial written discovery. Plaintiff's counsel followed up on alleged deficiencies in Richelieu's interrogatory responses. The Parties agreed to postpone further formal discovery pending settlement discussions.

The Parties scheduled a mediation with retired Judge Stuart Palmer, an experienced BIPA mediator. In advance of mediation, Richelieu produced certain documents related to its timekeeping equipment, and the Parties exchanged mediation statements with the relevant legal and factual arguments for their respective positions in the case. On March 31, 2021, the Parties participated in a day-long mediation with retired Judge Palmer and reached a settlement in principle, which is fully memorialized in this Settlement Agreement.

## **II. RICHELIEU DENIES LIABILITY**

Richelieu denies liability for the claims asserted in this Action. Neither the Settlement documents nor any other item pertaining to the Settlement contemplated herein shall be offered in

any other case or proceeding for any purpose, including as evidence of any admission by Richelieu of any liability with respect to any claim for damages or other relief, or of any admission by Plaintiff that they would not have prevailed on liability on any of their claims. Any stipulation or admission by Richelieu or Plaintiff contained in any document pertaining to the Settlement is made for settlement purposes only. In the event this Settlement is not finally approved, nothing contained herein shall be construed as a waiver by Richelieu of its contention that class certification is not appropriate or is contrary to law in this Action or any other case or proceeding, or by Plaintiff of his contention that class certification is appropriate in this case or any other case or proceeding.

### **III. CERTIFICATION OF THE SETTLEMENT CLASS**

Settlement Class Counsel shall request that the Court enter a certification order and certify for settlement purposes only the Settlement Class, defined as:

All of Defendant's workers, including direct employees and temporary staffing agency workers, who, without first executing a written release, enrolled in or used a finger-scan timekeeping system while working for Defendant in Illinois between June 5, 2015 and preliminary approval, excluding Defendant's employees who are or were union members ("the Settlement Class" or "Settlement Class Members").

Richelieu estimates there are 835 Settlement Class Members.

### **IV. SETTLEMENT TERMS**

#### **1. Final Approval; Waiver of Appeal; Settlement Effective Date**

The term "Final Approval" means the date on which the Court enters an order granting final approval of the Settlement. Plaintiff, individually, and Richelieu waive their right to appeal entry of Final Approval, except that Werman Salas P.C. ("Settlement Class Counsel") retain the right to appeal the award of attorney fees and costs if the Court awards less than requested in accordance with this Settlement Agreement.

If the Court grants Settlement Class Counsel's requested fees and costs and there are no objections from any Settlement Class Members, the "Effective Date" is the date of Final Approval.

If any Settlement Class Member objects to the Settlement or if the Court awards less than Class Counsel's requested fees and costs, the "Effective Date" means the first date on which the Final Approval Order is no longer appealable, or if an appeal is filed, the date on which such appeal is resolved in favor of Settlement approval and no further action is required by the Court.

**2. Gross Fund; Net Fund; and Allocation to Settlement Class Participants**

The term "Gross Fund" means the \$876,750.00 that Richelieu and/or its insurer will pay to settle the claims of Settlement Class Members in the Action. The Gross Fund is the maximum amount that Richelieu shall be obligated to pay under this Settlement, unless the number of the Settlement Class Members increases over 835, in which case the Gross Fund shall be increased on a pro rata basis (*i.e.*, \$1,050 per person added over 835). No amount of the Gross Fund shall revert back to Richelieu.

The term "Net Fund" is the Gross Fund minus the following deductions, which are subject to Court approval: Settlement Class Counsel's attorney fees and costs; the Settlement Administrator's costs; and the Settlement Class Representative's Service Award.

The Net Fund shall be distributed pro rata to Settlement Class Members who timely return valid claim forms ("Settlement Class Participants"). Any Settlement Class Member who does not timely return a claim form shall not be entitled to a payment. Because of this method of allocation to Settlement Class Participants, there will be no unclaimed funds in the Settlement.

**3. Release of Claims**

**a. Definitions**

The term "Released Parties" means Richelieu and its current and former owners, affiliates, parents, subsidiaries, divisions, officers, directors, shareholders, agents, employees, attorneys, insurers, benefit plans, predecessors, successors, and Richelieu's timekeeping vendor, Ceridian HCM, Inc. and its affiliates.

**b. Release for Settlement Class Members**

Subject to final approval by the Court of the Settlement, Settlement Class Members who do not timely and validly exclude themselves from the Settlement will release the Released Parties from all claims reasonably arising out of allegations in the Class Action Complaint in this lawsuit, including but not limited to allegations that Defendant improperly collected, stored, disclosed, or used Illinois employees' biometric identifiers and/or information obtained from its time clocks, including but not limited to claims arising under the Biometric Information Privacy Act, and all other federal, state, and local law, including the common law, as well as related claims for liquidated damages, penalties, attorneys' fees and costs, expenses, and interest.

**4. Settlement Administration**

The Parties have selected Analytics Consulting ("Settlement Administrator") to issue notice and administer this Settlement. The Settlement Administrator's costs, capped at \$20,000, shall be paid from the Gross Fund. The Parties agree to cooperate in the Settlement administration process and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the Settlement.

**5. Timeline of Settlement Events**

The Parties contemplate the following timeline for settlement events:

- a. Within thirty (30) days after the Court grants preliminary approval of the Settlement, Richelieu will provide the Settlement Administrator and Settlement Class Counsel with a "Class List" in Microsoft Excel spreadsheet format that shall contain Settlement Class Members' contact information, including names, addresses, dates of employment, social security numbers, cell phone numbers (if reasonably available), and personal email addresses (if reasonably available). Richelieu will provide a declaration from its employee with knowledge of how the

Settlement Class Members were identified and contact information was compiled. The Parties recognize that Richelieu may not be able to provide contact information for Settlement Class Members who were placed to work at Richelieu by a temporary staffing agency, but Richelieu will use its best efforts to obtain contact information for such individuals. Richelieu will cooperate with Settlement Class Counsel, as necessary, for Settlement Class Counsel to seek such contact information via subpoena. Settlement Class Counsel will provide names and contact information it obtains via subpoena to Richelieu and the Settlement Administrator on the same timeline that Richelieu provides the Class List.

- b. Provided that the Court grants preliminary approval of the Settlement, within fourteen (14) days after the Court grants preliminary approval of the Settlement, or within fourteen days after Richelieu receives the information from the Settlement Administrator needed to transfer such funds to the Qualified Settlement Fund (defined below), whichever is later, Richelieu or its insurer shall fund the \$20,000 available for notice and settlement administration to the Qualified Settlement Fund established by the Settlement Administrator.
- c. Before the deadline to distribute class notice, the Settlement Administrator shall establish a Settlement website. The website address will be [www.RichelieuFingerScanSettlement.com](http://www.RichelieuFingerScanSettlement.com), or another website address agreed to by the Parties. The Settlement website shall include a brief description of the claims asserted in the Action mutually agreed to by the Parties, the Notice of Class Action Settlement ("Notice") and Claim Form, the Settlement Agreement, the Preliminary Approval Order, the Motion for Attorney Fees, Costs, and Settlement Class



Representative's Service Award (once available), the Motion for Final Approval (once available), and the Final Approval Order (once available). The Settlement website shall identify the contact information for Settlement Class Counsel and describe how Settlement Class Members may obtain more information about the Settlement and will include a mechanism to complete and submit an electronic Claim Form.

- d. The Settlement Administrator will mail a Notice and Claim Form to everyone on the Class List in accordance with Section IV.11(b)(1) of this Settlement Agreement within fourteen (14) days after receiving the Class List. The same day, the Settlement Administrator shall send the notice communication described in Section IV.11.(b)(3)-(4) to Settlement Class Members by email and text message (assuming those forms of contact information exist for Settlement Class Members).
- e. Sixty (60) days after initial distribution of Notice, the Settlement Administrator shall send a reminder email and text message notice communication described in Section IV.11.(b)(3)-(4) to Settlement Class Members who have not returned a Claim Form (assuming those forms of contact information exist for Settlement Class Members).
- f. Settlement Class Counsel shall file a motion for attorney fees, litigation costs, settlement administration costs, and the Settlement Class Representative's Service Award within sixty (60) days from the date of the mailing of the notice to Settlement Class Members. Settlement Class Counsel shall provide this motion to the Settlement Administrator to be posted on the Settlement website so that

Settlement Class Members may obtain a copy during the objection/exclusion period as described in the notice.

- g. All completed claim forms must be postmarked (or submitted, if submitted electronically) or returned to the Settlement Administrator within ninety (90) days from the date of the initial distribution of the Notice to Settlement Class Members.
- h. Audit rights: Within fourteen (14) days of the claim filing deadline described in Section IV.5.g., the Settlement Administrator shall provide counsel for the Parties with a report that contains the information provided in the Claim Forms and its determination whether or not each claim should be approved or denied. Original Claim Forms will also be made available to counsel for the Parties upon request. Within fourteen (14) days of having received the report of proposed approved and denied claims from the Settlement Administrator, Settlement Class Counsel and Richelieu's counsel shall meet and confer regarding any issues that either Settlement Class Counsel or Richelieu believes need to be raised with the Settlement Administrator regarding the claims. Settlement Class Counsel and Richelieu's counsel agree to use their best efforts to resolve any disputes. If necessary, the Parties may request that the Settlement Administrator conduct reasonable follow up with particular Settlement Class Participants in the event of questions regarding the information provided by any Settlement Class Participant or take other reasonable steps as agreed to by the Parties.
- i. All requests for exclusion from the Settlement must be postmarked (or submitted, if submitted electronically) or returned to the Settlement Administrator within

ninety (90) days from the date of the initial distribution of the Notice to Settlement Class Members.

- j. All objections to the Settlement must be postmarked (or submitted, if submitted electronically) or returned to the Settlement Administrator within ninety (90) days from the date of the initial distribution of the notice to Settlement Class Members. Within three days of receiving an objection, the Settlement Administrator shall provide the objection, and any supporting materials, to counsel for the Parties. Within one business day of receiving an objection from the Settlement Administrator, Settlement Class Counsel shall file the objection with the Court.
- k. Settlement Class Counsel will file a motion for final approval of this Settlement within seven (7) days before the Final Approval Hearing or such other date as set by the Court.
- l. No later than fourteen (14) days after the Effective Date, Richelieu and/or its insurer will transfer the remainder of the Gross Fund, less the amount already transferred for Settlement Administration (pursuant to Section IV.5(b) above), to the Qualified Settlement Fund account established by the Settlement Administrator. Notwithstanding anything to the contrary, neither Richelieu nor its insurer shall have any obligation to fund the Settlement unless and until the Settlement is finally approved including resolution of any appeals or the expiration of any period by which an appeal must be made.
- m. Within twenty-eight (28) days of the Effective Date, the Settlement Administrator will mail or deliver the following payments: (1) Settlement award payments to Settlement Class Participants; (2) the Settlement Class Representative's Service

Award; and (3) Settlement Class Counsel's award of attorney fees and litigation costs (by wire transfer).

- n. The deadline for Settlement Class Participants to cash checks will be one hundred and fifty (150) days from the date the checks are issued by the Settlement Administrator.
- o. Within twenty-one (21) days after the deadline for Settlement Class Participants to cash checks, the Settlement Administrator shall distribute funds from uncashed checks in accordance with Section IV.9 of this Agreement and the Court's order(s).

**6. Tax Treatment of Settlement Awards**

For income tax purposes, the Parties agree that, if required by law, Settlement Class Participant settlement awards shall be allocated as non-wage income and shall not be subject to required withholdings and deductions. The Settlement Class Representative's Service Award shall be allocated as non-wage income and shall not be subject to required withholdings and deductions and shall be reported as non-wage income as required by law. If required by IRS regulations, the Settlement Administrator shall issue to each Settlement Class Participant an IRS Form 1099. Other than the reporting requirements herein, Settlement Class Participants shall be solely responsible for the reporting and payment of their share of any federal, state and/or local income or other taxes on payments received pursuant to this Settlement Agreement.

**7. Settlement Class Counsel's Attorney Fees and Costs**

- a. Settlement Class Counsel may request that the Court award them up to one-third of the Gross Fund as attorney fees plus their litigation expenses.
- b. The award of attorney fees and litigation expenses approved by the Court shall be paid to Settlement Class Counsel from the Gross Fund.

c. In the event that the Court does not approve the award of attorney fees and litigation expenses requested by Settlement Class Counsel, or the Court awards attorney fees and litigation expenses in an amount less than that requested by Settlement Class Counsel, such decision shall not affect the validity and enforceability of the Settlement and shall not be a basis for rendering the entire Settlement null, void, or unenforceable.

d. Settlement Class Counsel may appeal the award attorney fees and litigation expenses should the sum awarded by the Court fall below the amount requested by Settlement Class Counsel, provided that the request Settlement Class Counsel makes is consistent with the Settlement Agreement. Distributions to Settlement Class Participants shall be stayed during the pendency of the appeal. If Settlement Class Counsel elects not to appeal or if the appeals court affirms the decision, only the reduced amounts will be deemed to be Settlement Class Counsel's attorney fees and litigation expenses for purposes of this Settlement Agreement. Any amounts for Settlement Class Counsel's attorney fees and litigation expenses not awarded shall be added to the Net Fund available for distribution to Settlement Class Participants as settlement awards.

e. The payment of the award of attorney fees and litigation expenses to Settlement Class Counsel shall constitute full satisfaction of the obligation to pay any amounts to any person, attorney or law firm for attorney fees or litigation expenses in the Action incurred by any attorney on behalf of the Settlement Class Representative and the Settlement Class Members, and shall relieve Richelieu, the Released Parties, the Settlement Administrator, and Richelieu's Counsel of any other claims or liability to any other attorney or law firm for any attorney fees, expenses and/or costs to which any of them may claim to be entitled on behalf of the Settlement Class Representative and the Settlement Class Members. In exchange for such payment, Settlement Class Counsel will release and forever discharge any attorneys' lien on the Gross Fund.

**8. Service Award**

Settlement Class Counsel will apply for a “Service Award” of up to \$7,500 for the Settlement Class Representative, to be paid for his time and effort spent conferring with Settlement Class Counsel, pursuing the Action in his own name, answering written discovery, and recovering compensation on behalf of Settlement Class Members. Richelieu agrees not to oppose such application, so long as it is consistent with the provisions of this Settlement Agreement. Subject to Court approval, the Service Award shall be paid from the Gross Fund, in addition to the Settlement Class Representative’s settlement award. Any amount of the Service Award not awarded shall be added to the Net Fund available for distribution to Settlement Class Participants.

**9. All Uncashed Checks to the Unclaimed Property Division or *Cy Pres***

Any checks that remain uncashed after one hundred and fifty (150) days from the date they are issued by the Settlement Administrator shall be deemed void. The Settlement Administrator will distribute funds from each of these uncashed checks to the Unclaimed Property Division of the Illinois Treasurer’s Office and shall identify each individual Settlement Class Participant who did not cash his or her check. If the Court determines that distributing uncashed checks to the Unclaimed Property Division is inappropriate, funds from uncashed checks shall be distributed to a *cy pres* recipient agreed to by the Court and the Parties.

**10. Responsibilities of the Parties**

- a. The Parties shall perform all duties as stated in this Settlement Agreement.
- b. If Richelieu intends to communicate with current employee Settlement Class Members regarding the Settlement, Richelieu shall first provide its proposed communication to Settlement Class Counsel and the Parties will work together to agree on the communication. The Parties agree that any communication must be consistent with the notice approved by the Court. Except as provided above in this paragraph, Richelieu shall refrain from initiating

communications with Settlement Class Members regarding the Settlement. If any Settlement Class Members communicate with Richelieu or its agents regarding the Settlement, Richelieu shall direct these Settlement Class Members to contact Settlement Class Counsel or the Settlement Administrator.

**11. Approval of Settlement; Notice; Settlement Implementation**

As part of this Settlement, the Parties agree to the following procedures for obtaining preliminary Court approval of the Settlement, notifying Settlement Class Members, obtaining final Court approval of the Settlement, and processing the settlement awards:

a. Preliminary Approval Hearing. Settlement Class Counsel shall file a motion for preliminary approval of the Settlement as soon as is reasonably possible. With the motion for preliminary approval, Settlement Class Counsel will submit this Agreement and accompanying attachment(s).

b. Notice to Settlement Class Members. Notice of the Settlement shall be provided to Settlement Class Members, and Settlement Class Members shall submit any objections to the Settlement, and/or requests for exclusion from the Class, using the following procedures:

(1) Mailed Notice to Settlement Class Members. On the timetable specified in Section IV.5 of this Settlement Agreement, the Settlement Administrator shall send a copy of the Notice of Class Action Settlement and Claim Form, attached hereto as Attachment A, to Settlement Class Members via First Class regular U.S. mail. The Notice and Claim Form will be mailed using the most current mailing address information for Settlement Class Members, which the Settlement Administrator shall obtain by running each Settlement Class Member's name and address through the National Change of Address (NCOA) database or comparable databases. The front of the envelopes containing the Notice will be marked with words identifying the



contents as important documents authorized by the Court and time sensitive. The mailing shall include a pre-paid envelope for Settlement Class Members to return the Claim Form. For Settlement Class Members whose notices are returned as undeliverable without a forwarding address, the Settlement Administrator shall promptly run a search in Accurint or a similar database to locate an updated address and shall promptly mail the notice to the updated address. If after this second mailing, the Notice is again returned as undelivered, the notice mailing process shall end for that Settlement Class Member (except as provided in Section 11.b.(2), below).

(2) Updated Contact Information

Settlement Class Members should contact the Settlement Administrator to update their mailing addresses. Settlement Class Counsel will forward any updated contact information it receives from Settlement Class Members to the Settlement Administrator. The Settlement Administrator will reissue the Notice to any Settlement Class Members who provide updated contact information prior to the "Exclusion Deadline Date," as defined in Section IV.12.

(3) Text Notice

On the timetable specified in Section IV.5 of this Settlement Agreement, and only for Settlement Class Members for whom the Settlement Administrator is provided a cell phone number, the Settlement Administrator shall send text message notice as described in this Section. The text message notice shall state: "You may be entitled to payment in a class action settlement for non-union workers at Richelieu Foods in Illinois. To learn more, click **here**." The link will take Settlement Class Members to the Settlement website.

Sixty days after sending the initial text notice, the Settlement Administrator shall send a reminder text message to Settlement Class Members who have not yet returned a Claim Form. This text message shall state: "You were sent notice of a lawsuit settlement for certain non-union



workers at Richelieu Foods in Illinois. To request payment, you must complete a **Claim Form** by [insert date 30 days from text distribution].” The link will take Settlement Class Members to the portion of the Settlement website where they can complete and return an electronic Claim Form.

(4) Email Notice

On the timetable specified in Section IV.5 of this Settlement Agreement, and for Settlement Class Members for whom the Settlement Administrator is provided or obtains an email address, the Settlement Administrator shall email notice as described in this Section. The subject of this email shall state: “Legal Notice: Richelieu Foods Finger Scan Lawsuit Settlement.” The body of the email shall state as follows:

“Richelieu Foods has settled a class action lawsuit that claims Richelieu violated Illinois law by collecting fingerprint scan data from its Illinois workers through a biometric timekeeping system without written notice and consent. The Settlement includes Richelieu’s non-union employees and temporary staffing workers in Illinois who used Richelieu’s finger scan timekeeping system before July 29, 2020. You may be entitled to compensation as part of this settlement. To review the Notice of Class Action Settlement and submit a Claim Form to receive a settlement payment, please visit the settlement website: [www.RichelieuFingerScanSettlement.com](http://www.RichelieuFingerScanSettlement.com).”<sup>1</sup>

Sixty days after sending the initial email notice, the Settlement Administrator shall send a reminder email to Settlement Class Members who have not yet returned a claim form. The subject of this email shall state: “Reminder: Deadline to Submit Claim in Richelieu Finger Scan Lawsuit Settlement.” The body of the email shall state:

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<sup>1</sup> Or another website address agreed to by the Parties if this one is not available.

“You previously received an email about the settlement of a class action lawsuit that claims Richelieu Foods violated Illinois law by allegedly collecting fingerprint scan data from non-union workers in Illinois through a biometric timekeeping system without written notice and consent. You may be entitled to compensation as part of this settlement. The deadline for you to return a Claim Form and request a settlement payment is [insert date 30 days from email distribution]. You can return a Claim Form through the settlement website [www.RichelieuFingerScanSettlement.com](http://www.RichelieuFingerScanSettlement.com). If you do not fill out a Claim Form by the deadline, you will not get money.”<sup>2</sup>

**12. Procedure for Returning Claim Forms, Objecting, or Requesting Exclusion from Class Action Settlement**

a. Procedure for Claim Forms. The Notice and Claim Form shall explain that Settlement Class Members must return a Claim Form on or before 90 days from Notice distribution to receive a settlement payment. Settlement Class Members may return a Claim Form in a pre-paid return envelope or electronically through the case website. Settlement Class Counsel shall include data in its final approval motion about the number of Claim Forms that were returned.

b. Procedure for Objecting. The Notice shall provide that Settlement Class Members who wish to submit written objections to the Settlement must mail or email them to the Settlement Administrator on or before 90 days from Notice distribution. To state a valid objection to the Settlement, an objecting Settlement Class Member must sign the objection and provide: (i) full name, current address, current telephone number, and the last four digits of his or her Social Security Number; (ii) a statement of the position or objection the objector wishes to assert, including the grounds for the position and objection; and (iii) copies of any other documents that

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<sup>2</sup> See Footnote 1.

the objector wishes to submit in support of his/her/its position. No later than three (3) days after receiving an objection, the Settlement Administrator shall furnish Settlement Class Counsel and Richelieu's Counsel a copy of the objection. No later than one business day after receiving an objection from the Settlement Administrator, Settlement Class Counsel shall file the objection with the Court. Subject to approval of the Court, any objecting Settlement Class Member may appear in person or by counsel at the final approval hearing held by the Court to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate, or to object to any petition for attorney fees, reimbursement of reasonable litigation costs and expenses, the Settlement Administrator's costs, and Plaintiff's Service Award.

c. Procedure for Requesting Exclusion. The Notice shall provide that Settlement Class Members who wish to exclude themselves from the Class must submit a written statement requesting exclusion from the Class by mail or email to the Settlement Administrator on or before the 90 days from Notice distribution ("Exclusion Deadline Date"). Such written request for exclusion must contain the Class Member's full name, address, telephone number, and the last four digits of his or her social security number, a statement that the Class Member wishes to be excluded from the Settlement, and must be signed by the Class Member. The date of the postmark on the return mailing envelope or the timestamp on the electronic submission shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Any Class Member who excludes himself or herself from the Settlement will not be entitled to any recovery under the Settlement and will not be bound by the Settlement. If a Settlement Class Member submits both an exclusion request and a Claim Form, the Settlement Administrator shall contact the Settlement Class Member to determine whether the Settlement Class Member intended to request exclusion. If the Settlement Administrator contacts the Settlement Class Member and is

unable to communicate with him or her, the Claim Form will govern and the exclusion request will be considered invalid. No later than three (3) days after receiving a request for exclusion the Settlement Administrator shall furnish to Settlement Class Counsel and Richelieu's Counsel a copy of that request for exclusion. Settlement Class Counsel shall file the requests for exclusion with the motion for final approval of the settlement.

If ten percent (10%) or more of the Settlement Class Members submit valid requests for exclusion from the Settlement, Richelieu may elect to withdraw from and not be bound by the terms of this Settlement Agreement.

**13. Qualified Settlement Fund**

As required under this Agreement, Richelieu or its insurer shall transfer the required portions of the Gross Fund to a Qualified Settlement Fund ("Qualified Settlement Fund" or "QSF"), to be held as a separate trust as described in Treasury Regulation §1.468B-1, 26 C.F.R. §1.468B-1.

The Settlement Administrator shall cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns and tax withholdings statements in accordance with the provisions of Treasury Regulation §1.468B-2(k)(1) and Treasury Regulation §1.468B-2(l)(2)(ii). The Settlement Administrator may, at the expense of the QSF, retain legal counsel and an independent, certified public accountant to consult with and advise the Settlement Administrator with respect to the preparation and filing of such materials and the federal, state and local tax compliance of the QSF.

Based on the Settlement Administrator's recommendation and approval by the Parties, the QSF may be invested in United States Treasury bills, money market funds primarily invested in the same, or certificates of deposit (CDs), provided that such portions of the QSF as may reasonably be required to pay current QSF administrative expenses, taxes or disbursements to

Settlement Class Participants or Settlement Class Counsel may be deposited in bank accounts which are federally insured to the greatest extent practicable. All federal, state, and local taxes imposed with respect to income earned by, or property of, the QSF, shall be paid from the QSF.

The Settlement Administrator may amend, either in whole or in part, any administrative provision of this Section or the trust instrument through which the QSF is established to maintain the qualification of the QSF pursuant to the above-described authorities provided that the rights and liabilities of the Parties hereto and the Settlement Class are not altered thereby in any material respect.

**14. No Solicitation of Settlement Objections or Exclusions**

The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall either Party or their counsel seek to solicit or otherwise encourage Settlement Class Members to submit written objections to the Settlement or requests for exclusion from the Class, or appeal from the Court's Final Judgment.

**15. Final Settlement Approval Hearing**

In its preliminary approval order or a related order, the Court shall schedule a final approval hearing to determine whether to grant final approval of the Settlement Agreement along with the amount payable for (i) an award to Settlement Class Counsel for attorney fees and litigation expenses; (ii) the Settlement Administrator's expenses; and (iii) the Settlement Class Representative's Service Award. Plaintiff shall present a Final Approval order to the Court for its approval. The Final Approval order Plaintiff presents to the Court shall provide that the matter will be dismissed with prejudice seven (7) days after Plaintiff files a declaration with the Court from the Settlement Administrator confirming that Richelieu or its insurer has fully funded the Gross Fund.

**16. Richelieu's Representations Regarding Biometric Systems**

Richelieu represents that since July 29, 2020, Richelieu has maintained Biometric Information Privacy Act consents and policies and does not retain any finger scan data for separated Illinois employees.

**17. Richelieu's Legal Fees**

All of Richelieu's own legal fees, costs and expenses incurred in this Action shall be borne by Richelieu or its insurer.

**18. Certification of Distribution of Settlement Checks**

The Settlement Administrator shall provide Settlement Class Counsel or Richelieu's counsel with an accounting of the proceeds disbursed, upon request. If counsel for either Party requests such an accounting, that counsel will provide a copy of the accounting to counsel for the other Party.

**19. Attachment(s) and Headings**

The terms of this Settlement Agreement include the terms set forth in the attached Attachment(s), which are incorporated by this reference as though fully set forth herein. Any Attachment(s) to this Settlement Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Settlement Agreement.

**20. Amendment or Modification**

This Settlement Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors in interest. Notwithstanding the foregoing, the Parties agree that any dates contained in this Settlement Agreement may be modified by agreement of the Parties without Court approval if the Parties agree and cause exists for such modification. However, the Parties cannot modify deadlines set by the Court without Court approval.

**21. Entire Agreement**

Upon execution, this Settlement Agreement and any Attachment(s) constitute the entire agreement among the Parties, and, other than the Parties' executed Settlement Term Sheet, no oral or written representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Attachment(s) other than the representations, warranties and covenants contained and memorialized in such documents. Neither Party is relying on any representation, warranty, or covenant except those set forth herein. To the extent any term of the Settlement Term Sheet conflicts with this Settlement, the terms of this Settlement shall control.

**22. Good Faith Negotiation if the Court Does Not Grant Approval**

If the Court does not grant preliminary or final approval of the Settlement, the Parties will work together in good faith to address the concerns raised in denying preliminary or final approval. If the Parties are unable to jointly agree on solutions to address the court's concerns, then the Parties shall request the assistance of a Judge Palmer or another mediator agreed to by the Parties, unless the Parties agree not to resort to a mediator. Similarly, if the Parties are unable to reach agreement on the terms of the settlement documents, then the Parties shall request the assistance of Judge Palmer or another mediator, unless the Parties agree not to resort to a mediator.

**23. Authorization to Enter into Settlement Agreement**

Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement.



**24. Binding on Successors and Assigns**

This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

**25. Illinois Law Governs; Change in Law Will Not Invalidate Settlement**

All terms of this Settlement Agreement and the Attachment(s) hereto shall be governed by and interpreted according to the laws of the State of Illinois and federal law, to the extent applicable. An intervening change in law or court decision shall not invalidate this Settlement Agreement.

**26. Counterparts**

This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Electronic signatures compliant with the ESIGN Act and signatures transmitted by fax or .pdf shall have the same effect as an original ink signature.

**27. This Settlement is Fair, Adequate and Reasonable**

The Parties warrant and represent they have conducted a thorough investigation of the facts and allegations in the Action. The Parties further represent and warrant that they believe this Settlement Agreement represents a fair, adequate and reasonable Settlement of this action and that they have arrived at this Settlement Agreement through extensive arms-length negotiations, taking into account all relevant factors, present and potential.

**28. Jurisdiction of the Court**

The Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement embodied in this



Settlement Agreement and all orders and judgments entered in connection therewith.

**29. Cooperation and Drafting**

Each of the Parties has cooperated in the drafting and preparation of this Settlement Agreement. Hence, in any construction made to this Settlement Agreement, the same shall not be construed against any of the Parties.

**30. Invalidity of Any Provision**

Before declaring any provision of this Settlement Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

**31. Circular 230 Disclaimer**

Each Party to this Settlement Agreement acknowledges and agrees that (1) no provision of this Settlement Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers regarding this Settlement Agreement, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) each Party (A) has relied exclusively upon his, her or its own, independent legal and tax advisers for advice (including tax advice) in connection with this Settlement Agreement, (B) has not entered into this Settlement Agreement based upon the recommendation of any Party or any attorney or advisor to any other Party, and (C) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other Party to avoid any tax penalty that may be imposed on that Party; and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure

by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement Agreement.

DATED: June 30, 2021

**Jorge Gonzalez**

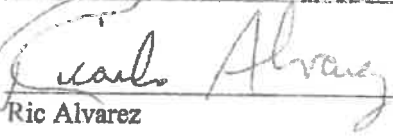
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**Settlement Class Representative**

DATED: 6/29/2021

**Richelieu Foods, Inc.**

By:   
**Mark Cole**

Its: Chief Financial Officer

By:   
**Ric Alvarez**

Its: Chief Executive Officer

# **EXHIBIT 2**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

JORGE GONZALEZ, on behalf of himself and	)	
all other persons similarly situated, known and	)	
unknown,	)	
	)	Case No. 1:20-cv-04354
Plaintiff,	)	
	)	Judge Thomas M. Durkin
v.	)	
	)	
RICHELIEU FOODS, INC.,	)	Magistrate Judge Heather K. McShain
	)	
Defendant.	)	

**DECLARATION OF DUE DILIGENCE**

I, Caroline P. Barazesh, state as follows:

1. I am over the age of twenty-one. I am competent to give this declaration. This declaration is true and correct to the best of my knowledge, information and belief.

2. I am currently a Director for Analytics Consulting LLC (hereinafter “Analytics”), located at 18675 Lake Drive East, Chanhassen, Minnesota, 55317. In my capacity as Director, I am responsible for claims administration in the above-captioned litigation.

3. Analytics Consulting LLC was approved by the Court to provide settlement administration services in the *Gonzalez v Richelieu Foods, Inc.* case (“Settlement”). In this capacity, Analytics Consulting, LLC was charged with (a) establishing and maintaining a related settlement fund account; (b) establishing and maintaining a calendar of administrative deadlines and responsibilities; (c) printing, mailing and emailing the Notice of Class Action Settlement; (d) sending notification text messages; (e) establishing a claims filing settlement website; (f) receiving and validating Requests for Exclusion, Objections, and Claims submitted by Settlement Class Members; (g) processing and mailing payments to Settlement Class

Members and Settlement Class Counsel; and (h) other tasks as the Parties mutually agree or the Court orders Analytics to perform.

4. On July 20, 2021, Analytics received the final version of the Court-approved Notice of Class Action Settlement and Claim Form (“Notice”). The Notice advised Settlement Class Members of their right to file a timely and valid claim form to receive a settlement payment, request exclusion from the Settlement, object to the Settlement, or do nothing, and the implications of each such action. The Notice advised Settlement Class Members of applicable deadlines and other events, including the Final Approval Hearing details, and how Settlement Class Members could obtain additional information.

5. On August 2, 2021, Analytics received a list of Aerotek employees who I understand are Settlement Class Members, containing names, last known mailing address, telephone numbers and alternate telephone numbers and Social Security Numbers where available for 147 class members. Sixteen records had no information apart from the name. On August 2, 2021, Analytics received a second file containing records for Elite employees who I understand are Settlement Class Members, containing names, addresses, phone numbers and email addresses where available. This file did not contain Social Security Numbers. A revised file containing names, addresses, phone numbers, email addresses and Social Security Numbers for 104 Elite employees was received on August 20, 2021. Three additional class member lists that I understand were received from third parties via Settlement Class Counsel’s subpoenas were provided to Analytics by Settlement Class Counsel on August 11, 2021, containing 353 records, of which 128 records had no mailing address. Finally, a list of Richelieu direct employees was provided to Analytics on August 27, 2021 containing 230 records with names, addresses, phone numbers and email addresses (where available) and Social Security Numbers.



6. The Class Lists provided to Analytics contained data for 834 records. Fifty-seven duplicate records were identified and excluded from the mailing list. As a result, the total number of Settlement Class Members is 777. 144 records had no mailing addresses. Analytics researched these records and identified two addresses.

7. The Class List data did not include email addresses for 384 Settlement Class Members, so a reverse append email address search was carried out and email addresses for 64 Settlement Class Members were identified. This resulted in a total of 635 Settlement Class Members with a mailing address, and 3 Settlement Class Members with no mailing address but a phone number or email address. There were 638 Settlement Class Members with either a mailing address, email address or phone number. There were 139 Settlement Class Members with no contact information and no social security number.

8. The mailing addresses contained in the Class List were processed and updated utilizing the National Change of Address Database (“NCOA”) maintained by the U.S. Postal Service. The NCOA contains requested changes of address filed with the U.S. Postal Service. In the event that any individual had filed a U.S. Postal Service change of address request, the address listed with the NCOA would be utilized in connection with the mailing of the Notice Packets.

9. Prior to the Notice distribution, Analytics engaged a professional translation service to translate the Class Notice, claim form, toll free phone message, website text, notice emails to Settlement Class Members and text messages to Settlement Class Members into Spanish.

10. Analytics established a toll-free phone number of (877) 768-1198, and a website [www.RichelieuFingerScanSettlement.com](http://www.RichelieuFingerScanSettlement.com) to provide assistance and information to Settlement Class Members. The toll-free phone number provides bi-lingual assistance to callers. The

website provides the opportunity for Settlement Class Members to file a claim form electronically and is available in both English and Spanish. The toll-free phone number and website address were included in the Notice.

11. On September 7, 2021, Analytics mailed the approved Notice of Class Action Settlement, Claim Form and return envelope (“Notice Packet”) to the most current mailing address of 635 Settlement Class Members via USPS First Class Mail. A copy of the Notice is attached hereto as Attachment 1 and a copy of the Claim Form is attached as Attachment 2. On the same day, Analytics emailed the approved Notice of Class Action Settlement in both English and Spanish with a link to the website to 473 Class Member email addresses and sent text messages with a link to the website to 650 Class Member phone numbers. 420 emails (88.8%) and 518 text messages (79.7%) were delivered.

12. If a Class Member’s Notice Packet was returned by the USPS as undeliverable and without a forwarding address, Analytics performed an advanced address search on all these addresses by using Experian, a reputable research tool. Analytics used the Class Member’s name, previous address and Social Security Number to locate a current address. Ninety-one (91) Notice Packets were returned to Analytics as undeliverable by USPS. From the address research, Analytics located 44 updated addresses and the Notice Packets were mailed to the updated addresses on March 25, 2021. In addition, Analytics promptly mailed the Notice Packet to updated addresses provided by USPS, Settlement Class Counsel and Settlement Class Members. After mailing Notice Packets to updated addresses, 10 Notice Packets were again returned as undeliverable by USPS. As of January 6, 2022, a total of seventy-one (72) out of 635 Notice Packets mailed were undeliverable. Out of 638 Settlement Class Members on the Class List, all received notice by mail, email or text.



13. Settlement Class Members had to return a valid Claim Form by December 6, 2021, to receive a settlement payment from the proposed settlement. As of January 6, 2022, a total of 228 Claim Forms have been received, of which 225 are timely and valid and three Claim Forms are considered late because they were received after the claims deadline. 35.74% of Settlement Class Members who were sent Notice have submitted a Claim Form. 29.34% of total Settlement Class Members have submitted a Claim Form. The Parties agreed to accept the late Claim Forms, so all 228 Claim Forms received are eligible for payment from the Settlement Fund.

14. Settlement Class Members could opt out of the settlement by mailing a written statement requesting exclusion from the Settlement Class to Analytics by December 6, 2021. As of January 6, 2022, no requests for exclusion have been received by Analytics.

15. Settlement Class Members could object to the proposed settlement by mailing a written statement objecting to the settlement to Analytics by December 6, 2021. As of January 6, 2022, no objections have been received by Analytics.

16. On November 5, 2021, Analytics sent 317 reminder emails and 462 text message notice communications to 441 Settlement Class Members who had not yet submitted a Claim Form. 273 emails (86.11%) and 406 text messages (87.87%) were delivered. Only 35 Class Members did not receive either a reminder email or reminder text notice communication. 51 Claim Forms were received after the reminder messages were sent.

17. Analytics established an interest-bearing bank account for the settlement fund on June 21, 2021 and \$20,000.00 was deposited by Richelieu Foods, Inc. on July 22, 2021.

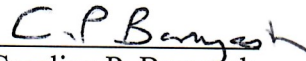
18. Analytics' total costs for services in connection with the administration of this Settlement, including fees incurred and anticipated future costs for completion of the administration, are estimated to be \$14,278.00. This amount will be paid by Defendant from the



Gross Fund. Analytics' work in connection with this matter will continue with the issuance of reminder emails and texts, issuance and mailing of the settlement checks to eligible class members, and to do the necessary tax reporting for the settlement fund.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 6, 2022

  
Caroline P. Barazesh

# **EXHIBIT 3**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

JORGE GONZALEZ, on behalf of himself	)	
and all other persons similarly situated,	)	
known and unknown,	)	
	)	Case No. 1:20-cv-04354
Plaintiff,	)	
	)	Judge Thomas M. Durkin
v.	)	
	)	Magistrate Judge Heather K. McShain
RICHELIEU FOODS, INC.,	)	
	)	
Defendant.	)	

**DECLARATION OF DOUGLAS M. WERMAN**

Douglas M. Werman, being first duly sworn on oath, deposes and states under penalty of perjury the following:

1. I submit this Declaration in support of Plaintiff's Motion for Final Approval of Class Action Settlement.
2. I was appointed Settlement Class Counsel in the above-captioned case.
3. I am a member in good standing of the Illinois State Bar and am the managing shareholder of Werman Salas P.C. A Firm Resume with my firm's accomplishments is attached to this Declaration.
4. Except as noted otherwise, this Declaration is based on my personal knowledge. If called as a witness to testify to the facts in this Declaration, I could and would testify to them.

**My Experience**

5. I graduated from Loyola University of Chicago's School of Law in 1990. I received my undergraduate degree from the University of Illinois, Champaign-Urbana, in 1987. I was admitted to practice law in the State of Illinois in 1990.

6. I am admitted in the following courts:

COURT OF ADMISSION	DATE OF ADMISSION
<b>State Admissions</b>	
State of Illinois	11/8/1990
<b>U.S. District Courts</b>	
Northern District of Illinois	12/20/1990
Western District of Michigan	6/24/1999
Central District of Illinois	3/30/2001
Eastern District of Michigan	3/25/2003
Southern District of Illinois	4/8/2010
Northern District of Indiana	10/25/2010
Western District of New York	7/22/2015
Federal Claims Court	8/13/2015
Southern District of Indiana	11/5/2015
Eastern District of Arkansas	12/4/2015
District of Colorado	6/6/2017
<b>U.S. Circuit Courts</b>	
Seventh Circuit Court of Appeals	8/4/1994
Second Circuit Court of Appeals	11/21/2013
Eleventh Circuit Court of Appeals	5/6/2015
Tenth Circuit Court of Appeals	4/21/2016
Ninth Circuit of Appeals	5/20/2016

7. I am an experienced class action lawyer, having appeared in more than eight hundred (800) cases filed in the state and federal courts in the last 20 years. The majority of these cases were pleaded as collective or class actions under Fed. R. Civ. P. 23. I have been appointed class counsel in scores of cases, including by not limited to: *Hart v. Barbecue Integrated Inc., d/b/a Smokey Bones*. No. 17-cv-227 (D.S.C.); *Magpayo v. Advocate Health and Hospitals Corporation*. No. 16-cv-1176 (N.D. Ill.); *Black, et al. v. P.F. Chang's China Bistro, Inc.* No. 16-cv-3958 (N.D. Ill.); *Ortiz v. Manpower, Inc.*, No. 12-cv-5248 (N.D. Ill.) (class comprising over 85,000 persons); *Arrez v. Kelly Services, Inc.*, No. 07-cv-1289 (N.D. Ill.) (class comprising over 95,000 persons); *Polk v. Adecco*, No. 06 CH 13405 (Cook County, Ill.) (class comprising over 36,000 persons); *Romo v. Manpower*, No. 09-cv-3429 (N.D. Ill.); *Garcia v. JC Penney Corp., Inc.*, No. 12-cv-3687 (N.D. Ill.) (comprising over 36,000 persons); *Robbins v. Blazin Wings, Inc.*,

No. 15-CV-6340 CJS, 2016 WL 1068201, at \*1 (W.D.N.Y. Mar. 18, 2016) (FLSA certification of a collective of 62,000 tipped employees); *Martignago, et al v. Merrill Lynch & Co., Inc.*, Case No. 11-cv-03923-PGG (multi-state class action certified for over 10,000 employees); *Haschak v. Fox & Hound Rest. Grp.*, No. 10-cv-8023 (N.D. Ill.); *Schaefer v. Walker Bros. Enters., Inc.*, No. 10-cv-6366 (N.D. Ill.); *Kernats v. Comcast Corp. Inc.*, Nos. 09-cv-3368 and 09-cv-4305 (N.D. Ill.); *Driver v. AppleIllinois, LLC*, 265 F.R.D. 293, 311 (N.D. Ill. 2010) & *Driver*, No. 06-cv-6149 (N.D. Ill.) (19,000 tipped employees, decertification denied); *Schmidt v. Smith & Wollensky*, 268 F.R.D. 323 (N.D. Ill.); *Hardaway v. Employbridge of Dallas, et al.* No. 11-cv-3200 (N.D. Ill.); *Williams v. Volt*, No. 10-cv-3927 (N.D. Ill.) (class action for over 15,000 employees); *Rosales v. Randstad*, No. 09-cv-1706 (N.D. Ill.); *Rusin v. Chicago Tribune*, No. 12-cv-1135 (N.D. Ill.); *Cope v. Let's Eat Out, Inc.*, 354 F. Supp. 3d 976 (W.D. Mo. 2019) (denying motion to decertify F.R.C.P. 23 class action under Missouri law and FLSA collective action); *Peraza v. Dominick's Finer Foods, LLC*, No. 11-cv-8390 (N.D. Ill.); *Alvarado v. Int'l Laser Prods., Inc.*, No. 18 C 7756, 2019 WL 3337995 (N.D. Ill. June 19, 2019) (contested certified class in case alleging violations of the Biometric Information Privacy Act for improper collection, possession, and transfer of employees' biometric fingerprint identifiers and information); *Adams v. World Hyundai of Matteson LLC*, 2018-CH-15640, Final Approval Order (July 10, 2019) (Cohen, J.) (certified settlement class of over 200 employees in case alleging violations of the Biometric Information Privacy Act for improper collection, possession, and transfer of employees' biometric fingerprint identifiers and information); *Guerrero v. Bob's Discount Furniture, LLC*, Case No. 2019-CH-01046, Preliminary Approval Order (Cir. Ct. Cook Cnty, Ill. Nov. 18, 2019) (Meyerson, J.) (same for 165 person class, which was later expanded to 225 class members); *Kiefer v. Bob Evans Farms, LLC*, Case No. 17-L-112, Preliminary

Approval Order (Cir. Ct. Tazewell Cnty., Ill. Oct. 18, 2019) (same for 1,504 person class); *Phillips v. Warehouse Services, Inc.*, No. 2019-CH-01183, Preliminary Approval Order (Cir. Ct. Cook Cnty., Ill. Dec. 19, 2019) (same for class of over 650 employees); *Briggs, et al. v. RhinoAG, Inc.*, No. 2019-CH-12, Preliminary Approval Order (Cir. Ct. Ford Cnty. Jan. 2, 2020) (same for class of over 200 employees); *Anderson v. Dana Hotel, LLC*, No. 2019-CH-06098, Preliminary Approval Order (Cir. Ct. Cook Cnty. March 3, 2020) (same for estimated 60 person class); *Jones v. CBC Restaurant Corp. d/b/a Corner Bakery Cafe*, No. 1:19-cv-06739, Preliminary Approval Order (N.D. Ill. June 12, 2020) (same for class of over 4,000 employees); *Trost v. Pretium Packaging, L.L.C.*, No. 2020-CH-03606, Preliminary Approval Order (Cir. Ct. Cook Cnty., Ill. May 8, 2020) (same for class of over 1,700 employees); *Lane v. Schenker, Inc.*, 3:19-cv-00507-NJR, ECF No. 44, at ¶ 8 (S.D. Ill. July 29, 2020) (same for class of over 300 employees); *Collier v. Pete's Fresh Market 2526 Corporation*, No. 2019-CH-5125, Preliminary Approval Order (Cir. Ct. Cook Cnty., Ill. Aug. 3, 2020) (same for two classes of over 6,000 employees); *Roach v. Walmart Inc.*, 2019-CH-1107, Preliminary Approval Order (Cir. Ct. Cook Cnty. Dec. 14, 2020) (same for class of over 21,000 employees); *Heard v. THC – North Shore, Inc.*, 2017-CH-16918 (Cir. Ct. Cook Cnty. Jan. 20, 2021) (same for class of over 2,800 employees); *Davis v. Heartland Employment Services, LLC*, 19-cv-00680, ECF No. 124, Preliminary Approval Order (N.D. Ill. May 18, 2021) (same for class of 10,836 employees that was later expanded to exceed 11,000 employees); *Burlinski v. Top Golf USA Inc.*, 1:19-cv-06700, ECF No. 98, Preliminary Approval Order (N.D. Ill. June 22, 2021) (same for class of over 2,660 employees).

8. Several federal courts have recognized the expertise that my firm and I possess in collective and class action litigation. For example:

- “Plaintiffs’ Counsel are known and recognized lawyers in wage and hour litigation and have an excellent national reputation in representing tipped employees in this type of case. Courts recognize Plaintiffs’ Counsel as leaders in advocating the rights of such workers throughout the United States.” *Osman, et al. v. Grube, Inc., et al.* 2018 WL 2095172, at \*4 (N.D. Ohio May 4, 2018);
- Douglas Werman and Werman Salas P.C. are “national leaders in advocating the rights of working people in wage and hour litigation” and describing Mr. Werman as a “highly respected and experienced lawyer[.]...” *Sanchez v. Roka Akor Chicago LLC*, No. 14 C 4645, 2017 WL 1425837, at \*5-7 (N.D. Ill., Apr. 20, 2017);
- Awarding Werman Salas P.C. attorney’s fees and stating that Mr. Werman and his firm are “... national leaders in advocating the rights of working people in wage and hour litigation. *Knox v. Jones Grp.*, No. 15-CV-1738 SEB-TAB, 2017 WL 3834929, at \*5 (S.D. Ind. Aug. 31, 2017);
- Describing Mr. Werman as a “highly experienced attorney” in class actions. *Schmidt v. Smith & Wollensky, LLC*, 268 F.R.D. 323, 328 n.5 (N.D. Ill. 2010) (Castillo, C.J.).

9. I am a frequent speaker on issues relating to class and collective actions, particular under state and federal labor laws. A non-exhaustive list of some of my speaking engagements include:

National Employment Lawyers Association, Denver, 2019	Strategies for Litigating Mass Individual Arbitrations
Chicago Bar Association, 2018	What’s Hot (and not) in Class Action Litigation
Chicago Bar Association, 2017, Chicago Fall Seminar on Wage and Hour Litigation	Settlement Strategies: Mediation and Court Approved Settlements in Wage and Hour Litigation
National Employment Lawyers Association National Convention, Los Angeles, 2016	Co-Counseling & Cooperating with Other Plaintiffs’ Lawyers
National Employment Lawyers Association National Convention, Los Angeles, 2016	Who is an Employer & Who is an Employee?
Federal Bar Association, Chicago Chapter, Moderator, 2016	Enforcement and Litigation Priorities: EEOC, NLRB, DOL
National Employment Lawyers Association National Convention, Washington, D.C., 2015	Settlement Issues in Settling Wage and Hour Class and Collective Actions

American Bar Association, Fair Labor Standards Legislation Committee, Puerto Vallarta, Mexico 2015	Litigation Issues in Wage and Hour Class and Collective Actions
Bridgeport Legal Conferences, Wage and Hour Class Action, Chicago, 2015	Settlement of Wage and Hour Class Actions
Practicing Law Institute, Chicago, 2013, 2014, 2015	FLSA Wage and Hour Update
Chicago Bar Association, Class Litigation Committee, 2011	Current Terrain in Class Action Litigation
Illinois Institute of Continuing Legal Education, 2008	Litigating Class Action Claims
AFL-CIO Lawyers Coordinating Committee, 2008	Arbitrating Wage and Hour Cases

10. My law firm has been actively developing and litigating dozens of potential class actions alleging similar violations of the Biometric Information Privacy Act (“BIPA”) as are alleged in this case. I have been appointed class counsel for settlement purposes in over a dozen cases similar to this one on behalf of individuals alleging violations of the BIPA based on biometric tracking systems. *See* Paragraph 7, *supra*.

11. My firm has handled briefing and/or oral argument that resulted in my firm’s clients prevailing on numerous motions to dismiss in proposed class actions under the BIPA. *See, e.g., Roach v. Wal-Mart*, 2019 CH 1107 (Cir. Ct. Cook Cnty. Oct. 25, 2019) (defeating motion to dismiss based on lack of Constitutional standing and statute of limitations); *Heard, et al. v. THC-North Shore, Inc.*, 17 CH 16918, at 10 (Cir. Ct. Cook Cnty., Dec. 12, 2019) (defeating motion to dismiss based on statute of limitations and failure to plead a violation of Section 15(a)); *Burlinski v. Top Golf USA Inc.*, No. 19-CV-06700, 2020 WL 5253150, at \*5 (N.D. Ill. Sept. 3, 2020) (defeating motion to dismiss based on statute of limitations, Workers’ Compensation Act preemption, and failure to plead a reckless violation); *Bryant v. Compass Grp. USA, Inc.*, No. 19 C 6622, 2020 WL 7013963, at \*1 (N.D. Ill. Nov. 29, 2020) (defeating motion to dismiss based on statute of limitations and special legislation Constitutional challenge).



12. I have been involved in every stage of the above-captioned litigation.

13. The Settlement Class Members without contact information and social security numbers are individuals who worked for Defendant through third-party temporary staffing agencies. Settlement Class Counsel obtained names of these workers from Defendant and then served subpoenas on the staffing agencies. One agency was no longer operating and corporate entity under which it operated was revoked. Although Settlement Class Counsel still attempted to serve a subpoena on that agency, it was unsuccessful and so no contact information was obtainable. While the remaining four agencies provided subpoena responses, they were still unable to provide contact information for each Settlement Class Member identified.

14. The Settlement represents a gross recovery of approximately \$1,128 per Settlement Class Member and a net recovery of approximately \$2,474.60 per Settlement Class Participant, if the Court permits payment of the late claims. The recovery compares favorably with other similar BIPA class settlements I am familiar with where Illinois state and federal courts have granted preliminary and final approval:

#### BIPA SETTLEMENT CHART

Case	Judge	Class Size	Per Class Member	Attorney Fees	Service Award
<i>Jones v. CBC Rest. Corp.</i> , 1:19-cv-06736 (N.D. Ill. Oct. 22, 2020)	Alonso	4,053	\$800 gross; no claims process	\$1,054,966 (32.5% fund)	\$7,500
<i>Dixon v. The Wash. &amp; Jane Smith Home</i> , 1:17-cv-8033 (N.D. Ill. Aug. 20, 2019)	Kennelly	1,378	\$1,085 or \$768 gross; no claims process <sup>1</sup>	\$451,548 (1/3rd of fund)	\$10,000

<sup>1</sup> A total of 837 class members in the potential two-year potential limitations period received the larger number (\$1,085.00 gross) and a total of 541 class members outside of the potential two-year but inside the potential five-year limitations period received the smaller award (\$768.12 gross).

Case	Judge	Class Size	Per Class Member	Attorney Fees	Service Award
<i>Martinez v. Nando's Rest. Grp., Inc.</i> , 1:19-cv-07012 (Oct. 27, 2020 N.D. Ill.)	Ellis	1,787	\$1,000 gross; no claims process	\$595,666.67 (1/3rd of fund)	\$7,500
<i>Lane v. Schenker, Inc.</i> , 3:19-cv-00507-NJR (Nov. 17, 2020 S.D. Ill.)	Rosenstengel	316	\$1,000 gross; no claims process	\$105,333.33 (1/3rd of fund)	\$7,500
<i>Thome v. NovaTime Tech., Inc.</i> , 1:19-cv-06256 (March 8, 2021 N.D. Ill.)	Kennelly	68,213	\$365 net per claimant <sup>2</sup>	\$1,365,300 (1/3rd of fund)	\$7,500
<i>Lopez-McNear v. Superior Health Linens, LLC</i> , 19-cv-2390 (Apr. 27, 2021 N.D. Ill.)	Pallmeyer	790	\$1,000 gross; no claims process	\$265,717.22 (35% of fund after admin. deduction)	\$5,000
<i>Bedford v. Lifespace Communities, Inc.</i> , 1:20-cv-04574 (May 12, 2021 N.D. Ill.)	Shah	851	\$1,150 gross; no claims process	\$328,954.05 (33.3% of fund)	\$10,000
<i>Burlinski v. Top Golf USA Inc.</i> , 1:19-cv-06700 (Oct. 13, 2021 N.D. Ill.)	Chang	2,602	\$1,012 gross; no claims process	\$865,345 (1/3rd of fund after <i>Redman</i> deductions)	\$7,500 each
<i>Davis v. Heartland Employment Services, LLC</i> , 19-cv-00680 (Oct. 25, 2021 N.D. Ill.)	Valderrama	11,048	At least \$689 per claimant	\$1,777,110 (1/3rd of fund after <i>Redman</i> deductions)	\$10,000 each

<sup>2</sup> In the final approval motion, Plaintiff reported the claims rate was 10 percent. The settlement also allows Plaintiff to seek additional settlement funds based on an insurance policy assignment that the Defendant provided Plaintiff.

15. The Settlement here is also strong because Defendant could have obtained a victory or greatly reduced the potential class recovery based on its defenses in the lawsuit, including:

- (1) that Plaintiff's damages claims were barred by the exclusivity provisions of the Workers' Compensation Act, an issue which is currently on appeal before the Illinois Supreme Court;<sup>3</sup>
- (2) that Defendant's biometric timekeeping system does not collect biometric identifiers or biometric information as defined by BIPA;
- (3) that any biometric data collected from Defendant's timekeeping system was in the sole possession of Defendant's timekeeping vendor and so Defendant could never have collected, possessed, or disclosed the data;
- (4) that the statute of limitations under BIPA is one year instead of five years;<sup>4</sup> and
- (5) that any liquidated damages imposed would be excessive in light of the alleged harm and so would violate Defendant's due process rights.

16. Regardless of the outcome of the above defenses, if the litigation had continued, it would have been complex, expensive, and protracted. The Parties would have completed written discovery and taken depositions of party witnesses. Plaintiff also would have obtained third-party discovery from the vendor of Defendant's timekeeping system. After that, Plaintiff would have served an expert witness report about how Defendant's timekeeping system collected

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<sup>3</sup> *McDonald v. Symphony Bronzeville Park, LLC*, Case No. 126511 (Ill.) (petition for leave to appeal accepted on January 26, 2021).


<sup>4</sup> After the Parties reached their settlement, the First District Appellate Court held that the five-year limitations period applies to BIPA claims under Sections 15(a), (b), and (e) and the one-year limitations period applies to claims under Section 15(c) and (d). *Tims v. Black Horse Carriers, Inc.*, Case No. 1-20-0563 (1st Dist) (Sept. 17, 2021). But given another ongoing appeal over the same issue, the Illinois Supreme Court is likely to be the ultimate decision-maker on this issue.

biometric identifiers and/or biometric information covered by BIPA. This likely would have resulted in Defendant hiring its own expert witness. Following that additional discovery, Plaintiff would have filed a motion for class certification and Defendant likely would have moved for summary judgment. If the case proceeded through a judgement, the losing party likely would have appealed given the lack of controlling precedent on the key legal disputes.

17. The Settlement of the Action is the product of well-informed judgments about the adequacy of the resolution. The Settlement was also the product of arm's-length, non-collusive negotiations, with the assistance of retired Judge Stuart Palmer, an experienced BIPA mediator. I am intimately familiar with the strengths and weaknesses of the claims and defenses of this case, as well as the factual and legal issues, sufficient to make an informed recommendation about the value of the claims, the time, costs and expenses of protracted litigation, discovery, and appeals, and the adequacy of the Settlement reached. The stage of litigation has advanced to a state that I could fairly and fully evaluate the value of the Settlement. In my professional opinion, the Settlement is fair and reasonable in light of the risk, costs, and delay of further litigation.

18. I declare under penalty of perjury pursuant to 28 U.S.C. 1746 that the foregoing is true and correct.

Executed on January 13, 2022.

A handwritten signature in black ink, appearing to read "Doug Werman", with a large, stylized loop at the end.

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Douglas M. Werman

## FIRM RESUME

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### WERMAN SALAS P.C.

77 West Washington Street

Suite 1402

Chicago, IL 60602

[www.flsalaw.com](http://www.flsalaw.com)

## **Introduction:**

Werman Salas P.C. is a Chicago based national law firm focused on the recovery of unpaid wages for workers in class and collective actions across the United States.

Recognizing the firm's skill and experience, a federal court described Werman Salas P.C. as "national leaders in advocating the rights of working people ..." *Sanchez v. Roka Akor Chicago LLC*, 2017 WL 1425837 (N.D. Ill., Apr. 20, 2017). A federal magistrate judge described Werman Salas P.C. as "known and recognized lawyers in wage and hour litigation" with "an excellent national reputation." *Osman, et al. v. Grube, Inc.*, 2018 WL 2095172, at \*4 (N.D. Ohio May 4, 2018).

## **Significant Biometric Information Privacy Act Class Actions**

### *Lead or Co-Lead Counsel*

- *Roach v. Walmart Inc.*, 2019-CH-1107, (Cir. Ct. Cook Cnty., Ill.) (appointed lead class counsel in settlement for over 21,000 class members alleging Biometric Information Privacy Act claims based on use of biometric tracking technology)
- *Davis v. Heartland Employment Services, LLC*, 1:19-cv-00680 (N.D. Ill.) (appointed co-lead class counsel in settlement for over 11,000 class members alleging Biometric Information Privacy Act claims based on use of biometric timekeeping equipment)
- *Collier v. Pete's Fresh Market 2526 Corporation*, No. 2019-CH-5125 (Cir. Ct. Cook Cnty., Ill.) (appointed co-lead class counsel in settlement for over 6,000 class members alleging Biometric Information Privacy Act claims based on use of biometric timekeeping equipment)
- *Jones v. CBC Rest. Corp.*, 1:19-cv-06736 (N.D. Ill.) (appointed class counsel in settlement for over 4,000 class members alleging Biometric Information Privacy Act claims based on use of biometric timekeeping equipment)
- *Heard v. THC – North Shore, Inc.*, 2017-CH-16918 (Cir. Ct. Cook Cnty., Ill.) (appointed co-lead class counsel in settlement for over 2,800 class members alleging Biometric Information Privacy Act claims based on use of biometric timekeeping equipment)
- *Burlinski v. Top Golf USA Inc.*, 1:19-cv-06700 (N.D. Ill.) (appointed co-lead class counsel in settlement for over 2,600 class members alleging Biometric Information Privacy Act claims based on use of biometric timekeeping equipment)
- *Trost v. Pretium Packaging, L.L.C.*, No. 2020-CH-03606 (Cir. Ct. Cook Cnty., Ill.) (appointed co-lead class counsel in settlement for over 1,700 class members alleging Biometric Information Privacy Act claims based on use of biometric timekeeping equipment)

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- *Kiefer v. Bob Evans Farms, LLC*, Case No. 17-L-112 (Cir. Ct. Tazewell Cnty., Ill.) (appointed class counsel in settlement for over 1,500 class members alleging Biometric Information Privacy Act claims based on use of biometric timekeeping equipment)
- *Phillips v. Warehouse Services, Inc.*, No. 2019-CH-01183 (Cir. Ct. Cook Cnty., Ill.) (appointed class counsel in settlement for over 600 class members alleging Biometric Information Privacy Act claims based on use of biometric timekeeping equipment)
- *Lane v. Schenker, Inc.*, 3:19-cv-00507-NJR, ECF (S.D. Ill.) (appointed co-lead class counsel in settlement for over 300 class members alleging Biometric Information Privacy Act claims based on use of biometric timekeeping equipment)
- *Adams v. World Hyundai of Matteson LLC*, 2018-CH-15640 (Cir. Ct. Cook Cnty., Ill.) (appointed class counsel in settlement for over 200 class members alleging Biometric Information Privacy Act claims based on use of biometric timekeeping equipment)
- *Alvarado v. Int'l Laser Prods., Inc.*, No. 18 C 7756, 2019 WL 3337995 (N.D. Ill. June 19, 2019) (contested certified class for hundreds of class members alleging violations of the Biometric Information Privacy Act based on use of biometric timekeeping equipment)
- *Briggs, et al. v. RhinoAG, Inc.*, No. 2019-CH-12 (Cir. Ct. Ford Cnty., Ill.) (appointed class counsel in settlement for hundreds class members alleging Biometric Information Privacy Act claims based on use of biometric timekeeping equipment)
- *Guerrero v. Bob's Discount Furniture, LLC*, Case No. 2019-CH-01046 (Cir. Ct. Cook Cnty., Ill.) (appointed class counsel in settlement for 165 class members, later expanded to 225 class members, alleging Biometric Information Privacy Act claims based on use of biometric timekeeping equipment)

#### **Significant Unpaid Wage Class Actions:**

##### *Lead or Co-Lead Counsel*

- *Arrez v. Kelly Services, Inc.*, No. 07-cv-1289 (N.D. Ill.) (appointed class counsel in settlement for 95,000 class members in lawsuit alleging violations of the Illinois Wage Payment and Collection Act for unpaid vacation pay benefits and of the Illinois Day and Temporary Labor Services Act for wage payment and notice violations )
- *Ortiz v. Manpower, Inc.*, No. 12-cv-5248 (N.D. Ill.) (unpaid wage class action for over 85,000 class members)

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- *Garcia v. JC Penney Corp., Inc.*, No. 12-CV-3687, 2016 WL 878203 (N.D. Ill. Mar. 8, 2016) (unpaid wage class action for over 36,000 employees)
- *Polk v. Adecco*, No. 06 CH 13405 (Cook County, Ill.) (unpaid wage class action for over 36,000 class members)
- *Driver v. AppleIllinois, LLC*, 265 F.R.D. 293, 311 (N.D. Ill. 2010) & *Driver*, No. 06-cv-6149 (N.D. Ill.) (class action for 19,000 tipped restaurant employees; decertification denied)
- *Williams v. Volt*, No. 10-cv-3927 (N.D. Ill.) (unpaid wage class action for over 15,000 employees)
- *Martignago, et al v. Merrill Lynch & Co., Inc.*, Case No. 11-cv-03923-PGG (multi-state class action certified for over 10,000 employees)
- *Kernats v. Comcast Corp. Inc.*, Nos. 09 C 3368 and 09 C 4305, 2010 U.S. Dist. LEXIS 112071 (N.D. Ill. Oct. 20, 2010) (class certification granted for over 8,000 Illinois employees)
- *Ryan Black v. P.F. Chang's China Bistro, Inc.*, Case No. 16 C 03958 (N.D. Ill.) (class and collective action settlement for thousands of restaurant workers)
- *McDonnell v. Groupon*, Case No. 14 cv 9028 (N.D. Ill.) (certified settlement class of 2,024 inside Account Representatives and Account Executives alleging overtime misclassification violations under the Illinois Minimum Wage Law and the Fair Labor Standards Act)
- *Magpayo v. Advocate Health & Hosps. Corp.*, No. 16-CV-01176, 2018 WL 950093, at \*1 (N.D. Ill. Feb. 20, 2018) (Following contested motion practice, the court certified Rule 23 classes under the Illinois Minimum Wage Law and under the Illinois Wage Payment and Collection Act for unpaid overtime and straight time wages due for working through unpaid meal periods)
- *Higgins v. Verizon North LLC*, No. 4:11-cv-1393 (E.D. Mo.) (appointed class counsel in settlement for 377 class members in lawsuit alleging off-the-clock violations under the Missouri Minimum Wage Law, the Fair Labor Standards Act, and under common law)
- *Davis v. A Sure Wing, LLC*, Case No. 3:15-cv-01384-SCW, ECF No. 55 (S.D. Ill. Aug. 29, 2016) (certified settlement class of 1,951 tipped employees of restaurant franchise alleging violations of the tip-credit provisions of the Missouri Minimum Wage Law and Illinois Minimum Wage Law)



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- *Cope v. Let's Eat Out, Incorporated*, Case No. 6:16-cv-03050-SRB (W.D. Mo. May 10, 2017) (contested certified classes of 993 tipped employees alleging violations of the Missouri Minimum Wage Act and the Missouri common law)
- *Zamudio v. Nick & Howard LLC d/b/a The Underground, et al.*, Case No. 15-cv-3917 (N.D. Ill.) (certified settlement class of 108 servers and bartenders in lawsuit alleging violations of the Illinois Minimum Wage Law and the Illinois Wage Payment and Collection Act for unpaid minimum and other earned wages)
- *Rusin v. Chicago Tribune Company*, Case No. 12 cv 01135 (N.D. Ill.) (certified settlement class of 46 field reporters in lawsuit alleging overtime misclassification violations under the Illinois Minimum Wage Law)
- *Snoep v. Asia on Illinois LLC*, Case No. 12 cv 2387 (N.D. Ill.) (certified settlement class of 176 tipped employees in lawsuit alleging violations of the tip credit provisions of the Illinois Minimum Wage Law)
- *Peraza, et al. v. Dominick's Finer Foods, LLC.*, Case No. 11 cv 8390 (N.D. Ill.) (certified settlement class of 85 managers in lawsuit alleging overtime misclassification violations under the Illinois Minimum Wage Law and the Fair Labor Standards Act)
- *Hopkins v. Theofanous Brothers, Inc.*, Case No. 10 CH 672 (Circuit Court of McHenry County, Chancery Division ) (following contested motion practice, the court certified classes under the Illinois Minimum Wage Law for unpaid minimum wages and under the Illinois Wage Payment and Collection Act for unauthorized deductions)
- *O'Donnell v. AT&T Services, Inc.*, Case No. 10 CH 46886 (Circuit Court of Cook County, Chancery Division) (certified settlement class of 272 IT Analysts in lawsuit alleging overtime misclassification violations under the Illinois Minimum Wage Law)
- *Gonzalez v. Fellowes, Inc.*, Case No. 10 cv 7682 (N.D. Ill.) (certified settlement class of 805 day and temporary laborers who alleged they were not paid for the time they worked through their meal breaks in violation of the Illinois Wage Payment and Collection Act, Illinois Minimum Wage Law, Illinois Day and Temporary Labor Services Act, and Fair Labor Standards Act)
- *Barragan v. Evanger's Dog and Cat Food Co., Inc.*, Case No. 09 cv 227 (N.D. Ill.) (following contested motion practice, the court certified a Rule 23 class under the Illinois Minimum Wage Law for unpaid overtime wages)
- *Jimenez v. Yamuna Enterprises, Inc.*, Case No. 07 CH 20918 (Circuit Court of Cook County, Chancery Division) (following contested motion practice, the court certified classes under the Illinois Minimum Wage Law and Illinois Wage Payment and Collection Act for owed overtime, minimum wages, and other unpaid wages)

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- *Shaukat, et al. v. Wireless 4 U*, Case No. 06 cv 4214 (N.D. Ill.) (following contested motion practice, the court certified Rule 23 classes under Illinois, Arizona, and Missouri state law for the non-payment of commission wages)
- *Steward v. Colonial Ice Cream, Inc. d/b/a Colonial Cafe & Ice Cream*, Case No. 1:15-cv-02284, ECF No. 100 (N.D. Ill. May 3, 2016) (certified settlement class of 457 tipped employees alleging violations of the tip-credit provisions of the Illinois Minimum Wage Law)

**Significant Collective Actions for Minimum Wages or Overtime:**

*Lead or Co-Lead Counsel*

- *Robbins v. Blazin Wings, Inc.*, No. 15-CV-6340 CJS, 2016 WL 1068201, at \*1 (W.D.N.Y. Mar. 18, 2016) (following contested motion practice, the court authorized step one FLSA certification to a nationwide class and over 5,000 servers and bartenders filed consents to join the case; after extensive discovery, the parties resolved the action on a collective action basis)
- *Knox v. The Jones Group*, No. 15-cv-1738 (S.D. Ind) (following contested motion practice the court authorized step one FLSA certification and 559 servers and bartenders filed consents to join the case; after extensive discovery, the parties resolved the action on a collective action basis)
- *Brunty v. Optima Health Plan*, No. 2:19-cv-255 (E.D. Va.) (collective action settlement for 178 Care Coordinator Non-RNs alleging overtime misclassification claims under the FLSA)
- *Turner v. BFI Waste Service, LLC*, No. 2:16-cv-2864-DCN (D.S.C.) (following contested motion practice the court authorized step one FLSA certification and 126 drivers filed consents to join the case; the parties later resolved the action for the collective)
- *Wolverton v. Diversified Restaurant Holdings, Inc., et al.*, Case No. 2:14-cv-11333-VAR-DRG (E.D. Mich.) (collective action settlement involving hundreds of restaurant franchise employees)
- *Burns v. RespiteCare*, Case No. 1:17-cv-00917 (N.D. Ill.) (collective action settlement for 94 Home Service Aides alleging failure to pay all overtime wages in violation of the FLSA)
- *Castaldo v. Uncle Julio's Corporation*, Case No. 1:15-cv-09176 (N.D. Ill.) (collective action settlement involving 396 tipped employees)

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- *McLamb v. High 5 Hospitality, LLC d/b/a Buffalo Wild Wings*, Case No. 1:16-cv-00039-GMS (D. Del.) (collective action settlement encompassing up to 612 tipped employees)
- *Osman v. Grube, Inc.*, Case No. 3:16-cv-00802-JJH (N.D. Ohio) (collective action settlement reached for 323 tipped workers in lawsuit alleging violations of the tip credit provisions of the Fair Labor Standards Act)
- *Grosscup v. KPW Management, Inc.*, Case No. 16 C 06501 (N.D. Ill.) (collective action settlement reached for 232 tipped workers in lawsuit alleging violations of the tip credit provisions of the Fair Labor Standards Act)
- *Russell v. EqHealth Solutions, Inc.*, 3:19-cv-000005 (M.D. La.) (collective action settlement for 63 care coordinators and utilization reviewers who alleged overtime misclassification claims under the FLSA)
- *Putman v. Galaxy 1 Marketing, Inc.*, 3:10-cv-72-JAJ-RAW (S.D. Iowa) (following contested motion practice the court authorized step one FLSA certification and 153 satellite installers filed consents to join the case; after extensive discovery on plaintiffs' independent contractor misclassification claims, the parties resolved the action on a collective action basis)

### **Significant Telephone Consumer Protection Act Class Actions**

#### *Lead or Co-Lead Counsel*

- *Buchanan v. Sirius XM Radio Inc.*, Case No. 17-cv-728 (N. D. Tex.) (class action settlement for over 14 million class members)

### **Our Attorneys:**

- **Douglas M. Werman, *Founder and Managing Partner***

Doug acted as lead and co-lead counsel in hundreds of individual, collective and class action lawsuits throughout the United States resulting in more than \$250,000,000 being paid to working people and their families.

Doug has served as counsel of record in scores of ground breaking cases, including the successful appeal of *Ervin v. OS Restaurant Serv.*, 09-3029 (7th Cir. Jan. 18, 2011), which confirmed the ability of employees to litigate, in the same lawsuit, Fair Labor Standards Act collective action claims together with state law class action claims for owed minimum wages and overtime pay. He is on the Board of Editors of the leading treatise on the Fair Labor Standards Act, entitled, "*The Fair Labor Standards Act*," and is a recurring speaker at Chicago and American Bar Association events, the National Employment Lawyers Association, the Illinois Institute for Continuing Education, and other legal conferences. Doug was on the working committees that helped author

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the Illinois Day and Temporary Labor Services Act, the 2006 amendments to the Illinois Minimum Wage Law, and the 2011 “Wage Theft” amendments to the Illinois Wage Payment and Collection Act. Recently, Doug was one of ten lawyers in the United States, working in conjunction with Federal Judiciary Center, who drafted Mandatory Initial Discovery Protocols to be used by the United States federal courts in Fair Labor Standards Act cases. Doug is also the proud recipient of the Thirteenth Annual Award for Excellence in Pro Bono Service awarded by the United States District Court for the Northern District of Illinois, in conjunction with the Chicago Chapter of the Federal Bar Association.

Doug graduated from Loyola University of Chicago School of Law in 1990. After his graduation, he worked at national management side labor law firms until starting Werman Law Office P.C. in 2001, which became Werman Salas P.C. on January 1, 2014. As a defense lawyer, Doug represented a broad range of clients in many business areas including telecommunications, retail, transportation, waste management, insurance, warehousing, and construction. His work on behalf of employers included extensive experience performing human resource counseling and before the National Labor Relations Board, including unfair labor practice proceedings and union representation cases.

- **Maureen A. Salas, *Partner***

Maureen is a highly knowledgeable and skilled class action litigator who is dedicated to obtaining successful results for her clients. Maureen has delivered outstanding results to her clients by winning trials, winning summary judgment motions, and by negotiating favorable settlements for her clients.

Maureen began working at the firm in 2006 and became a shareholder in 2013. She primarily represents employees in class and collective action wage and hour litigation, and she has had tremendous success recovering wages for workers across the nation in a variety of industries. Maureen has recovered tens of millions of dollars for working people during her tenure with the firm. Maureen also prides herself in delivering excellent service and results to the clients she represents in single plaintiff employment matters involving claims for discrimination, retaliatory discharge, and claims under the Family Medical Leave Act.

Maureen’s commitment to her practice of representing workers extends outside the courtroom. Maureen served as a Contributing Editor for the leading treatise on the Fair Labor Standards Act, entitled, “*The Fair Labor Standards Act*” (2010). She also serves as a Chapter Editor for the American Bar Association’s Federal Labor Standards Legislation Committee’s Midwinter Treatise.

Maureen has been asked to share her knowledge and experience with her peers and has served as a speaker on esteemed panels on a national and local level. She had the privilege of speaking on the topic of employee misclassification at the American Bar Association’s Labor and Employment Law Conference in 2017 and at its Annual Meeting in 2012. Maureen also had the honor of speaking on multiple occasions for the National Employment Lawyers Association, an organization that advances employee rights and advocates for equality and justice in the American

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workplace. Maureen has spoken on a local level for the Chicago Bar Association and the Illinois Bar Association on topics related to wage and hour litigation and pregnancy discrimination.

Maureen received her Juris Doctor degree, *summa cum laude*, from DePaul University College of Law in May 2006, and she was elected into the Order of the Coif in recognition of her scholastic excellence. Maureen also earned the distinction of becoming a Quarter-Finalist in the 2006 Wagner Competition, the nation's largest student-run appellate moot court competition and the premier competition dedicated exclusively to the areas of labor and employment law. As a law student, Maureen also worked as an intern for the Equal Employment Opportunity Commission. Maureen received her Bachelor of Science degree, *magna cum laude*, in Public Administration from the University of Arizona in 2002.

- **Sarah J. Arendt, *Partner***

Sarah Arendt has represented thousands of employees in class, collective, and individual actions to recover unpaid minimum wages, overtime compensation, and other owed wages and penalties. She has recovered over \$7 million in owed wages for her clients. A federal court has called Sarah a "highly respected and experienced lawyer" in wage and hour law.

Sarah takes on wage theft in all its forms – she has represented federal employees seeking owed overtime and night pay from the U.S. Government, inside sales representatives who were misclassified as managers by their tech firm and big-box employers, and tipped workers who were not paid the minimum wage by restaurant franchises across the country. Sarah has also recovered unpaid wages and overtime compensation for home health and companion care workers, including those who work 24-hour shifts in the homes of their employer's clients.

Sarah doesn't just fight wage theft. She has also recovered hundreds of thousands of dollars for employees who have been discriminated against on the basis of their age, national origin, sex, sexual orientation, and military service. She has represented clients before the Equal Employment Opportunity Commission and the Illinois Department of Human Rights.

Sarah is also an ardent advocate for workers outside the office. She is a regular contributor to a leading treatise, "The Fair Labor Standards Act," and has spoken on state and local vacation pay legislation at the Chicago-Kent College of Law. Sarah was the recipient of LAF Chicago's 2015 Volunteer of the Year Award for their Violence Against Women Act and U Visa Pro Bono Project. She is a former Peggy Browning fellow and the current Co-Coordinator of the Peggy Browning Alumni Association – Chicago Chapter, which encourages law students and young attorneys to pursue careers in union-side labor law. Sarah is also a member of the Women Employed Quality Jobs Council, where she helped draft the proposed No Salary History bill, which passed the Illinois legislature with overwhelming support but was vetoed by Governor Rauner in 2017.

Sarah received her J.D. from the University of Chicago Law School. During law school Sarah worked to overturn the convictions of wrongly-accused prisoners through The Exoneration Project clinic. She also worked as a research assistant to Professor Tom Ginsburg and Dean Thomas J. Miles.

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- **Sally Abrahamson, *Partner***

Throughout her career, Sally has recovered over \$100 million dollars for workers and has litigated and settled cutting edge cases. Sally is nationally recognized as an aggressive litigator, who can also work effectively with the other side when a deal can be made.

Notably, Sally has litigated some of the biggest cases in the country against national chain restaurants and recovered tens of millions of dollars for tipped workers. She litigates a wide-range of wage-and-hour cases on behalf of service employees, technicians, and sales employees (among others). Sally also litigates disparate impact discrimination cases, including *Cote v. Walmart*, which resulted in a \$7.5 million class action settlement on behalf of Walmart associates who were unable to obtain health insurance coverage for their same-sex spouses from Walmart. In 2017, Sally won Public Justice's prestigious Trial Lawyer of the Year Award as part of the litigation team in a class action against the Census Bureau. The case challenged the use of arrest and criminal history records as a screen for employment for 850,000 applicants and in 2016, the parties reached a landmark settlement that required the Census Bureau to reform its hiring practices for the 2020 decennial census.

Prior to joining Werman Salas P.C. in 2020, Sally was a partner at Outten & Golden LLP, a plaintiff-side employment firm with a national presence. Sally also previously worked as a staff attorney at the D.C. Employment Justice Center, where she won two bench trials. She clerked for the Honorable Frank Montalvo, U.S. District Judge in the Western District of Texas, El Paso Division. In addition to serving as Judge Montalvo's law clerk, Sally drafted speeches and papers in Spanish on topics ranging from arbitration to due process in support of Judge Montalvo's position on the Committee on International Judicial Relations.

Sally speaks frequently about issues facing LGBTQ employees and low-wage workers. She has won several awards and received national recognition for her litigation skills, including:

- Super Lawyers Super Lawyer: 2020
- Super Lawyers Rising Star: 2016-2019
- Legal 500 United States Recommended Labor and Employment Lawyer 2019-2020
- Finalist for Public Justice's Trial Lawyer of the Year Award 2018
- Trial Lawyer of the Year Award, Public Justice, *Gonzalez v. Pritzker* 2017
- National LGBT Bar Association Best LGBT Lawyers Under 40 – Class of 2017

Sally received her B.A. from Oberlin College and her J.D., with honors, from American University's Washington College of Law where she received the Dean's Award for Professional Responsibility – Outstanding Student in the Clinical Program for her work with the Domestic Violence Clinic.



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- **Michael Tresnowski, Associate**

Mike represents workers seeking to recover unpaid wages in individual, collective, and class action lawsuits. He represents employees throughout the nation across a wide range of industries.

Before committing his practice exclusively to workers' rights, Mike represented both individuals and companies in complex commercial cases as an associate at Miller Shakman Levine and Feldman, a Chicago litigation boutique. Mike's practice involved a wide range of issues including executive compensation, antitrust, and professional malpractice. Mike's knowledge of federal courts is informed by his service as a law clerk for the Honorable James B. Zagel, United States District Judge on the Northern District of Illinois.

Mike graduated with honors from the University of Chicago Law School in 2016, where he was an Articles Editor on the University of Chicago Law Review. He represented victims of racial discrimination in class action proceedings as a participant in the law school's Employment Law Clinic.

Prior to law school, Mike was a public school teacher in Washington D.C. He remains a supporter of public education as an elected member of the Local School Council at the Chicago Public School in his neighborhood. He graduated in 2010 from the University of Notre Dame with degree in philosophy.

- **Ben K. Schott, Associate**

Ben joined Werman Salas as an associate in 2021 in Chicago, Illinois. Ben has been a practicing attorney since 2013, most recently serving as an associate at two global law firms, Morgan, Lewis & Bockius LLP and Littler Mendelson P.C., where he specialized in management-side labor & employment defense. As a defense lawyer, Ben represented employers in the online retail, food and beverage, financial services, and automobile manufacturing sectors. Ben has litigated single-plaintiff and complex class action cases in jurisdictions throughout the country on a wide-range of issues, including unpaid wages, wrongful termination, discrimination, retaliation, compensation and benefits, and leaves of absence. Together with his private practice experience, Ben served as a federal law clerk to the Honorable Ursula Ungaro (ret.), U.S. District Judge in the Southern District of Florida.

Ben is a member of the Illinois and Florida bars. He received his B.S. from Florida State University and his J.D., with honors, from University of Florida's Levin College of Law, where he served on the editorial board of the Journal of Law & Public Policy.