

**IN THE CIRCUIT COURT OF DUPAGE COUNTY  
EIGHTEENTH JUDICIAL CIRCUIT**

DAVID BAMBERG, *individually and on behalf of all others similarly situated*,

Plaintiff,

v.

DYNAMIC MANUFACTURING, INC.,

Defendant.

Case No. 2023LA000015

Judge: Hon. Timothy McJoynt

**DECLARATION OF PHILIP L. FRAIETTA IN SUPPORT OF PLAINTIFF'S  
UNOPPOSED MOTION FOR ATTORNEYS' FEES, COSTS, EXPENSES, AND  
INCENTIVE AWARD**

I, Philip L. Fraietta, hereby aver, pursuant to 735 ILCS 5/1-109, that I am fully competent to make this Declaration, that I have personal knowledge of all matters set forth herein unless otherwise indicated, and that I would testify to all such matters if called as a witness in this matter.

1. I am a Partner at Bursor & Fisher, P.A., Class Counsel in this action. I make this declaration in support of Plaintiff's Unopposed Motion for Attorneys' Fees, Costs, Expenses, and Incentive Award, filed herewith.

2. I am a member in good standing of the Illinois, New York, New Jersey, and Michigan Bars; the United States District Courts for the Southern District of New York, Eastern District of New York, Northern District of New York, Western District of New York, Northern District of Illinois, Central District of Illinois, District of New Jersey, Eastern District of Michigan, and Western District of Michigan; and the United States Court of Appeals for the Second, Third, Sixth, and Ninth Circuits.

3. Attached hereto as **Exhibit 1** is a true and correct copy of the Parties' Class Action Settlement Agreement, and the exhibits attached thereto.

4. Prior to filing this Action, Plaintiff filed a similar putative class action against

Defendant. The material allegations of that Complaint were that Defendant possessed, collected, stored, and used – without first providing notice, obtaining informed written consent or publishing data retention policies – the fingerprints and associated personally identifying information of hundreds of its employees (and former employees), who were required to “clock in” with their fingerprints, in violation of the BIPA, 740 ILCS 14/1 *et seq.* Defendant has denied Plaintiff’s allegations.

5. From the outset of the case, the Parties engaged in settlement discussions, including informally exchanging relevant information surrounding the alleged claims.

6. Given that the information exchanged would have been, in large part, the same information produced in formal discovery related to issues of class certification and summary judgment, the Parties had sufficient information to assess the strengths and weaknesses of the claims and defenses.

7. On December 27, 2022, the Parties agreed on all material terms of a class action settlement and executed a term sheet.

8. On January 6, 2023, Plaintiff dismissed his individual action against Defendant. Thereafter, he filed this case in this Court, which the Parties agree is an appropriate venue for Plaintiff’s and the Settlement Class’s claims under the BIPA against Defendant.

9. Thereafter, the Parties drafted and executed the Settlement Agreement and related documents. The Settlement Agreement was fully executed on February 27, 2023.

10. The resulting Proposed Settlement of up to \$1,826,400 secures extraordinary relief for the class. Based on Defendant’s records the proposed Settlement Class includes 2,283 individuals used a finger scan timekeeping system in connection with their employment with or assignment to Defendant from February 3, 2016 through December 27, 2022, and who do not timely opt-out of the settlement.

11. Pursuant to the terms of the Proposed Settlement, every Settlement Class Member who submits a timely, simple, one page Claim Form approved by the Settlement Administrator, will receive a portion of the Gross Settlement Amount – which proposed Class Counsel estimates will be approximately \$511 – unless he or she excludes him or herself from the Settlement Agreement ¶¶ 46-47, 52.

12. The Parties agreed to the terms of the Settlement through experienced counsel who possessed all the information necessary to evaluate the case, determine all the contours of the proposed class, and reach a fair and reasonable compromise after negotiating the terms of the Settlement at arm's-length.

13. Plaintiff and Class Counsel recognize that despite our belief in the strength of Plaintiff's claims, and Plaintiff's and the Class's ability to ultimately secure a favorable judgment at trial, the expense, duration, and complexity of protracted litigation would be substantial and the outcome of trial uncertain.

14. Plaintiff and Class Counsel are also mindful that absent a settlement, the success of Defendant's various defenses in this case could deprive Plaintiff and the Settlement Class Members of any potential relief whatsoever. Defendant is represented by highly experienced attorneys who have made clear that absent a settlement, they were prepared to continue their vigorous defense of this case. Plaintiff and Class Counsel are also aware that Defendant would continue to challenge liability, as well as assert a number of defenses. Indeed, at the time of settlement, Defendant argued that the claims were barred by the applicable statute of limitations and that the claims only accrued on the first alleged collection. or whether BIPA claims accrue with every finger scan, or only on the first collection. The viability of both defenses was the subject of pending appeals before the Illinois Supreme Court at the time of settlement. *See Tims v. Black Horse Carriers, Inc.*, -- N.E.3d --, 2023 IL 127801 (Feb. 2, 2023) (concluding BIPA claims are

subject to a five-year statute of limitations); *Cothron v. White Castle System, Inc.*, -- N.E.3d --, 2023 WL 128004 (Feb. 17, 2023) (concluding that BIPA claims accrue with each scan).<sup>1</sup> An adverse decision in either appeal would have deprived the Settlement Class, or at least a substantial portion thereof, of any recovery whatsoever.

15. Looking beyond trial, Plaintiff is also keenly aware that Defendant could appeal the merits of any adverse decision, and that in light of the statutory damages in play it would argue – in both the trial and appellate courts – for a reduction of damages based on due process concerns.

16. Plaintiff and Class Counsel believe that the relief provided by the settlement weighs heavily in favor of a finding that the settlement is fair, reasonable, and adequate, and well within the range of approval.

17. On March 22, 2023, the Court preliminarily approved the Settlement. A true and correct copy of the Court’s March 22, 2023 Preliminary Approval Order is attached hereto as **Exhibit 2**.

18. A copy of the firm resume of Bursor & Fisher, P.A. is attached hereto as **Exhibit 3**. Bursor & Fisher, P.A. is well suited to continue to represent Plaintiff and Settlement Class in this matter

19. My firm, Bursor & Fisher, P.A., has extensive experience litigating class actions of similar size, scope, and complexity to the instant action. We were appointed Class Counsel in in

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<sup>1</sup> Indeed, numerous trial courts throughout Illinois had concluded that a BIPA claim accrues for purposes of calculating the statute of limitations upon the initial capture and use of a plaintiff’s fingerprint or hand scan, thus potentially depriving some Settlement Class Members of any recovery whatsoever. *See Smith v. Top Die Casting Co.*, Case No. 2019-L-248 (Cir. Ct. Winnebago Cnty. Mar. 12, 2020); *Robertson v. Hostmark Hospitality Group, Inc.*, Case No. 18-CH-5194 (Cir. Ct. Cook Cnty. Jan. 27, 2020); *Robertson v. Hostmark Hospitality Group, Inc.*, Case No. 18-CH-5194 (Cir. Ct. Cook Cnty. May 29, 2020); *Watson v. Legacy Healthcare Financial Services, LLC*, Case No. 19-CH-3425 (Cir. Ct. Cook Cnty. June 10, 2020); *Mora v. J&M Plating Inc.*, Case No. 21-CH-0022 (Cir. Ct. Winnebago Cnty. July 13, 2021). *But see Watson v. Legacy Healthcare Financial Servs., LLC*, -- N.E.3d --, 2021 WL 5917935 (IL App. Ct. 1st Dist., Dec. 15, 2021) (holding otherwise).

similar worker fingerprint BIPA actions such as *Jenkins, et al. v. Charles Industries, LLC*, Case No. 2021L001047 (Cir. Ct. DuPage Cnty.); *Suren, et al. v. DSV Solutions, LLC*, Case No. 2021CH000037 (Cir. Ct. DuPage Cnty.); *Cruz v. The Connor Group*, Case No. 22cv01966 (N.D. Ill.); *Willoughby v. Lincoln Insurance Agency, Inc.*, Case No. 2022CH01917 (Cir. Ct., Cook Cnty.); *Whitlock v. Jabil Inc.*, Case No. 2021CH00626 (Cir. Ct., Cook Cnty.); *Landreth v. Verano Holdings LLC, et al.*, Case No. 2020CH06633 (Cir. Ct. Cook Cnty.); *Isaacson v. Liqui-Box Flexibles, LLC, et al.*, Case No. 2021CH000099 (Cir. Ct. Will Cnty.); and *Sahlin v. Hospital Housekeeping Systems, LLC*, Case No. 2021L28 (Cir. Ct. Williamson Cnty.). We are also lead counsel in numerous BIPA putative class actions currently pending in Illinois. We have also been appointed Class Counsel in a number of state-law based privacy class actions in the past few years. *See, e.g., Edwards v. Hearst Communications, Inc.*, Case No. 15-cv-03934 (S.D.N.Y.) (\$50 million class wide settlement); *Ruppel v. Consumers Union of United States Inc.*, Case No. 16-cv-02444 (S.D.N.Y.) (\$16.375 million class wide settlement); *Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast*, Case No. 15-cv-05671 (S.D.N.Y.) (\$13.75 million class wide settlement); *Taylor v. Trusted Media Brands, Inc.*, Case No. 16-cv-01812 (S.D.N.Y.) (\$8.225 million class wide settlement); *Moeller v. American Media, Inc.*, Case No. 16-cv-11367 (E.D. Mich.) (\$7.6 million class wide settlement); *Kokoszki v. Playboy Enterprises, Inc.*, Case No. 19-cv-10302 (E.D. Mich.) (\$3.85 million class wide settlement). Notably, in *Hearst*, we secured a victory on summary judgment for the named plaintiff. *See Boelter v. Hearst Commc'ns, Inc.*, 269 F. Supp. 3d 172 (S.D.N.Y. 2017).

20. In addition, my firm has also been recognized by courts across the country for its expertise. (*See Ex. 3*); *see also Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561, 566 (S.D.N.Y. 2014) (Rakoff, J.) (“Bursor & Fisher, P.A., are class action lawyers who have experience litigating consumer claims. ... The firm has been appointed class counsel in dozens of cases in both federal

and state courts, and has won multi-million dollar verdicts or recoveries in five class action jury trials since 2008.”<sup>2</sup>; *Williams v. Facebook, Inc.*, Case No. 3:18-cv-01881, ECF No. 51 (N.D. Cal. June 26, 2018) (appointing Bursor & Fisher class counsel to represent a putative nationwide class of all persons who installed Facebook Messenger applications and granted Facebook permission to access their contact list).

21. Moreover, my firm has served as trial counsel for class action plaintiffs in six jury trials and has won all six, with recoveries ranging from \$21 million to \$299 million. Most recently, in May 2019, we secured a jury verdict for over \$267 million in a TCPA case in the Northern District of California. *See Perez v. Rash Curtis & Associates*, 2020 WL 1904533 (N.D. Cal. Apr. 17, 2020).

22. Since the Court preliminarily approved the Settlement, my firm has worked with the Settlement Administrator, Analytics LLC to carry out the Court-ordered notice plan. Specifically, my firm helped compile and review the contents of the class notices, reviewed and tested the settlement website before it launched live, and monitored the claiming process. My firm also worked with Defendant and Analytics LLC to secure the class list and effectuate notice.

23. Since class notice has been disseminated, my firm has continued to work closely with Analytics LLC to monitor settlement administration and any other issues that may arise.

24. My firm undertook this litigation on a contingency basis, despite knowing the litigation risks and the prospect of no recovery.

25. As set forth above, my firm has devoted (and continues to devote) a significant amount of attorney time and other resources investigating, prosecuting and resolving this litigation and, as a result, has been forced to forego other new matters that we otherwise would have taken

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<sup>2</sup> Bursor & Fisher has since won a sixth jury verdict in *Perez v. Rash Curtis & Associates*, Case No. 4:16-cv-03396-YGR (N.D. Cal.), for \$267 million.

on.

26. I am of the opinion that Plaintiff's active involvement in this case was critical to its ultimate resolution. He took his role as class representative seriously, devoting significant amounts of time and effort to protecting the interests of the class. Without his willingness to assume the risks and responsibilities of serving as class representative, I do not believe such a strong result could have been achieved.

27. Plaintiff equipped Class Counsel with critical details regarding his employment with Defendant. He assisted Class Counsel in investigating his claims, detailing his experience at Defendant and with the handprint scanning clocking system, supplying supporting documentation, and aiding in drafting the Complaint. Plaintiff was also prepared to testify at deposition and trial, if necessary. And he was actively consulted during the settlement process.

28. In short, Plaintiff assisted Class Counsel in pursuing this action on behalf of the class, and his involvement in this case has been nothing short of essential.

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

Executed this 8th day of May 2023 at New York, New York.

/s/ Philip L. Fraietta

Philip L. Fraietta

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## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement” or “Settlement Agreement”) is entered into by and between Plaintiff David Bamberg (“Plaintiff” or “Bamberg”) and Defendant Dynamic Manufacturing, Inc. (“Dynamic” or “Defendant”) in the case of *Bamberg v. Dynamic Manufacturing, Inc.*, Case No. 2023-LA-000015, currently pending in the Circuit Court of Eighteenth Judicial Circuit, County of DuPage, and previously pending in the Circuit Court of Cook County, Illinois, Chancery Division, Case Number 2021-CH-00537 (hereinafter collectively referred to as the “Action”). Plaintiff and Defendant are each referred to as a “Party” and are collectively referred to herein as the “Parties.”

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

1. On February 3, 2021, Plaintiff David Bamberg filed a putative class action lawsuit against the Defendant alleging violations of the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.* in the Circuit Court of Cook County, Illinois, Chancery Division, Case Number 2021-CH-00537 (the “Cook County Action”). On April 16, 2021, the Cook County Action was stayed, and the stay was continued pending the outcome of appeals in other BIPA class actions.

2. In an effort to reach a resolution of this matter, the Parties informally exchanged information and engaged in extensive settlement discussions. Following arms-length negotiations, the Parties have negotiated a settlement in which the Parties agree to resolve all matters pertaining to, arising from, or associated with the Timekeeping System as defined in Paragraph 40 below, including, but not limited to claims arising under the BIPA, the allegations contained in the Action, as well as any related or similar statutory or common law claims, whether they be asserted or unasserted, which Plaintiff and the members of the class he seeks to represent for purposes of the Settlement, have or may have had against Defendant, its respective direct or indirect parents and subsidiaries, brands, owners, shareholders, directors, officers, members, agents, managers, employees, assigns, representatives, insurers, attorneys, vendors, and staffing agencies who provide or provided it with temporary workers, through the date on which the Parties execute this Agreement. Defendant represents in good faith that approximately 2,313 of its current and former employees and temporary workers assigned to its facilities in Illinois utilized the Timekeeping System at issue in the Action at any time from February 3, 2016 to December 27, 2022, and who did not first execute a written release.

3. The Parties have agreed to all material terms for the settlement of all claims asserted against Defendant in the Action and entered into a Term Sheet which was executed by both Parties. The Term Sheet is expressly superseded by this Agreement.

4. On January 6, 2023, Plaintiff voluntarily dismissed the Cook County Action against Defendant. Thereafter, on January 6, 2023, Plaintiff filed a Class Action Complaint against Defendant, making the same material allegations and claims in the Circuit Court of the Eighteenth Judicial Circuit, County of DuPage, Case Number 2023-LA-000015, which the Parties agree is an appropriate venue for this matter. Defendant has not yet answered or otherwise responded to the Complaint.

5. The Parties have agreed to settle the Action on the terms and conditions set forth herein in recognition that the outcome of the Action is uncertain and that achieving a final result through litigation would require substantial additional risk, discovery, time, and expense.

6. Defendant denies and continues to deny the material allegations of Plaintiff and any and all members of the Settlement Class asserted in the complaints in the Action or otherwise. Defendant also continues to deny all charges of wrongdoing or liability of any kind whatsoever that Plaintiff or members of the Settlement Class have asserted in the Action or may in the future assert. Despite its belief that it is not liable and that it has meritorious defenses to the claims alleged in the Action, Defendant desires to settle the Action and thus avoid the expense, risk, exposure, inconvenience, and distraction of continued litigation of any action or proceeding relating to the matters being fully settled and finally resolved in this Settlement Agreement. Neither this Settlement Agreement, nor any settlement negotiation or discussion thereof, is or may be deemed to be or may be used as an admission of or evidence of any wrongdoing or liability. Further, neither this Settlement Agreement, nor any settlement negotiation or discussion thereof, is or may be deemed to be or may be used as an admission that the Timekeeping System collected, captured, received, or otherwise obtained or disclosed Biometric Identifiers or Biometric Information under the BIPA or any similar federal, state, or local law.

7. Following arms-length negotiations, the Parties now seek to enter into this Settlement Agreement. Plaintiff and Class Counsel have conducted an investigation into the facts and the law regarding the Action and have concluded that a settlement according to the terms set forth below is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiff and the Settlement Class, recognizing: (a) the existence of complex and contested issues of law and fact; (b) the risks inherent in litigation; (c) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement; (d) the magnitude of the benefits derived from the contemplated settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever; and (e) the Plaintiff's determination that the Settlement is fair, reasonable, adequate, and will substantially benefit the Settlement Class Members.

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

9. In consideration of the covenants, agreements, and releases set forth herein, including a general release on behalf of the Class Representative, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Action be settled and compromised, and that the Releasers release the Released Parties of the Released Claims, without costs as to Defendant, Released Parties, Plaintiff, Class Counsel, or the Settlement Class, except as explicitly provided for in this Agreement, subject to the approval of the Court, on the following terms and conditions.

10. However, if this Settlement Agreement is not approved by the Court for any reason, Defendant reserves all rights to further contest liability, challenge class certification, and the Parties will return to their prior positions in the Litigation subject to the provisions herein regarding mandatory renegotiation, appeals and refile in Paragraph 73 of this Agreement.

## **II. DEFINITIONS**

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

11. “Action” shall mean the action pending in the Circuit Court of Eighteenth Judicial Circuit, County of DuPage, Illinois, *Bamberg v. Dynamic Manufacturing, Inc.*, Case No. 2023-LA-000015, which was previously pending in the Circuit Court of Cook County, Illinois, Chancery Division, Case Number 2021-CH-00537.

12. “Administrative Expenses” shall mean expenses associated with the Settlement Administrator, including but not limited to costs in providing notice, communicating with the Settlement Class Members, and disbursing payments to the proposed Settlement Class Members.

13. “Claim Form” means the Claim Form at Exhibit A hereto that shall be included in the Notice found at Exhibit B hereto, which must be submitted to be a Settlement Class Participant under the Agreement and to obtain compensation under this Settlement.

14. “Class,” “Settlement Class,” “Class Member,” or “Settlement Class Member” shall mean each member of the Settlement Class, as defined in Section III of this Agreement, who does not timely elect to be excluded from the Settlement Class and includes, but is not limited to, Plaintiff.

15. “Class Counsel” shall mean Bursor & Fisher, P.A.

16. “Counsel” or “Counsel for the Parties” means both Class Counsel and Defendant’s Counsel, collectively.

17. “Court” shall mean the Circuit Court of Eighteenth Judicial Circuit, County of DuPage, Illinois, and any judge presiding over the Action.

18. “Defense Counsel” shall mean Jackson Lewis P.C.

19. “Effective Date” shall mean the date when the Settlement Agreement becomes Final. If there are no objectors, the Effective Date shall mean when the Court grants Final Approval.

20. “Fee and Expense Petition” shall mean the motion to be filed by Plaintiff, in which Class Counsel will seek approval of an award of attorneys’ fees, costs, and expenses.

21. “Fee Award” means the amount of attorneys’ fees and reimbursement of out-of-pocket costs and expenses awarded by the Court to Class Counsel to be paid out of the Gross Settlement Amount.

22. “Final” means the Final Approval Order has been entered on the docket, and if a timely objection has been submitted (a) the time to appeal from such order has expired and no appeal has been timely filed; (b) if such an appeal has been filed, it has been finally resolved and has resulted in an affirmation of the Final Approval Order; or (c) the Court, following the resolution of the appeal, enters a further order or orders approving the settlement on the material terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s).

23. “Final Approval Hearing” means the hearing before the Court where the Plaintiff will request a Final Approval Order to be entered by the Court approving the Settlement Agreement, approving the Fee Award, and approving an Incentive Award to the Class Representative.

24. “Final Approval Order” shall mean an order entered by the Court that:

- a. Certifies the Settlement Class pursuant to 735 ILCS §§ 5/2-801 for purposes of effectuating this settlement;
- b. Finds that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of this Agreement;
- c. Dismisses the Plaintiff’s individual and class claims pending before it with prejudice and without costs, except as explicitly provided for in this Agreement;
- d. Approves the Class Representative’s General Release of Claims attached hereto as Exhibit C and Releases provided in Section VI and orders that, as of the Effective Date, the Released Claims will be forever released as to the Released Parties; and
- e. Finds that, pursuant to 735 ILCS 5/2-1301, there is no just reason for delay of entry of final judgment with respect to the foregoing.

25. “Gross Settlement Amount” represents the maximum possible sum to be paid by Defendant to fund the Settlement, which will be distributed to the Plaintiff, Settlement Class Participants, Settlement Administrator and Class Counsel in accordance with the terms of this Settlement Agreement. The Gross Settlement Amount is to be calculated based on Eight Hundred Dollars and No Cents (\$800.00) per member of the Settlement Class. Assuming 2,313 individuals are included in the Settlement Class, the Gross Settlement Amount will be, at maximum, One Million Eight-Hundred Fifty Thousand Four-Hundred Dollars and No Cents (\$1,850,400.00). If Defendant’s estimate that 2,313 individuals are included in the Settlement Class is in error and

more individuals fall within the definition of the Settlement Class, then the amount of the Gross Settlement Amount will increase by \$800.00 for each additional individual who falls within the definition of the Settlement Class. If Defendant's estimate that 2,313 individuals are included in the Settlement Class is in error and fewer individuals fall within the definition of the Settlement Class, then the amount of the Gross Settlement Amount will decrease by \$800.00 for each individual who was identified in error. The following payments, and only the following payments, shall be made from the Gross Settlement Amount according to the terms of this Agreement: (1) monetary relief to the Settlement Class Participants who timely submit a valid Claim Form, (2) Administrative Expenses, (3) the Fee Award, and (4) the Incentive Award. In no event will Defendant be required to make any payments pursuant to this Settlement and Settlement Agreement in excess of the Gross Settlement Amount. Furthermore, Defendant shall not be required to fund a Gross Settlement Amount greater than what is expressly required by terms of this Settlement Agreement under the particular circumstances of the Settlement, including the circumstances of the number of Settlement Class Participants who make valid claims, the Administrative Expenses, the Fee Award and the Incentive Award, which may add to less than the maximum possible Gross Settlement Amount.

26. "Incentive Award" shall have the meaning ascribed to it as set forth in Section XIII of this Agreement.

27. "Net Settlement Amount" shall mean the Gross Settlement Amount less the Administrative Expenses, the Fee Award, and the Incentive Award.

28. "Notice" means the direct notice of this proposed Settlement, which is to be provided substantially in the manner set forth in this Agreement and Exhibit B along with the Claim Form at Exhibit A, and which are consistent with the requirements of due process, and approved by the Court.

29. "Objection/Exclusion Deadline" means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a person within the Settlement Class must be postmarked and/or filed with the Court, which shall be designated as a date approximately sixty (60) days after the entry of the Preliminary Approval Order, or such other date as ordered by the Court.

30. "Parties" shall mean Plaintiff and Defendant, collectively.

31. "Plaintiff" or "Class Representative" shall mean the named class representative, David Bamberg.

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

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

34. “Released Claims” shall mean any and all claims, liabilities, suits, actions, controversies, demands, and/or causes of action arising out of, related to, or connected with the alleged capture, collection, storage, possession, transmission, conversion, disclosure, redisclosure, dissemination, transmittal, conversion, and/or other use of biometric identifiers and/or biometric information in connection with the use of the Timekeeping System, whether known or unknown, filed or unfiled, asserted or as of yet unasserted, existing or contingent, whether legal, statutory, equitable, or whether of any other type or form, including, but not limited to, claims brought under the BIPA, or any other federal state, or local law, and whether brought in an individual, representative, or any other capacity, of any nature and description whatsoever, since February 3, 2016, including but not limited to claims under BIPA from February 3, 2016 to the date of the Preliminary Approval Order. Released Claims shall also include but are not limited to all claims that arise from and/or are reasonably related to the claims (whether common law and/or statutory) that were and/or could have been asserted in the Action and any Related Actions, regardless of whether such claims are known or unknown, filed or unfiled, asserted or as yet unasserted, existing or contingent, relating to the alleged capture, collection, storage, possession, transmission, conversion, disclosure, purchase, otherwise obtaining, sale, lease, profit from, redisclosure, dissemination, transmittal, and/or other use of biometric identifiers and/or biometric information, including, but not limited to, any related statutory claims related to the use of the Timekeeping System. Released Claims shall include, without limitation, statutory, constitutional, contractual, and/or common law claims for damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, and equitable relief to the extent permitted by applicable law. In exchange for the Incentive Award to be provided to Plaintiff as set forth in Section XIII, Plaintiff will execute the General Release which is attached hereto as Exhibit C.

35. “Released Party” or “Released Parties” shall refer, jointly and severally, and individually and collectively, to Dynamic Manufacturing, Inc. and any and all of its past, present, and future, direct or indirect, current and former owners, parents, subsidiaries, divisions, officers, directors, shareholders, board members, partners, agents, employees, attorneys, insurers, reinsurers, predecessors, successors and assigns, the agencies employing the temporary workers in the Settlement Class, and all manufacturers, suppliers, contractors and vendors of any timekeeping or payroll system used by Defendant since February 3, 2016, including, but not limited to, the Timekeeping System.

36. “Releasers” shall refer, jointly and severally, and individually and collectively, to Plaintiff, the Settlement Class Members, and to each of their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, through or on behalf of them.

37. “Settlement Administrator” means, subject to Court approval, Analytics Consulting LLC, the entity selected and supervised by Class Counsel to administer the Settlement.

38. “Settlement Class List” or “Class List” shall mean the list of Settlement Class Members to whom notice of this Settlement will be sent.

39. “Settlement Class Participant” shall mean each Settlement Class Member who submits a valid Claim Form postmarked within sixty (60) days after the mailing date of the Notice consistent with the requirements herein.

40. “Timekeeping System” shall mean any allegedly biometric devices, software, technologies, or equipment capable of capturing information that is or could be subject to the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.*, or any other similar state, local, or federal law, regulation, ordinance, or common law, including but not limited to alleged biometric time clocks used by Defendant’s employees and temporary workers assigned to Defendant’s facilities while these individuals were working for Defendant in Illinois at any time since February 3, 2016, including but not limited to from February 3, 2016 to the date of Preliminary Approval.

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

41. For the purposes of the Settlement only, the Parties stipulate and agree that (a) the Class shall be certified in accordance with the definition contained in Paragraph 43, below; (b) Plaintiff shall represent the Class for settlement purposes and shall be the Class Representative; and (c) Plaintiff’s Counsel shall be appointed as Class Counsel.

42. Defendant does not consent to certification of the Class for any purpose other than to effectuate the Settlement. If the Court does not enter Final Approval of the Settlement Agreement, or if for any other reason Final Approval of the Settlement Agreement does not occur, is successfully objected to, or challenged on appeal, any certification of any Class will be vacated and, subject to the renegotiation, appeal and refiling provisions of Paragraph 73 herein, the Parties will be returned to their positions with respect to the Action as if the Agreement had not been entered into.

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

All individuals who worked or are currently working for Defendant in the State of Illinois who allegedly had their alleged Biometric Identifiers and/or Biometric Information collected, captured, stored, possessed, received, transmitted, converted, or otherwise obtained or disclosed by Defendant, its agents, vendors, or payroll providers in connection with the Timekeeping System without first executing a written release from February 3, 2016 to December 27, 2022, and who do not timely opt-out of the Settlement.

44. Excluded from the Settlement Class are all persons who timely and properly elect to exclude themselves from the Settlement Class, the Court and staff to whom this case is assigned, and any member of the Court’s or staff’s immediate family.

45. If for any reason the Settlement Agreement is not approved, the Court does not enter a Preliminary Approval Order and/or Final Approval Order, or a Final settlement and resolution of this Action as provided for in this Agreement is not reached, Defendant's agreement as to certification of the Settlement Class shall not be used for any purpose, including but not limited to in any request for class certification in the Action or any other proceeding.

#### **IV. SETTLEMENT RELIEF**

##### **46. Settlement Payments to Settlement Class Participants.**

- a. The Settlement Administrator shall send to each Settlement Class Member who submits a valid and timely Claim Form a Settlement Payment by check within twenty-eight (28) days of the Effective Date via First Class Mail to the address identified on the Claim Form in accordance with the provisions in this Agreement.

To receive a payment as part of this Settlement, Class Members shall be required to submit a valid and timely Claim Form. All Claim Forms in the form of Exhibit A attached hereto, and which are appended to the Notice at Exhibit B hereto, must be submitted and postmarked within sixty (60) days after the mailing of the Notice and Claim Form, unless such deadline is extended by order of the Court. Class Members who do not timely return valid Claim Forms will not be entitled to any payment pursuant to this Settlement Agreement. Further, any Class Member who fails to submit a valid and timely Claim Form shall be forever barred from receiving any payment as part of this Settlement, but shall in all other respects bound by all of the terms of this Agreement, any order entered by the Court, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Released Parties concerning any of the Released Claims. However, regardless of whether a Settlement Class Member submits a Claim Form, he or she will be bound by this Agreement, including the release set forth and described in Paragraphs 34-36 and 54-58 herein, unless he or she excludes himself or herself from the Settlement pursuant to the procedures set forth below in Paragraphs 63-64.

- b. No later than fourteen (14) days after the Effective Date, Defendant will transfer the portion of the Net Settlement Amount (as calculated pursuant to the provisions herein) claimed by the Settlement Class Participants, the Incentive Award, the Settlement Administration Expenses, and the Fee Award to a Qualified Settlement Fund ("QSF") established by the Settlement Administrator pursuant to Section 1.468B-1, *et seq.*, of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended. No later than the Effective Date, the Settlement Administrator will provide Defendant with all information necessary for Defendant to make the transfer to the QSF including, but not limited to, wiring instructions and completed tax forms from any necessary party. Class Counsel shall ensure that the Settlement Administrator has any necessary tax forms prior to the Effective Date in order to effectuate the payments set forth in this Agreement.



- c. Within twenty-one (21) days of the Effective Date, the Settlement Administrator shall deliver to Class Counsel (i) the Incentive Award, (ii) any payment to Plaintiff from the Net Settlement Amount, and (iii) the Fee Award.
- d. Within twenty-eight (28) days of the Effective Date, the Settlement Administrator shall mail to all Settlement Class Participants who timely submitted a valid Claim Form (excluding Plaintiff) their portion of proceeds from the Net Settlement Amount.

47. Each Settlement Class Participant (*i.e.*, each Settlement Class Member who does not timely exclude himself or herself and who timely completes and submits a valid Claim Form) shall be entitled to a payment in the amount of 1/2,313 of the Net Settlement Amount, regardless of the number of individuals who submit valid and timely claims pursuant to this Settlement Agreement. In other words, each Settlement Class Participant shall receive a payment equal to the Net Settlement Amount divided by 2,313. The Settlement Administrator shall mail the payments to Settlement Class Participants within twenty-eight (28) days of the Effective Date.

**48. Procedure for Approving Settlement.**

- a. Plaintiff will file the Parties' joint motion for an order granting Preliminary Approval of the Settlement, conditionally certifying the Class, approving the Class Notice, and setting a date for the Final Approval Hearing (the "Joint Motion for Preliminary Approval").
- b. At the hearing on the Joint Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the Joint Motion for Preliminary Approval, and submit a proposed order granting preliminary approval of the Settlement Agreement; conditional certification of the Class for the purpose of effectuating the Settlement; appointing the Class Representative and Class Counsel; approving the form of Notice and Claim Form to the Class of the Settlement; and setting the Final Approval Hearing.
- c. For the purposes of the Settlement and the proceedings contemplated herein only, the Parties stipulate and agree that the Class shall be conditionally certified in accordance with the definition and on the terms contained above, that Plaintiff shall be conditionally appointed Class Representative, and that Plaintiff's Counsel shall be conditionally appointed as Class Counsel.

**49. Procedure for Administering Settlement.**

- a. Class List.
  - i. Defendant shall create the Settlement Class List based on readily available information already within its possession. The Settlement Class List will be prepared by Defendant based on readily available information in

Defendant's possession. The Settlement Class List will include the first and last name, last known address, last known telephone number, and social security number (if requested by the Settlement Administrator) for each member of the Settlement Class to the extent known by Defendant. The Parties agree that the Settlement Class List shall only be provided to the Settlement Administrator for the purpose of giving notice to the Settlement Class Members and that the Settlement Administrator shall keep the Settlement Class List and all personal information contained therein and obtained therefrom, including the identity and contact information of all persons, strictly confidential.

- ii. The Settlement Administrator will update the Settlement Class List using the U.S. Postal Service's database of verifiable mailing addresses and the National Change-of-Address database.
- iii. Defendant shall provide the Settlement Class List to the Settlement Administrator within ten (10) days after entry of the Preliminary Approval Order. Class Counsel acknowledges and agrees that it will not receive a copy of the Class List from Defendant, nor will it seek a copy of the Class List from the Settlement Administrator. Notwithstanding the foregoing, within one (1) business day of receiving the Class List, the Settlement Administrator shall inform Class Counsel of how many individuals are listed on it.

b. Type of Notice Required.

- i. The Notice and Claim Form, which shall be substantially in the form of Exhibits A and B attached hereto, shall be used for the purpose of informing Settlement Class Members that there is a pending settlement, and to further inform Settlement Class Members how they may: (i) protect their rights regarding the Settlement; (ii) participate in the Settlement by submitting a Claim Form; (iii) request exclusion from the Settlement Class and the proposed Settlement, if desired; (iv) object to any aspect of the proposed Settlement, if desired; and (v) participate in the Final Approval Hearing, if desired.
- ii. Dissemination of the Notice and Claim Form shall be the responsibility of the Settlement Administrator. The text of the Notice and Claim Form shall be agreed upon by the Parties and shall be substantially in the form attached as Exhibits A and B hereto.
- iii. Within 7 days of receipt of the Settlement Class List, the Settlement Administrator shall send individual Notice and Claim Forms via first class U.S. Mail (substantially in the form of Exhibits A and B.). If a Notice and Claim Form is returned as undeliverable with a forwarding address, the Settlement Administrator shall resend by first class mail the Notice and

Claim Form to that forwarding address. If (i) the Notice and Claim Form is sent to a forwarding address that is undeliverable and is returned with no forwarding address or (ii) the Notice and Claim Form are returned as undeliverable without a forwarding address in the first instance, the Settlement Administrator shall use an address location service to attempt to locate a current address for the Settlement Class Member and send the Notice and Claim Form to the address so found.

50. Class Members shall have sixty (60) days after the Notice and Claim Form are mailed by the Settlement Administrator to complete and return the Claim Form to the Settlement Administrator. Completed Claim Forms must be postmarked by the sixtieth (60th) day after they are mailed by the Settlement Administrator in order to be timely.

51. The Settlement Administrator shall keep and record all Claim Forms submitted, and shall notify Counsel for the Parties within seven (7) days of a Claim Form that is submitted but not deemed valid by the Settlement Administrator.

52. **Allocation.**

- a. Each Settlement Class Participant (*i.e.*, each Settlement Class Member who does not timely exclude himself or herself from the Settlement and who timely completes and submits a valid Claim Form) shall be entitled to a payment in the amount of 1/2,313 of the Net Settlement Amount. In other words, each Settlement Class Participant shall receive a payment equal to the Net Settlement Amount divided by 2,313. The Settlement Administrator shall mail the payments to Settlement Class Participants within twenty-eight (28) days of the Effective Date.
- b. Within twenty-eight (28) days after the Effective Date, the Settlement Administrator shall send to the Named Plaintiff a check in the amount of the Incentive Award awarded by the Court provided that Plaintiff has executed and not revoked the General Release attached hereto as Exhibit C. The amount of the Incentive Award shall be reported as 1099 income to Plaintiff and will be reported on an IRS Form 1099. That said, neither Defendant nor Defendant's Counsel makes any representation to Plaintiff or Class Counsel regarding the proper tax treatment of such payment
- c. The Settlement Administrator shall notify the Parties that all payments have been issued within five (5) business days of the last such payment. The Settlement Administrator will provide Counsel for the Parties with weekly reports regarding the status of administration of this Settlement.
- d. Checks to the Settlement Class Members shall remain valid and negotiable for one hundred eighty (180) days from the date of their issuance and will thereafter automatically be cancelled if not cashed within that time period. At the conclusion of the 180-day period, the Settlement Administrator shall provide a list of any settlement checks that are not then cashed/negotiated to counsel for the

Parties. Within ten (10) days of the expiration of the 180-day period, the Claims Administrator shall transfer such uncashed funds as directed by Defendant's Counsel to Allied World Insurance Company. If any Settlement Class Participant does not cash the settlement check within the 180-day period, the Settlement Class Participant whose check was not cashed will be deemed to have waived irrevocably any right or claim to his or her payment from the Settlement, but the terms of the Settlement and Settlement Agreement, including the release of claims, nevertheless will be binding upon that individual.

## **V. PROSPECTIVE RELIEF**

53. In lieu of injunctive relief, without admitting any liability or that it was required by law to do so, Defendant states that as of the date of its execution of this Agreement, it is in full compliance with BIPA.

## **VI. RELEASE**

54. **The Releasors' Release.** Upon the Effective Date, and in consideration of the settlement relief described herein, the sufficiency of which is acknowledged by the Parties, Class Counsel, and Defendant's Counsel, the Releasors, and each of them, shall be deemed to have released and shall have fully, finally, and forever released, relinquished, waived, surrendered, forgone, abandoned, cancelled, and discharged any and all Released Claims against the Released Parties. As of the Effective Date, all Releasors will be forever barred and enjoined from prosecuting any action against the Released Parties asserting any and/or all Released Claims. Releasors and anyone else purporting to act on behalf of, or for the benefit of, or derivatively for any of them, are permanently barred from filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding, in any jurisdiction or forum, that is based upon, arises out of, or relates to any Released Claims, including, without limitation, any claim that is based upon, arises out of, or relates to (i) the Action or the transactions and occurrences referred to in the Action, or (ii) Defendant's practice or alleged practice of capturing, collecting, obtaining, storing, disseminating, transmitting, and/or using the alleged biometric identifiers and/or biometric information of individuals.

55. **Class Representative's General Release of Claims.** In exchange for the Incentive Award to be provided to the Class Representative as set forth in Paragraph 77, by executing this Agreement, the Class Representative will provide a general release of all claims known or unknown, asserted or unasserted, against the Released Parties by signing (and not revoking) the General Release which is attached hereto as Exhibit C and incorporated herein by reference. In order to be entitled to the Incentive Award, the Class Representative must execute and return the General Release to the Settlement Administrator and Defendant's Counsel no later than the date of the Final Approval Hearing. The Class Representative acknowledges and agrees that he is not entitled to payment of the Incentive Award absent his executing (and not revoking) the General Release attached as Exhibit C.

56. In addition to the effect of the Final Approval Order entered in accordance with this Agreement, upon the Effective Date, and for other valuable consideration as described herein, the Released Parties shall be completely released, acquitted, and forever discharged from any and all Released Claims.

57. Final approval of the Settlement Agreement will settle and resolve with finality on behalf of Plaintiff and the Settlement Class, the Action, and any subsequent action filed pursuant to Paragraph 73, and the Released Claims against the Released Parties in the Action. The Settlement Agreement and the above-described release of the Released Claims will be binding on, and have *res judicata* preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all other Settlement Class Members who do not validly and timely exclude themselves from the Settlement, and their respective predecessors, successors, spouses, heirs, executors, administrators, agents and assigns of each of the foregoing.

58. Each Releasor waives any and all defenses, rights, and benefits that may be derived from the provisions of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the release contained in this Agreement.

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

59. This Settlement Agreement shall be subject to approval of the Court. As set forth in Section XII, Defendant shall have the right to withdraw from the Settlement Agreement if the Court does not approve the material aspects of the Agreement subject to the provisions of Paragraph 73 herein.

60. Plaintiff, through Class Counsel, shall submit this Agreement, together with its exhibits, to the Court and shall move the Court for Preliminary Approval of the Settlement set forth in this Agreement, certification of the Settlement Class, appointment of Class Counsel and the Class Representative, and entry of the Preliminary Approval Order, which order shall seek a Final Approval Hearing date and approve the Notice and Claim Form for dissemination in accordance with the Notice plan.

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

62. At least fourteen (14) days prior to the Final Approval Hearing, or by some other date if so directed by the Court, Plaintiff, through Class Counsel, will move for: (a) final approval of the Settlement Agreement; (b) final approval of the appointment of the Class Representative and Class Counsel; and (c) final certification of the Settlement Class, including for the entry of a Final Order and Judgment, and file a memorandum in support of the motion for Final Approval.

## **VIII. EXCLUSIONS**

63. Exclusion Period.

- a. Settlement Class Members will have until the Objection/Exclusion Deadline to exclude themselves from the Settlement in accordance with this Section. If the Settlement Agreement is finally approved by the Court, all Settlement Class Members who did not timely exclude themselves consistent with this Section by the end of the Objection/Exclusion Deadline will be bound by the Agreement.
64. Exclusion Process.
- a. A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked on or before the Objection/Exclusion Deadline.
  - b. In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his/her name, address, email address, and telephone number; the name and number of this case; a statement that he/she wishes to be excluded from the Settlement Class; and a signature. A request to be excluded that does not include all of the foregoing information, that is sent to an address other than that designated in the Class Notice, or that is not postmarked within the time specified, shall be invalid and the person serving such a request shall be considered a member of the Settlement Class and shall be bound as Settlement Class Members by the Agreement, if approved.
  - c. Any member of the Settlement Class who elects to be excluded shall not: (i) be bound by any Final Approval Order entered by the Court; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement. A member of the Settlement Class who requests to be excluded from the Settlement Class cannot also object to the Settlement Agreement.
  - d. The request for exclusion must be personally signed by the person requesting exclusion. So-called “mass” or “class” exclusion requests shall not be allowed.
  - e. Within three (3) business days after the Objection/Exclusion Deadline, the Settlement Administrator shall provide Class Counsel and Defendant’s Counsel a written list reflecting all timely and valid exclusions from the Settlement Class.

## **IX. OBJECTIONS**

65. The Notice shall advise Settlement Class Members of their rights, including the right to be excluded from or object to the Settlement Agreement and its terms. The Notice shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing, only if, on or before the Objection/Exclusion Deadline approved by the Court, the person making an objection shall file notice of his/her intention to do so and at the same time: (a) file copies of such papers he/she

proposed to submit at the Final Approval Hearing with the Clerk of the Court; and (b) sends copies of such papers via US Mail, hand delivery, or overnight delivery to both Class Counsel and Defendant's Counsel. A copy of the objection must also be mailed to the Settlement Administrator at the address that the Settlement Administrator will establish to receive requests for exclusion or objections and any other communication relating to this Settlement.

66. Any Settlement Class Member who intends to object to this Settlement Agreement must include in any such objection: (a) his/her full name, address, current telephone number, and email address; (b) the case name and number of this Action; (c) the date range during which s/he was employed by Defendant or worked as a temporary worker at one of Defendant's facilities; (d) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (e) the identification of any other objections s/he has filed, or has had filed on his/her behalf, in any other class action cases in the last five years; and (f) the objector's signature. If represented by counsel, the objecting Settlement Class Member must also provide the name and telephone number of his/her counsel. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, s/he must state as such in the written objection, and must also identify any witnesses s/he may call to testify at the Final Approval Hearing and all exhibits s/he intends to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection.

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

## **X. FINAL APPROVAL HEARING**

68. The Parties will jointly request that the Court hold a Final Approval Hearing approximately ninety (90) days after entry of the Preliminary Approval Order. At the Final Approval Hearing, the Parties will request that the Court consider whether the Settlement Class should be certified as a class pursuant to 735 ILCS 2-801 for purposes of settlement only and, if so, (a) consider any valid and timely-filed objections; (b) determine whether the Settlement Agreement is fair, reasonable and adequate, was entered into in good faith and without collusion, and should be approved, and shall provide findings in connection therewith; and (c) enter the Final Approval Order, including final approval of the Settlement Class and the Settlement Agreement, a Fee Award, the Incentive Award (if Plaintiff timely executed the General Release), and payment of Administrative Expenses.

## **XI. FINAL APPROVAL ORDER**

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

70. The Parties shall jointly submit to the Court a proposed order that, without limitation:

- a. Approves finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of 735 ILCS 2-801 and directing its consummation according to its terms; and
- b. Dismisses, with prejudice, all claims of the Plaintiff and Settlement Class against Defendant in the Action, without costs and fees except as explicitly provided for in this Agreement.

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

## **XII. TERMINATION OF THE SETTLEMENT**

72. The Settlement is conditioned upon Preliminary and Final Approval of the Parties' written Settlement Agreement, and all terms and conditions thereof without material change, material amendments, or material modifications by the Court (except to the extent such changes, amendments, or modifications are agreed to in writing between the Parties). All Exhibits attached hereto are incorporated into this Settlement Agreement., The Parties' Term Sheet is expressly superseded by this Agreement. Accordingly, any Party may elect to terminate and cancel this Settlement Agreement within ten (10) days of any of the following events:

- a. This Settlement Agreement is changed in any material respect to which the Parties have not agreed in writing subject to the requirements of Paragraph 73 herein;
- b. More than 15% of the Settlement Class opts out of the Settlement;
- c. The Court refuses to grant Preliminary Approval of this Agreement subject to the requirements of Paragraph 73 herein;
- d. The Court refuses to grant Final Approval of this Agreement in any material respect subject to the requirements of Paragraph 73 herein; or
- e. The Court refuses to dismiss the claims of the Plaintiff and Settlement Class, with prejudice, as described herein, again subject to the requirements of Paragraph 73 herein.

Furthermore, Defendant may at its election terminate the Settlement and this Settlement Agreement should it be determined that the actual size of the Settlement Class is 5% or more higher than Defendant's good faith estimate of 2,313 Settlement Class Members (*i.e.*, the actual size of the Settlement Class is 2,429 Settlement Class Members or more).

73. In the event the Settlement Agreement is not approved or does not become Final, the Parties: (a) must attempt to renegotiate the Settlement Agreement for the purpose of obtaining



Court approval of a renegotiated Settlement Agreement at least twice, if necessary; and/or (b) either or both Parties may seek reconsideration or appellate review of the decision denying approval of the Settlement Agreement. In the event reconsideration and/or appellate review is denied and/or the mutually agreed-upon modified Settlement Agreements are not approved by the Court, the Parties agree that they will seek approval and completion of the Settlement in another venue, should improper venue be at least partially the reason for denial of approval of the Settlement Agreement, as stated by the judge, or if the judge otherwise states that venue is either not proper, may not be proper, or would be more appropriate elsewhere. The Parties agree that, in the event this requirement is invoked, Will County, Illinois would also be an appropriate venue for this lawsuit. With respect to the Parties' agreed procedure, within ten (10) days following the Court in DuPage County not approving the agreed-upon modified Settlement Agreement due, at least in part because of venue, or if the judge otherwise states that venue is either not proper, may not be proper, or would be more appropriate elsewhere, Plaintiff shall dismiss the DuPage County action and file a new case in Will County, Illinois making the same general allegations and asserting the same claims under the BIPA. The Will County action shall also be governed by any material terms previously agreed-upon by the Parties in the Settlement Agreement. Defendant further agrees that the statute of limitations shall remain tolled for the duration of the DuPage County action, and the statute of limitations will be calculated from February 3, 2021. In the event the Settlement Agreement is appropriately filed in Will County but is not approved or does not become Final, the Parties: (a) must attempt to renegotiate the Settlement Agreement for the purpose of obtaining the Will County Court's approval at least twice, if necessary; and/or (b) either or both Parties may seek reconsideration or appellate review of the decision denying approval of the Settlement Agreement. Only if reconsideration and/or appellate review is denied and/or the mutually agreed-upon modified Settlement Agreements are not approved, and the Parties decide to forego further negotiations, then the operative Settlement Agreement will terminate and the Parties, pleadings, and proceedings will return to the status quo ante as if no settlement had been negotiated or entered into, and the Parties will then negotiate in good faith to establish a new schedule for the Action. To be clear, the Parties' duties to attempt to renegotiate the Settlement Agreement under the circumstances set forth in this Paragraph will never require renegotiating (a) the monetary terms of the Settlement (*i.e.*, the Parties' agreement to a maximum Gross Settlement Amount based on \$800 per Settlement Class Member, as discussed in Paragraph 25 herein, or (b) the overall "claims-made" structure of the Settlement, as discussed in Paragraphs 45 and 52 herein, for example. That said, the Parties may freely choose to renegotiate any term of the Settlement with one another under the circumstances set forth in this Paragraph.

### **XIII. ATTORNEYS' FEES, COSTS, AND EXPENSES AND INCENTIVE AWARD**

74. No later than fourteen (14) days prior to the date of the Final Approval Hearing, Class Counsel will move the Court for the Fee Award of attorneys' fees, costs, and expenses, which shall not exceed thirty-five percent (35%) of the Gross Settlement Amount, or Six-Hundred Forty-Seven Thousand, Six-Hundred Forty Dollars and 00/100 Cents (\$647,640.00).

75. Notwithstanding any contrary provision of this Agreement, and subject to Paragraph 68 of this Agreement, the Court's consideration of the Fee Award is to be conducted separately from the Court's consideration of the fairness, reasonableness, and adequacy of the

Settlement Agreement, and any award made by the Court with respect to Class Counsel's attorneys' fees or expenses, or any proceedings incident thereto, including any appeal thereof, shall not operate to terminate or cancel this Agreement or be deemed material thereto.

76. Class Counsel shall provide the Settlement Administrator with its completed W-9 before the payment of the Fee Award is due. Within twenty-one (21) days after the Effective Date, the Settlement Administrator shall pay to Class Counsel the amount awarded by the Court in the Fee Award. Any payment of the Fee Award shall be paid via electronic wire transfer to an account designated by Class Counsel.

77. Prior to or at the same time as Plaintiff seeks final approval of the Settlement Agreement, Class Counsel shall move the Court for an Incentive Award for the Class Representative in an amount not to exceed Five Thousand Dollars and 00/100 Cents (\$5,000.00), and Defendant agrees that they will not oppose such a request provided that the Parties agree that Plaintiff will be required to execute (and not revoke) the General Release attached hereto as Exhibit C in order to be entitled to payment of the Incentive Award. The Incentive Award shall be paid solely from the Gross Settlement Amount by check written by the Settlement Administrator within twenty-one (21) days of the Effective Date.

78. Defendant shall have no financial responsibility for any amount to be paid pursuant to this Settlement Agreement which exceeds the Gross Settlement Amount. Defendant shall have no further obligation for attorneys' fees or expenses to any counsel representing or working on behalf of either one or more individual Settlement Class Members or the Settlement Class beyond the Fee Award awarded by the Court. Defendant will have no responsibility, obligation, or liability for allocation of fees and expenses among Class Counsel.

#### **XIV. MISCELLANEOUS REPRESENTATIONS**

79. The Parties agree that the Settlement Agreement provides fair, equitable, and just compensation, and a fair, equitable, and just process for determining eligibility for compensation for any given Settlement Class Member related to the Released Claims.

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

81. The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff and the Settlement Class, and each or any of them, on the one hand, against Defendant and the other Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was

brought by Plaintiff or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.

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

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

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

85. This Agreement, including, but not limited to, the General Release of claims set forth in Exhibit C, set forth the entire Agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements, and undertakings with respect to the matters set forth herein. The Parties expressly agree that the Term Sheet is expressly superseded by this Agreement. No representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.

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

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

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

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

90. Plaintiff represents and warrants that he has not assigned any claim or right or interest therein as against the Released Parties to any other person or party, and that he is fully entitled to release the same.

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

92. The Parties specifically acknowledge, agree, and admit that this Settlement Agreement and its Exhibits, and the Term Sheet, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders, or other documents shall be considered a

compromise within the meaning of Illinois Rule of Evidence 408, and any other equivalent or similar rule of evidence, and shall not, except in accordance with Paragraph 95 of this Agreement, (a) constitute, be construed, be offered, or received into evidence as an admission of the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Action or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party or any Released Party, or (b) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue.

93. The Parties also agree that this Settlement Agreement and its Exhibits, and the Term Sheet, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders or other documents entered in furtherance of this Settlement Agreement, and any acts in the performance of this Settlement Agreement, are not intended to establish grounds for certification of any class involving any Settlement Class Member other than for certification of the Settlement Class for settlement purposes only.

94. Except in accordance with Paragraph 95 of this Agreement, this Settlement Agreement, whether approved or not approved, revoked, or made ineffective for any reason, and any proceedings related to this Settlement Agreement and any discussions relating thereto shall be inadmissible as evidence of any liability or wrongdoing whatsoever and shall not be offered as evidence of any liability or wrongdoing in any court or other tribunal in any state, territory, or jurisdiction, or in any manner whatsoever. Further, neither this Settlement Agreement, the settlement contemplated by it, nor any proceedings taken under it, will be construed or offered or received into evidence as an admission, concession, or presumption that class certification is appropriate, except to the extent necessary to consummate this Agreement and the binding effect of the Final Order.

95. The provisions of this Settlement Agreement, and any orders, pleadings, or other documents entered in furtherance of this Settlement Agreement, may be offered or received in evidence solely (a) to enforce the terms and provisions hereof or thereof, (b) as may be specifically authorized by a court of competent jurisdiction after an adversary hearing upon application of a Party hereto, (c) in order to establish payment, or an affirmative defense of preclusion or bar in a subsequent case, (d) in connection with any motion to enjoin, stay, or dismiss any other action, or (e) to obtain Court approval of the Settlement Agreement. Moreover, if this Settlement Agreement is finally approved by the Court, any party or any of the Released Parties may file this Settlement Agreement in any action that may be brought against such Party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement judgment bar or reduction, or any other theory of claim preclusion, or similar defense or counterclaim.

96. Nothing express or implied in this Agreement is intended or shall be construed to confer upon or give any person or entity other than the Parties, the Released Parties, and the Settlement Class Members any rights or remedy under or by reason of this Agreement. Each of the Released Parties is an intended third-party beneficiary of this Agreement with respect to the Released Claims and shall have the right and power to enforce the release of the Released Claims in his, her, or its favor against all Releasers.

97. Except as provided herein, there shall be no comments made to the press regarding the Action. Plaintiff and Class Counsel shall not make any statement to the press regarding the Settlement aside from the following agreed-upon statement: “The Parties have reached a proposed agreement to resolve this matter and look forward to the Court’s review of the same.” Class Counsel also agrees not to identify this matter by name on their websites or in any marketing material. This Section shall not be construed to limit or impede the notice requirements of Section IV above, nor shall this Section be construed to prevent Class Counsel or Defendant’s Counsel from notifying or explaining to any member of the Settlement Class that this case has settled and how to obtain settlement benefits, nor shall this Section limit the representations that the Parties or their attorneys may make to the Court to assist in its evaluation of the proposed settlement. A party may also provide necessary and accurate information about the Settlement to its members or shareholders, and other persons or entities as required by applicable laws or regulations. Class Counsel may also identify this matter, that they were appointed Class Counsel (in the event the Court does so), and its resolution, including the terms thereof, in court filings, mediations, arbitrations, or settlement negotiations in other cases.

98. 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 advisors 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 advisors 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 advisor to any other party to avoid any tax penalty that may be imposed on that Party; and (3) no attorney or advisor 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 such transaction, including any transaction contemplated by this Settlement Agreement.

99. This Agreement may be executed in one or more counterparts exchanged by hand, messenger, or PDF as an electronic mail attachment, and any such signature exchanged, including electronic signature via DocuSign, shall be deemed an original signature for purposes of this Settlement Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument, provided that counsel for the Parties to this Agreement all exchange signed counterparts.

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

101. Before declaring any provision of this Settlement Agreement invalid, the Parties jointly request that the Court first attempt to construe the provisions to be valid to the fullest extent possible consistent with applicable precedents so as to find all provisions of this Settlement Agreement valid and enforceable.

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

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

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

If to Class Counsel:

Philip L. Fraietta  
Bursor & Fisher, P.A.  
888 Seventh Avenue  
New York, NY 10019  
Tel: (646) 837-7150  
pfraietta@bursor.com

If to Defendant's Counsel:

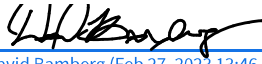
Jason A. Selvey  
Jackson Lewis P.C.  
150 North Michigan Avenue, Suite 2500  
Chicago, Illinois 60601  
Tel: (312) 787-4949  
Jason.Selvey@jacksonlewis.com

105. This Agreement shall be deemed executed as of the date that the last Party signatory signs the Agreement.


[REMAINDER OF PAGE INTENTIONALLY BLANK]

In witness hereof, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below.

**DAVID BAMBERG**

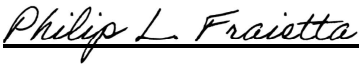
  
David Bamberg (Feb 27, 2023 13:46 CST)  
David Bamberg, Plaintiff  
Date: Feb 27, 2023

**DYNAMIC MANUFACTURING, INC.**


By:   
Name: John Bellantuono  
Title: Chairman, CEO  
Date: 2/27/2023

As to form and substance:

**CLASS COUNSEL**

  
Date: February 27, 2023

**DEFENDANT'S COUNSEL**

  
Date: 2/27/2023

Jason A. Selvey  
Jody Kahn Mason  
Thanin O. Stewart  
Jackson Lewis P.C.  
150 North Michigan Avenue  
Suite 2500  
Chicago, Illinois 60601  
Tel: (312) 787-4949  
Jason.Selvey@jacksonlewis.com  
Jody.Mason@jacksonlewis.com  
Thanin.Stewart@jacksonlewis.com

# **Exhibit A**



**DYNAMIC MANUFACTURING BIPA SETTLEMENT CLAIM FORM**

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

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

Name (First, M.I., Last): \_\_\_\_\_

Current Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Address Where You Lived When Working At Dynamic Manufacturing, Inc. (if different)

\_\_\_\_\_

Email Address (optional): \_\_\_\_\_

Contact Phone #: ( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_ (You may be contacted if further information is required.)

**Class Member Verification:** By submitting this claim form and checking the boxes below, I declare that I believe I am a member of the Settlement Class and that the following statements are true (each box must be checked to receive a payment):

I worked for or was a temporary worker assigned to Dynamic Manufacturing, Inc. in the State of Illinois between February 3, 2016 and December 27, 2022, and had my alleged Biometric Identifiers and/or Biometric Information collected, captured, stored, possessed, received, transmitted, converted, or otherwise obtained or disclosed by Dynamic Manufacturing, Inc. or its agent(s), vendor(s) or payroll provider(s) in connection with Dynamic Manufacturing, Inc.'s timekeeping system(s) without first executing a written release.

I have not filed for an Opt-Out or to be excluded from this Settlement.

I have not submitted any other Claim for the same account and have not authorized any other person or entity to do so, and know of no other person or entity having done so on my behalf. If I maintained account(s) jointly with any other person or entity, only one Claim has or will be submitted per account.

Under penalty of perjury, all information provided in this Claim Form is true and correct to the best of my knowledge and belief.

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

Print Name: \_\_\_\_\_

Before you complete and submit this Claim Form by mail or online, you should read and be familiar with the information contained in this Notice and Claim Form available at **[SETTLEMENT WEBSITE]**. The Settlement Administrator will review your Claim Form; you may be required to submit additional documentation to validate your claim. If accepted, you will be mailed a check for a *pro rata* share of the Net Settlement Fund. This process takes time. Please be patient.

Questions, visit **[SETTLEMENT WEBSITE]** or call **[toll free number]**

# **Exhibit B**

COURT AUTHORIZED NOTICE OF CLASS  
ACTION AND PROPOSED SETTLEMENT

OUR RECORDS  
INDICATE YOU WORK  
OR HAVE WORKED AT  
DYNAMIC  
MANUFACTURING, INC.  
IN THE STATE OF  
ILLINOIS. YOU MAY BE  
ENTITLED TO A  
PAYMENT FROM A  
CLASS ACTION  
SETTLEMENT.

DYNAMIC MANUFACTURING BIPA Settlement  
Settlement Administrator  
P.O. Box 0000  
City, ST 00000-0000



Postal Service: Please do not mark barcode

XXX—«ClaimID» «MailRec»

«First1» «Last1»

«C/O»

«Addr1» «Addr2»

«City», «St» «Zip» «Country»

By Order of the Court Dated: [date]

**DYNAMIC MANUFACTURING BIPA SETTLEMENT CLAIM FORM**

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

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

Name (First, M.I., Last): \_\_\_\_\_

Current Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Address Where You Lived When Working At Dynamic Manufacturing, Inc. (if different)

\_\_\_\_\_

Email Address (optional): \_\_\_\_\_

Contact Phone #: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ (You may be contacted if further information is required.)

**Class Member Verification:** By submitting this claim form and checking the boxes below, I declare that I believe I am a member of the Settlement Class and that the following statements are true (each box must be checked to receive a payment):

I worked for or was a temporary worker assigned to Dynamic Manufacturing, Inc. in the State of Illinois between February 3, 2016 and December 27, 2022, and had my alleged Biometric Identifiers and/or Biometric Information collected, captured, stored, possessed, received, transmitted, converted, or otherwise obtained or disclosed by Dynamic Manufacturing, Inc. or its agent(s), vendor(s) or payroll provider(s) in connection with Dynamic Manufacturing, Inc.'s timekeeping system(s) without first executing a written release.

I have not filed for an Opt-Out or to be excluded from this Settlement.

I have not submitted any other Claim for the same account and have not authorized any other person or entity to do so, and know of no other person or entity having done so on my behalf. If I maintained account(s) jointly with any other person or entity, only one Claim has or will be submitted per account.

Under penalty of perjury, all information provided in this Claim Form is true and correct to the best of my knowledge and belief.

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

Print Name: \_\_\_\_\_

Before you complete and submit this Claim Form by mail or online, you should read and be familiar with the information contained in this Notice and Claim Form and available at **[SETTLEMENT WEBSITE]**. The Settlement Administrator will review your Claim Form; you may be required to submit additional documentation to validate your claim. If accepted, you will be mailed a check for a *pro rata* share of the Net Settlement Fund. This process takes time. Please be patient.

**Questions, visit **[SETTLEMENT WEBSITE]** or call **[toll free number]****

A settlement has been reached in a class action lawsuit alleging that Defendant, Dynamic Manufacturing, Inc. ("Dynamic Manufacturing"), unlawfully possessed, collected, captured, stored, received, transmitted, converted, or otherwise obtained or disclosed its Illinois employees' and temporary workers' alleged Biometric Identifiers and/or Biometric Information through its finger clock-in system(s). Dynamic Manufacturing denies the claims in the lawsuit and contends that it did not do anything wrong and denies that class certification is warranted or appropriate. The Court did not resolve the claims and defenses raised in this action. Nor has the Court determined that Dynamic Manufacturing did anything wrong or that this matter should be certified as a class action except if the Settlement is fully approved by the Court. The parties have agreed to settle the dispute to avoid the cost and risk of a trial.

**Am I a Class Member?** Our records indicate that you are a current or former employee of Dynamic Manufacturing in the State of Illinois or a temporary worker who worked for Dynamic Manufacturing in the State of Illinois and may be a Class Member. Class Members are persons who worked or are currently working for Dynamic Manufacturing in Illinois and had their alleged Biometric Identifiers and/or Biometric Information collected, captured, stored, possessed, received, transmitted, converted, or otherwise obtained or disclosed by Dynamic Manufacturing or its agent(s), vendor(s) or payroll provider(s) from February 3, 2016 to December 27, 2022, in connection with Dynamic Manufacturing timekeeping system(s) without first executing a written release.

**What Can I Get?** If approved by the Court, a Gross Settlement Amount in the total amount of \$1,850,400.00 will be established to pay all claims to the Settlement Class, including all notice and administration expenses, approved attorneys' fees and costs, and an incentive award to the named plaintiff. In addition, Dynamic Manufacturing has represented that it is in full compliance with the BIPA.

**How Do I Get a Payment?** You must submit a properly completed Claim Form **no later than [claims deadline]**. You may use the Claim Form attached to this Notice or you can submit one online at [SETTLEMENT WEBSITE].

**What Are My Other Options?** You may exclude yourself from the Settlement Class by sending a letter to the settlement administrator no later than [objection/exclusion deadline]. If you exclude yourself, you cannot get a settlement payment, but you keep any rights you may have to sue Dynamic Manufacturing over the legal issues in the lawsuit. If you don't exclude yourself from the Settlement Class, then you and/or your lawyer also have the right to appear before the Court, at your own cost, to object to the proposed settlement, if you wish to do so, but you don't have to. Your written objection must be filed no later than [objection/exclusion deadline]. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at [SETTLEMENT WEBSITE]. If you do nothing, and the Court approves the Settlement, you will be bound by all of the Court's orders and judgments, and your claims relating to Dynamic Manufacturing's alleged unlawful collection, capture, receipt, possession, storage, transmission, conversion, or otherwise obtaining or disclosing of its Illinois employees' and temporary workers' alleged Biometric Identifiers and/or Biometric Information without first obtaining an executed written release, as well as any other claims listed in the Settlement Agreement, will be released.

**Who Represents Me?** The Court has appointed Bursor & Fisher, P.A. to represent the class. These attorneys are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

**When Will the Court Consider the Proposed Settlement?** The Court will hold the Final Approval Hearing at [time].m. on [date] at the DuPage County Courthouse, 505 N. County Farm Road, Wheaton, IL 60187. At that hearing, the Court will: hear any objections concerning the fairness of the Settlement; determine the fairness of the Settlement; decide whether to approve Class Counsel's request for attorneys' fees and costs; and decide whether to award the Class Representative up to \$5,000 from the Gross Settlement Amount for their services in helping to bring and settle this case. Dynamic Manufacturing has agreed that Class Counsel may be paid attorneys' fees out of the Gross Settlement Amount in an amount to be determined by the Court. Class Counsel is entitled to seek no more than 35% of the Gross Settlement Amount, plus reimbursement of reasonable costs and expenses, but the Court may award less than this amount.

**How Do I Get More Information?** This is only a summary. For more information, including the full Notice, Claim Form and Settlement Agreement go to [SETTLEMENT WEBSITE], contact the settlement administrator at [phone number] or Dynamic Manufacturing BIPA Settlement Administrator, [address], or call Class Counsel at 646-837-7150. Please do not telephone the Court to inquire about the settlement or the claims process.

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

Dynamic Manufacturing BIPA Settlement Administrator  
c/o [Settlement Administrator]  
PO Box 0000  
City, ST 00000-0000

**XXX**

# **Exhibit C**

## EXHIBIT C

### General Release

Defendant Dynamic Manufacturing, Inc. (“Dynamic” or “Defendant”) and David Bamberg, his heirs, executors, administrators, successors, and assigns (collectively, “Bamberg”), agree that:

1. **Service Award.** Bamberg hereby understands and acknowledges that signing and complying with this General Release is a condition to receiving the Incentive Award specified in Section XIII of the Settlement Agreement and Release (“Settlement Agreement”) in the matter of *Bamberg v. Dynamic Manufacturing, Inc.*, Case No. 2023-LA-000015 (the “Action”).

2. **General Release, Claims Not Released and Related Provisions.** In consideration of the settlement relief described herein, Bamberg knowingly and voluntarily, fully, finally, and forever, releases, relinquishes and discharges Dynamic Manufacturing, Inc. and all of its past, present, and future, direct or indirect, current and former, owners, parents, subsidiaries, divisions, officers, directors, shareholders, board members, partners, agents, employees, attorneys, insurers, reinsurers, predecessors, successors and assigns, and all manufacturers, suppliers, contractors and vendors of any timekeeping or payroll system used by Defendant since February 3, 2016, including, but not limited to, the Timekeeping System (as defined in Paragraph 40 of the Settlement Agreement), jointly and severally, and individually and collectively (referred to herein as “Released Parties”) of and from any and all claims including all actual, potential, filed, unfiled, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra-contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys’ fees and/or obligations of any kind whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, including but not limited to all claims which were made or which could have been made by Bamberg in this Action and any alleged violation of the following, as amended:

- Title VII of the Civil Rights Act of 1964;
- Sections 1981 through 1988 of Title 42 of the United States Code;
- The Employee Retirement Income Security Act of 1974 (“ERISA”);
- The Internal Revenue Code of 1986;
- The Immigration Reform and Control Act;
- The Americans with Disabilities Act of 1990;
- Title IX of the Higher Education Act of 1965;
- The Worker Adjustment and Retraining Notification Act;
- The Fair Credit Reporting Act;
- The Family and Medical Leave Act;
- The Equal Pay Act;
- The Fair Labor Standards Act;
- The Genetic Information Nondiscrimination Act of 2008;
- The Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”);



- Executive Order 11246 (if applicable);
- The Rehabilitation Act (if applicable);
- The Vietnam Era Veterans' Readjustment Assistance Act ("VEVRAA") (if applicable);
- Families First Coronavirus Response Act;
- The Illinois Human Rights Act;
- 820 ILCS 305/4(h) of the Illinois Workers' Compensation Act;
- Illinois common law regarding retaliation or discrimination for filing a workers' compensation claim;
- Illinois Equal Pay Act;
- Illinois School Visitation Rights Act;
- Illinois AIDS Confidentiality Act;
- Illinois Right to Privacy in the Workplace Act;
- Illinois Genetic Information Privacy Act;
- Illinois One Day Rest in Seven Act;
- Illinois Eight Hour Work Day Act;
- Illinois Health and Safety Act;
- Illinois Whistleblower Act;
- Illinois Victims' Economic Safety and Security Act;
- Illinois Worker Adjustment and Retraining Notification Act;
- Illinois Personnel Records Review Act;
- Illinois Criminal Identification Act;
- Illinois Voter Leave Act;
- Illinois Family Military Leave Act;
- Illinois Joint Agency Rules of Sex Discrimination;
- Illinois Joint Agency Rules on National Origin Discrimination;
- Illinois Human Rights Commission Rules on Handicap Discrimination;
- Illinois Human Rights Commission Rules on Unfavorable Military Discharge Discrimination;
- Smoke Free Illinois Act;
- Illinois Blood Donation Leave Act;
- Illinois Civil Patrol Leave Law;
- Illinois Jury Duty Leave Law;
- Illinois Official Meetings Leave Law;
- Illinois Witness Duty Leave Law;
- Illinois Nursing Mothers in the Workplace Act;
- Illinois Common Law Claims for Unlawful Retaliatory Discharge in Violation of Public Policy;
- Illinois Employee Sick Leave Act;
- Illinois Child Bereavement Leave Act;
- Illinois Biometric Information Privacy Act;
- Illinois Workplace Transparency Act;
- Illinois Volunteer Emergency Worker Job Protection Act;
- Illinois Gender Violence Act;

- Cook County Human Rights Ordinance;
- Cook County Earned Sick Leave Ordinance;
- Chicago Human Rights Ordinance, as amended;
- Chicago Earned Sick Leave Ordinance;
- Chicago Anti-Retaliation Ordinance;
- Chicago Fair Workweek Ordinance;
- any other federal, state or local law, rule, regulation, or ordinance;
- any public policy, contract, tort, or common law; or
- any basis for recovering costs, fees, or other expenses including attorneys' fees incurred in these matters.

(a) **Claims Not Released.** Bamberg is not waiving any rights he may have to: (i) Bamberg's own vested or accrued employee benefits under Defendant's qualified retirement benefit plans as of the date he separated from Defendant, if any; (ii) benefits and/or the right to seek benefits under applicable workers' compensation and/or unemployment compensation statutes; (iii) pursue claims which by law cannot be waived by signing this General Release; or (iv) enforce this General Release.

(b) **Governmental Agencies.** Nothing in this General Release prohibits, prevents, or otherwise limits Bamberg from filing a charge or complaint with or participating, testifying, or assisting in any investigation, hearing, or other proceeding before any federal, state, or local government agency (e.g., EEOC, NLRB, SEC) or in any legislative or judicial proceeding nor does anything in this General Release preclude, prohibit or otherwise limit, in any way, Bamberg's rights and abilities to contact, communicate with or report unlawful conduct, or provide documents, to federal, state, or local officials for investigation or participate in any whistleblower program administered by any such agencies. However, to the maximum extent permitted by law, Bamberg agrees that if such an administrative claim is made, he shall not be entitled to recover any individual monetary relief or other individual remedies. In addition, nothing in this Agreement, including but not limited to the release of claims, prohibits Bamberg from: (1) reporting possible violations of federal or other law or regulations, including any possible securities laws violations, to any governmental agency or entity, including but not limited to the U.S. Department of Justice, the U.S. Securities and Exchange Commission, the Commodity Futures Trading Commission, the U.S. Congress, or any agency Inspector General; (2) making any other disclosures that are protected under the whistleblower provisions of federal or other law or regulations; or (3) filing a charge or complaint or otherwise fully participating in any governmental whistleblower programs, including but not limited to any such programs managed or administered by the U.S. Securities and Exchange Commission, the Commodity Futures Trading Commission and/or the Occupational Safety and Health Administration. Bamberg is not required to notify or obtain permission from Dynamic when filing a governmental whistleblower charge or complaint or engaging or participating in protected whistleblower activity. Moreover, nothing in this Agreement prohibits or prevents Bamberg from receiving individual monetary awards or other individual relief by virtue of participating in such governmental whistleblower programs.

(c) **Collective/Class Action Waiver.** With the exception of Bamberg's claims under the Illinois Biometric Information Privacy Act ("BIPA") which are the subject of the Action, if any claim is not subject to release, to the maximum extent permitted by law, Bamberg waives

any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which Defendant or any other Released Party is a party.

**3. Acknowledgments and Affirmations.**

Bamberg affirms that he has not filed, has not caused to be filed, and is not presently a party to any claim against Dynamic or any Released Party with the exception of the claims asserted in the Action.

Bamberg also affirms that he has reported all hours worked as of the date he signs this General Release and has been paid and/or has received all compensation, wages, bonuses, commissions, paid sick leave, predictability pay, and/or benefits which are due and payable as of the date he signs this General Release. Bamberg further affirms that he has been reimbursed for all necessary expenses or losses incurred by him within the scope of his employment. Bamberg further affirms that he has submitted expense reports for all necessary expenses or losses incurred by him within the scope of his employment.

Bamberg also affirms that he has been granted any leave to which he was entitled under the Family and Medical Leave Act and/or federal, state or local leave or disability accommodation laws.

Bamberg further affirms that he has no known workplace injuries or occupational diseases.

Bamberg further affirms that he has not been retaliated against for reporting any allegations of wrongdoing by Defendant or its officers, including any allegations of corporate fraud, and has not been retaliated against for reporting any such allegations internally to Defendant.

Bamberg affirms that all of Defendant's and/or any Released Party's decisions regarding his pay and benefits through the date of his separation of employment were not discriminatory based on age, disability, race, color, sex, religion, national origin, or any other classification protected by law.

Bamberg understands and acknowledges that signing and complying with this General Release is a condition to receiving the Incentive Award.

**4. Governing Law and Interpretation.** This General Release shall be governed and conformed in accordance with the laws of the State of Illinois without regard to its conflicts of laws provision. In the event of a breach of any provision of this General Release, either party may institute an action specifically to enforce any term or terms of this General Release and/or seek damages for breach. Should any provision of this General Release be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language, such provision shall immediately become null and void, leaving the remainder of this General Release in full force and effect.

**5. Waiver of Rights.** Bamberg understands and acknowledges that this is a legally binding document under which Bamberg is giving up certain rights. Bamberg has been advised to

consult with an attorney prior to signing this document and has been given at least twenty-one (21) calendar days within which to consider this General Release.

6. **No Admission of Wrongdoing.** Bamberg and Defendant agree that neither this General Release nor the furnishing of the consideration for this General Release shall be deemed or construed at any time for any purpose as an admission by either party, or evidence of any wrongdoing, liability or unlawful conduct of any kind.

7. **Amendment.** This General Release may not be modified, altered or changed except upon express written consent of both parties wherein specific reference is made to this General Release.

8. **Entire Agreement.** This General Release and the Settlement Agreement constitute the entire agreement between Bamberg and Defendant with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between Bamberg and Defendant shall be deemed merged into the General Release and the Settlement Agreement.

9. **Counterparts and Signatures.** This General Release may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument. A signature made on a faxed or electronically mailed copy of the Release or a signature transmitted by facsimile or electronic mail will have the same effect as the original signature.

10. **Mutual Negotiation.** This General Release was the result of negotiations between the Parties. In the event of vagueness, ambiguity, or uncertainty, this General Release shall not be construed against the Party preparing it, but shall be construed as if both Parties prepared it jointly.

**BAMBERG IS ADVISED THAT HE HAS UP TO TWENTY-ONE (21) CALENDAR DAYS TO EXECUTE AND RETURN THIS GENERAL RELEASE. BAMBERG ALSO IS ADVISED TO CONSULT WITH AN ATTORNEY PRIOR TO HIS SIGNING OF THIS GENERAL RELEASE.**

**BAMBERG AGREES THAT ANY MODIFICATIONS, MATERIAL OR OTHERWISE, MADE TO THIS GENERAL RELEASE DO NOT RESTART OR AFFECT IN ANY MANNER THE ORIGINAL UP TO TWENTY-ONE (21) CALENDAR DAY CONSIDERATION PERIOD.**

**BAMBERG FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS GENERAL RELEASE INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS BAMBERG HAS OR MIGHT HAVE AGAINST THE RELEASED PARTIES.**

**IN WITNESS WHEREOF**, the Parties hereto knowingly and voluntarily executed this General Release as of the date set forth below:

**DAVID BAMBERG**



David Bamberg (Feb 27, 2023 14:35 CST)

David Bamberg, Plaintiff

Date: Feb 27, 2023

**DYNAMIC MANUFACTURING, INC.**

By:



Name: John Bellantuono

Title: Chairman, CEO

Date: 2-28-2023



#26

2008

2250  
1040  
407  
2180  
2180  
2180  
2445

IN THE CIRCUIT COURT OF DUPAGE COUNTY  
EIGHTEENTH JUDICIAL CIRCUIT

DAVID BAMBERG, *individually and on behalf of all others similarly situated,*

Plaintiff,

v.

DYNAMIC MANUFACTURING, INC.,

Defendant.

Case No. 2023LA000015

Judge: Hon. Timothy McJoynt

**\*FILED\***  
MAR 22, 2023 02:46 PM  
*Candice Adams*  
CLERK OF THE  
18TH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT, CERTIFYING SETTLEMENT CLASS, APPOINTING CLASS REPRESENTATIVE, APPOINTING CLASS COUNSEL, AND APPROVING NOTICE PLAN**

WHEREAS, a putative class action is pending before the Court entitled *Bamberg v. Dynamic Manufacturing, Inc.*, Case No. 2023LA000015; and

WHEREAS, David Bamberg ("Plaintiff") and Defendant Dynamic Manufacturing, Inc. ("Defendant" or "Dynamic") have entered into a class action Settlement Agreement and Release, which, together with the exhibits attached thereto, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice as to Defendant upon the terms and conditions set forth therein (the "Settlement Agreement"), and the Court having read and considered the Settlement Agreement and exhibits attached to;

This matter coming before the Court upon the agreement of the parties, good cause being shown, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS FOLLOWS:

1. Terms and phrases in this Order shall have the same meaning as ascribed to them in the Settlement Agreement.

2. The Parties have moved the Court for an order approving the settlement of the

Action in accordance with the Settlement Agreement, which, together with the documents incorporated therein, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice, and the Court having read and considered the Settlement Agreement and having heard the parties and being fully advised in the premises, hereby preliminarily approves the Settlement Agreement in its entirety subject to the Final Approval Hearing referred to in paragraph 5 of this Order.

3. This Court finds that it has jurisdiction over the subject matter of this action and over all Parties to the Action.

4. The Court finds that, subject to the Final Approval Hearing, the Settlement Agreement is fair, reasonable, and adequate, within the range of possible approval, and in the best interests of the Settlement Class set forth below. The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives of the putative class action and provides substantial relief to the Settlement Class without the risks, burdens, costs, or delay associated with continued litigation, trial, and/or appeal. The Court also finds that the Settlement Agreement (a) is the result of arm's-length negotiations between experienced class action attorneys; (b) is sufficient to warrant notice of the settlement and the Final Approval Hearing to be disseminated to the Settlement Class; (c) meets all applicable requirements of law, including 735 ILCS 5/2-801 to 807; and (d) is not a finding or admission of liability by the Defendant or any other person, nor a finding of the validity of any claims asserted in the Action or of any wrongdoing or any violation of law.

#### **Final Approval Hearing**

5. The Final Approval Hearing shall be held before this Court on **June 20, 2023, at 9:30 a.m.** at the DuPage County Courthouse, 505 N. County Farm Rd., Wheaton, Illinois or



remotely by Zoom at <https://18thjudicial.org/18thJudicial/Remote-Court-Hearings> to determine (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be given final approval by the Court; (b) whether a judgment and order of dismissal with prejudice should be entered; (c) whether to approve the payment of attorneys' fees, costs, and expenses to Class Counsel; and (d) whether to approve the payment of the Incentive Award to the Class Representative. The Court may adjourn the Final Approval Hearing without further notice to members of the Settlement Class.

6. Class Counsel shall file papers in support of their Fee Award and Class Representative's Incentive Award (collectively, the "Fee Petition") with the Court on or before **May 8, 2023**. Defendant may, but is not required to, file a response to Class Counsel's Fee Petition with the Court on or before **June 6, 2023**. Class Counsel may file a reply in support of their Fee Petition with the Court on or before **June 13, 2023**.

7. Papers in support of final approval of the Settlement Agreement and any supplementation to the Fee Petition shall be filed with the Court on or before **June 6, 2023**.

**Certification of the Settlement Class**

8. For purposes of settlement only: (a) Bursor & Fisher, P.A. is appointed Class Counsel for the Settlement Class; and (b) David Bamberg is named Class Representative. The Court finds that Bursor & Fisher, P.A. is competent and capable of exercising the responsibilities of Class Counsel and that Plaintiff will adequately protect the interests of the Settlement Class defined below.

9. For purposes of settlement only, the Court conditionally certifies the following Settlement Class as defined in the Settlement Agreement:

All individuals who worked or are currently working for Defendant in the State of Illinois who allegedly had their alleged Biometric Identifiers and/or Biometric Information collected, captured, stored, possessed, received, transmitted, converted, or otherwise obtained or disclosed by Defendant, its agents, vendors, or payroll providers in connection with the Timekeeping System without first executing a written release from February 3, 2016 to December 27, 2022, and who do not timely opt-out of the settlement.

10. Excluded from the Settlement Class are all persons who elect to timely and validly exclude themselves from the Settlement Class pursuant to the relevant provisions of the Settlement Agreement and this Order, the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family.

11. The Court finds, subject to the Final Approval Hearing referred to in Paragraph 5 above, that the Settlement Agreement is fundamentally fair, adequate, and reasonable, and, solely within the context of and for the purposes of settlement only, that the Settlement Class satisfies the requirements of 735 ILCS 5/2-801, specifically, that: the Settlement Class is so numerous that joinder of all members is impracticable; there are questions of fact and law common to the Settlement Class (*e.g.*, whether Defendant collected or otherwise obtained Plaintiff's and the Class's biometric identifiers and/or biometric information; whether, if required, Defendant developed a BIPA-compliant written policy establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of their last interaction, whichever occurs first; whether, if required, Defendant destroyed Plaintiff's and the Class's biometric identifiers and/or biometric information once that information was no longer needed for the purpose for which it was originally collected; whether, if required, Defendant properly informed Plaintiff and the Class that it collected, used, and stored their biometric identifiers and/or biometric information;

whether BIPA's requirements applied to Defendant's use of the Timekeeping System in the first instance, whether Defendant's alleged violations of BIPA were committed intentionally, recklessly, or negligently; the claims of the Class Representative are typical of the claims of the members of the Settlement Class; the Class Representative and Class Counsel will fairly and adequately protect the interests of the members of the Settlement Class; common questions of law or fact predominate over questions affecting only individual members; and a class action is a superior method for fairly and efficiently adjudicating the Action.

12. If the Settlement Agreement does not receive the Court's final approval, or if final approval is reversed on appeal, or if the Settlement Agreement is terminated or otherwise fails to become effective, the Court's grant of class certification shall be vacated, and the Class Representative and the Settlement Class will once again bear the burden of establishing the propriety of class certification. In such case, neither the certification of the Settlement Class for settlement purposes, nor any other act relating to the negotiation or execution of the Settlement Agreement shall be considered as a factor in connection with any class certification issue(s).

#### **Notice and Administration**

13. The Court approves, as to form, content, and distribution, the Notice Plan set forth in the Settlement Agreement, including the Notice Plan and all forms of Notice to the Settlement Class as set forth in the Settlement Agreement and Exhibits A-B thereto, and finds that such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of 735 ILCS 5/2-803. The Court also finds that the Notice constitutes valid, due, and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice is reasonably calculated to, under all circumstances, reasonably apprise members of the Settlement Class of the pendency of this

Action, the terms of the Settlement Agreement, and the right to object to the settlement and to exclude themselves from the Settlement Class. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this Action. The Parties, by agreement, may revise the Notice in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting.

14. The Court approves the request for the appointment of Analytics Consulting LLC as Settlement Administrator of the Settlement Agreement.

15. Pursuant to paragraph 49 of the Settlement Agreement, the Settlement Administrator is directed to send direct notice via first class U.S. Mail in accordance with the Notice Plan called for by the Settlement Agreement. The plan for giving Notice, in form, method, and content, fully complies with the requirements of 735 ILCS 5/2-803 and due process and is due and sufficient notice to all Persons entitled thereto.

**Requests for Exclusion from Class**

16. Any person falling within the definition of the Settlement Class may, upon valid and timely request, exclude themselves or “opt out” from the Class. Any such person may do so if, on or before the Objection/Exclusion Deadline of **May 22, 2023**, they comply with the exclusion procedures set forth in the Settlement Agreement and Notice. Any members of the Class so excluded shall neither be bound by the terms of the Settlement Agreement nor entitled to any of its benefits.

17. Any members of the Settlement Class who elect to exclude themselves or “opt out” of the Settlement Agreement must file a written request with the Settlement Administrator, received or postmarked no later than the Objection/Exclusion Deadline. The request for exclusion must comply with the exclusion procedures set forth in the Settlement Agreement and

Notice and include the Settlement Class member's name and address, email address, telephone number, a signature, the name and number of the Action, and a statement that he or she wishes to be excluded from the Settlement Class for the purposes of this Settlement. Each request for exclusion must be submitted individually. So called "mass" or "class" opt-outs shall not be allowed.

18. Individuals who opt out of the Class relinquish all rights to benefits under the Settlement Agreement and will not release their claims. However, members of the Settlement Class who fail to submit a valid and timely request for exclusion shall be bound by all terms of the Settlement Agreement and the Final Judgment, regardless of whether they have requested exclusion from the Settlement Agreement and regardless of whether they submit a timely and valid Claim Form.

#### **Appearances and Objections**

19. At least twenty-one (21) calendar days before the Final Approval Hearing (**May 30, 2023**), any person who falls within the definition of the Settlement Class and who does not request exclusion from the Class may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. Any Settlement Class Member who does not enter an appearance will be represented by Class Counsel.

20. Any members of the Settlement Class who have not timely and validly filed a request for exclusion may object to the fairness, reasonableness, or adequacy of the Settlement Agreement or to a Final Judgment being entered dismissing the Action with prejudice in accordance with the terms of the Settlement Agreement, or to the attorneys' fees and expense reimbursement sought by Class Counsel in the amounts specified in the Notice, or to the Incentive Award to the Class Representative as set forth in the Notice and Settlement

Agreement. At least fourteen (14) days prior to the Objection/Exclusion Deadline, papers supporting the Fee Award shall be filed with the Court. Members of the Class may object on their own or may do so through separate counsel at their own expense.

21. To object, members of the Class must sign and file a written objection no later than on or before the Objection/Exclusion Deadline of **May 22, 2023**. To be valid, the objection must comply with the objection procedures set forth in the Settlement Agreement and Notice, and include (1) the objector's name, address, telephone number and email address; (2) the case name and number of this Action; (3) the date range during which the objector was employed by Defendant or worked as a temporary worker at one of Defendant's facilities; (4) all grounds for the objection, with factual and legal support for the objection, including all citations to legal authority and evidence supporting the objection; (5) the identification of any other objections the objector has filed, or has had filed on the objector's behalf, in any other cases in the last five years; (6) the objector's signature; (7) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection and/or who may profit from the pursuit of the objection (the "Objecting Attorneys"); and (8) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Local Rules), which also identifies any witnesses the objector may call to testify and all exhibits the objector intends to introduce into evidence, all of which must be attached to the objection submitted. If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection

must include a statement identifying each such case by full case caption.

22. Members of the Class who fail to file and serve timely written objections in compliance with the requirements of this Order and the Settlement Agreement shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement Agreement or to any of the subjects listed in paragraph 5, above, *i.e.* (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be given final approval by the Court; (b) whether a judgment and order of dismissal with prejudice should be entered; (c) whether to approve the payment of attorneys' fees and expenses to Class Counsel; and (d) whether to approve the payment of Incentive Award to the Class Representative.

23. To be valid, objections must be filed with the Court and sent to the following: Class Counsel, Philip L. Fraietta of Bursor & Fisher, P.A., 888 Seventh Avenue, New York, NY 10019; and Defendant Dynamic Manufacturing, Inc.'s Counsel, Jason A. Selvey of Jackson Lewis P.C., 150 N Michigan Ave, Suite 2500, Chicago, IL 60601. In addition, any objections made by a Class Member represented by counsel must be filed through the Court's electronic filing system.

**Further Matters**

24. All further proceedings in the Action are ordered stayed until Final Judgment or termination of the Settlement Agreement, whichever occurs earlier, except for those matters necessary to obtain and/or effectuate final approval of the Settlement Agreement.

25. Members of the Settlement Class shall be bound by all determinations and judgments in the Action concerning the Action and/or Settlement Agreement, whether favorable or unfavorable.

26. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement Agreement. The Court may approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.

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

28. Class Members who wish to participate in the class settlement fund and receive a payment pursuant to the provisions of the Settlement Agreement shall timely and validly complete and submit a Claim Form in accordance with the terms and conditions of the Settlement Agreement. The Settlement Administrator shall accept and process Claim Forms in accordance with the Settlement Agreement.

29. If the Settlement Agreement is not approved by the Court in complete accordance with its terms, the parties have agreed to provisions regarding required renegotiation, appeal, and other matters in the Settlement Agreement (§ 73), in an effort to nevertheless obtain approval of the settlement. Only if the parties nevertheless fail to obtain approval of any renegotiated Settlement Agreement after following the provisions of the Settlement Agreement, or if one of the provisions in paragraph 72 of Settlement Agreement applies, will the Settlement Agreement



terminate and the proceedings return to the status quo ante as if the Settlement Agreement had not been negotiated, made, or filed with the Court. In such event, the parties will retain all rights as if the Settlement Agreement was never agreed upon.

30. In the event that the Settlement Agreement is terminated pursuant to the provisions of the Settlement Agreement or for any reason whatsoever the approval of it does not become Final then (i) the Settlement Agreement shall be null and void, including any provision related to the award of attorneys' fees, and shall have no further force and effect with respect to any party in this Action, and shall not be used in this Action or in any other proceeding for any purpose; (ii) all negotiations, proceedings, documents prepared, and statements made in connection therewith shall be without prejudice to any person or party hereto, shall not be deemed or construed to be an admission by any party of any act, matter, or proposition, and shall not be used in any manner or for any purpose in any subsequent proceeding in this Action or in any other action in any court or other proceeding, provided, however, that the termination of the Settlement Agreement shall not shield from subsequent discovery any factual information provided in connection with the negotiation of this Settlement Agreement that would ordinarily be discoverable but for the attempted settlement; (iii) other than as expressly preserved by the Settlement Agreement in the event of its termination, the Settlement Agreement shall have no further force and effect with respect to any party and shall not be used in the Action or any other proceeding for any purpose; and (iv) any party may elect to move the Court pursuant to the provisions of this paragraph, and none of the non-moving parties (or their counsel) shall oppose any such motion.







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## **FIRM RESUME**

With offices in Florida, New York, and California, BURSOR & FISHER lawyers have represented both plaintiffs and defendants in state and federal courts throughout the country.

The lawyers at our firm have an active civil trial practice, having won multi-million-dollar verdicts or recoveries in six of six class action jury trials since 2008. Our most recent class action trial victory came in May 2019 in *Perez v. Rash Curtis & Associates*, in which Mr. Bursor served as lead trial counsel and won a \$267 million jury verdict against a debt collector found to have violated the Telephone Consumer Protection Act. During the pendency of the defendant's appeal, the case settled for \$75.6 million, the largest settlement in the history of the Telephone Consumer Protection Act.

In August 2013 in *Ayyad v. Sprint Spectrum L.P.*, in which Mr. Bursor served as lead trial counsel, we won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

In *Thomas v. Global Vision Products, Inc. (II)*, we obtained a \$50 million jury verdict in favor of a certified class of 150,000 purchasers of the Avacor Hair Regrowth System. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009, and the largest in any class action.

The lawyers at our firm have an active class action practice and have won numerous appointments as class counsel to represent millions of class members, including customers of Honda, Verizon Wireless, AT&T Wireless, Sprint, Haier America, and Michaels Stores as well as purchasers of Avacor™, Hydroxycut, and Sensa™ products. Bursor & Fisher lawyers have been court-appointed Class Counsel or Interim Class Counsel in:

1. *O'Brien v. LG Electronics USA, Inc.* (D.N.J. Dec. 16, 2010) to represent a certified nationwide class of purchasers of LG French-door refrigerators,
2. *Ramundo v. Michaels Stores, Inc.* (N.D. Ill. June 8, 2011) to represent a certified nationwide class of consumers who made in-store purchases at Michaels Stores using a debit or credit card and had their private financial information stolen as a result,
3. *In re Haier Freezer Consumer Litig.* (N.D. Cal. Aug. 17, 2011) to represent a certified class of purchasers of mislabeled freezers from Haier America Trading, LLC,
4. *Rodriguez v. CitiMortgage, Inc.* (S.D.N.Y. Nov. 14, 2011) to represent a certified nationwide class of military personnel against CitiMortgage for illegal foreclosures,

5. *Rossi v. The Procter & Gamble Co.* (D.N.J. Jan. 31, 2012) to represent a certified nationwide class of purchasers of Crest Sensitivity Treatment & Protection toothpaste,
6. *Dzielak v. Whirlpool Corp. et al.* (D.N.J. Feb. 21, 2012) to represent a proposed nationwide class of purchasers of mislabeled Maytag Centennial washing machines from Whirlpool Corp., Sears, and other retailers,
7. *In re Sensa Weight Loss Litig.* (N.D. Cal. Mar. 2, 2012) to represent a certified nationwide class of purchasers of Sensa weight loss products,
8. *In re Sinus Buster Products Consumer Litig.* (E.D.N.Y. Dec. 17, 2012) to represent a certified nationwide class of purchasers,
9. *Ebin v. Kangadis Food Inc.* (S.D.N.Y. Feb. 25, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
10. *Forcellati v. Hyland's, Inc.* (C.D. Cal. Apr. 9, 2014) to represent a certified nationwide class of purchasers of children's homeopathic cold and flu remedies,
11. *Ebin v. Kangadis Family Management LLC, et al.* (S.D.N.Y. Sept. 18, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
12. *In re Scotts EZ Seed Litig.* (S.D.N.Y. Jan. 26, 2015) to represent a certified class of purchasers of Scotts Turf Builder EZ Seed,
13. *Dei Rossi v. Whirlpool Corp., et al.* (E.D. Cal. Apr. 28, 2015) to represent a certified class of purchasers of mislabeled KitchenAid refrigerators from Whirlpool Corp., Best Buy, and other retailers,
14. *Hendricks v. StarKist Co.* (N.D. Cal. July 23, 2015) to represent a certified nationwide class of purchasers of StarKist tuna products,
15. *In re NVIDIA GTX 970 Graphics Card Litig.* (N.D. Cal. May 8, 2015) to represent a proposed nationwide class of purchasers of NVIDIA GTX 970 graphics cards,
16. *Melgar v. Zicam LLC, et al.* (E.D. Cal. March 30, 2016) to represent a certified ten-jurisdiction class of purchasers of Zicam Pre-Cold products,
17. *In re Trader Joe's Tuna Litigation* (C.D. Cal. December 21, 2016) to represent purchaser of allegedly underfilled Trader Joe's canned tuna.
18. *In re Welspun Litigation* (S.D.N.Y. January 26, 2017) to represent a proposed nationwide class of purchasers of Welspun Egyptian cotton bedding products,
19. *Retta v. Millennium Products, Inc.* (C.D. Cal. January 31, 2017) to represent a certified nationwide class of Millennium kombucha beverages,
20. *Moeller v. American Media, Inc.,* (E.D. Mich. June 8, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
21. *Hart v. BHH, LLC* (S.D.N.Y. July 7, 2017) to represent a nationwide class of purchasers of Bell & Howell ultrasonic pest repellers,
22. *McMillion v. Rash Curtis & Associates* (N.D. Cal. September 6, 2017) to represent a certified nationwide class of individuals who received calls from Rash Curtis & Associates,

23. *Lucero v. Solarcity Corp.* (N.D. Cal. September 15, 2017) to represent a certified nationwide class of individuals who received telemarketing calls from Solarcity Corp.,
24. *Taylor v. Trusted Media Brands, Inc.* (S.D.N.Y. Oct. 17, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
25. *Gasser v. Kiss My Face, LLC* (N.D. Cal. Oct. 23, 2017) to represent a proposed nationwide class of purchasers of cosmetic products,
26. *Gastelum v. Frontier California Inc.* (S.F. Superior Court February 21, 2018) to represent a certified California class of Frontier landline telephone customers who were charged late fees,
27. *Williams v. Facebook, Inc.* (N.D. Cal. June 26, 2018) to represent a proposed nationwide class of Facebook users for alleged privacy violations,
28. *Ruppel v. Consumers Union of United States, Inc.* (S.D.N.Y. July 27, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
29. *Bayol v. Health-Ade* (N.D. Cal. August 23, 2018) to represent a proposed nationwide class of Health-Ade kombucha beverage purchasers,
30. *West v. California Service Bureau* (N.D. Cal. September 12, 2018) to represent a certified nationwide class of individuals who received calls from California Service Bureau,
31. *Gregorio v. Premier Nutrition Corporation* (S.D.N.Y. Sept. 14, 2018) to represent a nationwide class of purchasers of protein shake products,
32. *Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast* (S.D.N.Y. Oct. 24, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
33. *Bakov v. Consolidated World Travel Inc. d/b/a Holiday Cruise Line* (N.D. Ill. Mar. 21, 2019) to represent a certified class of individuals who received calls from Holiday Cruise Line,
34. *Martinelli v. Johnson & Johnson* (E.D. Cal. March 29, 2019) to represent a certified class of purchasers of Benecol spreads labeled with the representation “No Trans Fat,”
35. *Edwards v. Hearst Communications, Inc.* (S.D.N.Y. April 24, 2019) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
36. *Galvan v. Smashburger* (C.D. Cal. June 25, 2019) to represent a proposed class of purchasers of Smashburger’s “Triple Double” burger,
37. *Kokoszki v. Playboy Enterprises, Inc.* (E.D. Mich. Feb. 7, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
38. *Russett v. The Northwestern Mutual Life Insurance Co.* (S.D.N.Y. May 28, 2020) to represent a class of insurance policyholders that were allegedly charged unlawful paper billing fees,
39. *In re: Metformin Marketing and Sales Practices Litigation* (D.N.J. June 3, 2020) to represent a proposed nationwide class of purchasers of generic diabetes medications that were contaminated with a cancer-causing carcinogen,

40. *Hill v. Spirit Airlines, Inc.* (S.D. Fla. July 21, 2020) to represent a proposed nationwide class of passengers whose flights were cancelled by Spirit Airlines due to the novel coronavirus, COVID-19, and whose tickets were not refunded,
41. *Kramer v. Alterra Mountain Co.* (D. Colo. July 31, 2020) to represent a proposed nationwide class of purchasers to recoup the unused value of their Ikon ski passes after Alterra suspended operations at its ski resorts due to the novel coronavirus, COVID-19,
42. *Qureshi v. American University* (D.D.C. July 31, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by American University due to the novel coronavirus, COVID-19,
43. *Hufford v. Maxim Inc.* (S.D.N.Y. Aug. 13, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
44. *Desai v. Carnegie Mellon University* (W.D. Pa. Aug. 26, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Carnegie Mellon University due to the novel coronavirus, COVID-19,
45. *Heigl v. Waste Management of New York, LLC* (E.D.N.Y. Aug. 27, 2020) to represent a class of waste collection customers that were allegedly charged unlawful paper billing fees,
46. *Stellato v. Hofstra University* (E.D.N.Y. Sept. 18, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Hofstra University due to the novel coronavirus, COVID-19,
47. *Kaupelis v. Harbor Freight Tools USA, Inc.* (C.D. Cal. Sept. 23, 2020), to represent consumers who purchased defective chainsaws,
48. *Soo v. Lorex Corporation* (N.D. Cal. Sept. 23, 2020), to represent consumers whose security cameras were intentionally rendered non-functional by manufacturer,
49. *Miranda v. Golden Entertainment (NV), Inc.* (D. Nev. Dec. 17, 2020), to represent consumers and employees whose personal information was exposed in a data breach,
50. *Benbow v. SmileDirectClub, Inc.* (Cir. Ct. Cook Cnty. Feb. 4, 2021), to represent a certified nationwide class of individuals who received text messages from SmileDirectClub, in alleged violation of the Telephone Consumer Protection Act,
51. *Suren v. DSV Solutions, LLC* (Cir. Ct. DuPage Cnty. Apr. 8, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
52. *De Lacour v. Colgate-Palmolive Co.* (S.D.N.Y. Apr. 23, 2021), to represent a certified class of consumers who purchased allegedly “natural” Tom’s of Maine products,
53. *Wright v. Southern New Hampshire University* (D.N.H. Apr. 26, 2021), to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Southern New Hampshire University due to the novel coronavirus, COVID-19,

54. *Sahlin v. Hospital Housekeeping Systems, LLC* (Cir. Ct. Williamson Cnty. May 21, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
55. *Landreth v. Verano Holdings LLC, et al.* (Cir. Ct. Cook Cnty. June 2, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act.
56. *Rocchio v. Rutgers, The State University of New Jersey*, (Sup. Ct., Middlesex Cnty. October 27, 201), to represent a certified nationwide class of students for fee refunds after their classes were moved online by Rutgers due to the novel coronavirus, COVID-19,
57. *Malone v. Western Digital Corp.*, (N.D. Cal. Dec. 22, 2021), to represent a class of consumers who purchased hard drives that were allegedly deceptively advertised,
58. *Jenkins v. Charles Industries, LLC*, (Cir. Ct. DuPage Cnty. Dec. 21, 2021) to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
59. *Frederick v. Examsoft Worldwide, Inc.*, (Cir. Ct. DuPage Cnty. Jan. 6, 2022) to represent a certified class of exam takers who used virtual exam proctoring software, in alleged violation of the Illinois Biometric Information Privacy Act,
60. *Isaacson v. Liqui-Box Flexibles, LLC, et al.*, (Cir. Ct. Will Cnty. Jan. 18, 2022) to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
61. *Goldstein et al. v. Henkel Corp.*, (D. Conn. Mar. 3, 2022) to represent a proposed class of purchasers of Right Guard-brand antiperspirants that were allegedly contaminated with benzene,
62. *McCall v. Hercules Corp.*, (N.Y. Sup. Ct., Westchester Cnty. Mar. 14, 2022) to represent a certified class of who laundry card purchasers who were allegedly subjected to deceptive practices by being denied cash refunds,
63. *Lewis v. Trident Manufacturing, Inc.*, (Cir. Ct. Kane Cnty. Mar. 16, 2022) to represent a certified class of workers who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
64. *Croft v. Spinx Games Limited, et al.*, (W.D. Wash. Mar. 31, 2022) to represent a certified class of Washington residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Washington law,
65. *Fischer v. Instant Checkmate LLC*, (N.D. Ill. Mar. 31, 2022) to represent a certified class of Illinois residents whose identities were allegedly used without their consent in alleged violation of the Illinois Right of Publicity Act,
66. *Rivera v. Google LLC*, (Cir. Ct. Cook Cnty. Apr. 25, 2022) to represent a certified class of Illinois residents who appeared in a photograph in Google Photos, in alleged violation of the Illinois Biometric Information Privacy Act,
67. *Loftus v. Outside Integrated Media, LLC*, (E.D. Mich. May 5, 2022) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,



68. *D'Amario v. The University of Tampa*, (S.D.N.Y. June 3, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by The University of Tampa due to the novel coronavirus, COVID-19,
69. *Fittipaldi v. Monmouth University*, (D.N.J. Sept. 22, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Monmouth University due to the novel coronavirus, COVID-19,
70. *Armstead v. VGW Malta Ltd. et al.* (Cir. Ct. Henderson Cnty. Oct. 3, 2022) to present a certified class of Kentucky residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Kentucky law,
71. *Cruz v. The Connor Group, A Real Estate Investment Firm, LLC*, (N.D. Ill. Oct. 26, 2022) to represent a certified class of workers who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act;
72. *Delcid et al. v. TCP HOT Acquisitions LLC et al.* (S.D.N.Y. Oct. 28, 2022) to represent a certified nationwide class of purchasers of Sure and Brut-brand antiperspirants that were allegedly contaminated with benzene,
73. *Kain v. The Economist Newspaper NA, Inc.* (E.D. Mich. Dec. 15, 2022) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
74. *Strano v. Kiplinger Washington Editors, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
75. *Moeller v. The Week Publications, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act.

### **SCOTT A. BURSOR**

Mr. Bursor has an active civil trial practice, having won multi-million verdicts or recoveries in six of six civil jury trials since 2008. Mr. Bursor's most recent victory came in May 2019 in *Perez v. Rash Curtis & Associates*, in which Mr. Bursor served as lead trial counsel and won a \$267 million jury verdict against a debt collector for violations of the Telephone Consumer Protection Act (TCPA).

In *Ayyad v. Sprint Spectrum L.P.* (2013), where Mr. Bursor served as lead trial counsel, the jury returned a verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

In *Thomas v. Global Vision Products, Inc.* (2009), the jury returned a \$50 million verdict in favor of the plaintiff and class represented by Mr. Bursor. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009.

Class actions are rarely tried to verdict. Other than Mr. Bursor and his partner Mr. Fisher, we know of no lawyer that has tried more than one class action to a jury. Mr. Bursor's perfect record of six wins in six class action jury trials, with recoveries ranging from \$21 million

to \$299 million, is unmatched by any other lawyer. Each of these victories was hard-fought against top trial lawyers from the biggest law firms in the United States.

Mr. Bursor graduated from the University of Texas Law School in 1996. He served as Articles Editor of the Texas Law Review, and was a member of the Board of Advocates and Order of the Coif. Prior to starting his own practice, Mr. Bursor was a litigation associate at a large New York based law firm where he represented telecommunications, pharmaceutical, and technology companies in commercial litigation.

Mr. Bursor is a member of the state bars of New York, Florida, and California, as well as the bars of the United States Court of Appeals for the Second, Third, Fourth, Sixth, Ninth and Eleventh Circuits, and the bars of the United States District Courts for the Southern and Eastern Districts of New York, the Northern, Central, Southern and Eastern Districts of California, the Southern and Middle Districts of Florida, and the Eastern District of Michigan.

### Representative Cases

Mr. Bursor was appointed lead or co-lead class counsel to the largest, 2nd largest, and 3rd largest classes ever certified. Mr. Bursor has represented classes including more than 160 million class members, roughly 1 of every 2 Americans. Listed below are recent cases that are representative of Mr. Bursor's practice:

Mr. Bursor negotiated and obtained court-approval for two landmark settlements in *Nguyen v. Verizon Wireless* and *Zill v. Sprint Spectrum* (the largest and 2nd largest classes ever certified). These settlements required Verizon and Sprint to open their wireless networks to third-party devices and applications. These settlements are believed to be the most significant legal development affecting the telecommunications industry since 1968, when the FCC's Carterfone decision similarly opened up AT&T's wireline telephone network.

Mr. Bursor was the lead trial lawyer in *Ayyad v. Sprint Spectrum, L.P.* representing a class of approximately 2 million California consumers who were charged an early termination fee under a Sprint cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory and common law claims. After a five-week combined bench-and-jury trial, the jury returned a verdict in June 2008 and the Court issued a Statement of Decision in December 2008 awarding the plaintiffs \$299 million in cash and debt cancellation. Mr. Bursor served as lead trial counsel for this class again in 2013 during a month-long jury trial in which Sprint asserted a \$1.06 billion counterclaim against the class. Mr. Bursor secured a verdict awarding Sprint only \$18.4 million, the exact amount calculated by the class's damages expert. This award was less than 2% of the damages Sprint sought, less than 6% of the amount of the illegal termination fees Sprint charged to class members. In December 2016, after more than 13 years of litigation, the case was settled for \$304 million, including \$79 million in cash payments plus \$225 million in debt cancellation.

Mr. Bursor was the lead trial lawyer in *White v. Cellco Partnership d/b/a Verizon Wireless* representing a class of approximately 1.4 million California consumers who were charged an early termination fee under a Verizon cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory

and common law claims. In July 2008, after Mr. Bursor presented plaintiffs' case-in-chief, rested, then cross-examined Verizon's principal trial witness, Verizon agreed to settle the case for a \$21 million cash payment and an injunction restricting Verizon's ability to impose early termination fees in future subscriber agreements.

Mr. Bursor was the lead trial lawyer in *Thomas v. Global Visions Products Inc.* Mr. Bursor represented a class of approximately 150,000 California consumers who had purchased the Avacor® hair regrowth system. In January 2008, after a four-week combined bench-and-jury trial, Mr. Bursor obtained a \$37 million verdict for the class, which the Court later increased to \$40 million.

Mr. Bursor was appointed class counsel and was elected chair of the Official Creditors' Committee in *In re Nutraquest Inc.*, a Chapter 11 bankruptcy case before Chief Judge Garrett E. Brown, Jr. (D.N.J.) involving 390 ephedra-related personal injury and/or wrongful death claims, two consumer class actions, four enforcement actions by governmental agencies, and multiple adversary proceedings related to the Chapter 11 case. Working closely with counsel for all parties and with two mediators, Judge Nicholas Politan (Ret.) and Judge Marina Corodemus (Ret.), the committee chaired by Mr. Bursor was able to settle or otherwise resolve every claim and reach a fully consensual Chapter 11 plan of reorganization, which Chief Judge Brown approved in late 2006. This settlement included a \$12.8 million recovery to a nationwide class of consumers who alleged they were defrauded in connection with the purchase of Xenadrine® dietary supplement products.

Mr. Bursor was the lead trial lawyer in *In re: Pacific Bell Late Fee Litigation*. After filing the first class action challenging Pac Bell's late fees in April 2010, winning a contested motion to certify a statewide California class in January 2012, and defeating Pac Bell's motion for summary judgment in February 2013, Mr. Bursor obtained final approval of the \$38 million class settlement. The settlement, which Mr. Bursor negotiated the night before opening statements were scheduled to commence, included a \$20 million cash payment to provide refunds to California customers who paid late fees on their Pac Bell wireline telephone accounts, and an injunction that reduced other late fee charges by \$18.6 million.

#### **L. TIMOTHY FISHER**

L. Timothy Fisher has an active practice in consumer class actions and complex business litigation and has also successfully handled a large number of civil appeals.

Mr. Fisher has been actively involved in numerous cases that resulted in multi-million dollar recoveries for consumers and investors. Mr. Fisher has handled cases involving a wide range of issues including nutritional labeling, health care, telecommunications, corporate governance, unfair business practices and consumer fraud. With his partner Scott A. Bursor, Mr. Fisher has tried five class action jury trials, all of which produced successful results. In *Thomas v. Global Vision Products*, Mr. Fisher obtained a jury award of \$50,024,611 — the largest class action award in California in 2009 and the second-largest jury award of any kind. In 2019, Mr. Fisher served as trial counsel with Mr. Bursor and his partner Yeremey Krivoshey in *Perez. v. Rash Curtis & Associates*, where the jury returned a verdict for \$267 million in statutory damages under the Telephone Consumer Protection Act.

Mr. Fisher was admitted to the State Bar of California in 1997. He is also a member of the bars of the United States Court of Appeals for the Ninth Circuit, the United States District Courts for the Northern, Central, Southern and Eastern Districts of California, the Northern District of Illinois, the Eastern District of Michigan, and the Eastern District of Missouri. Mr. Fisher taught appellate advocacy at John F. Kennedy University School of Law in 2003 and 2004. In 2010, he contributed jury instructions, a verdict form and comments to the consumer protection chapter of Justice Elizabeth A. Baron's *California Civil Jury Instruction Companion Handbook* (West 2010). In January 2014, Chief Judge Claudia Wilken of the United States District Court for the Northern District of California appointed Mr. Fisher to a four-year term as a member of the Court's Standing Committee on Professional Conduct.

Mr. Fisher received his Juris Doctor from Boalt Hall at the University of California at Berkeley in 1997. While in law school, he was an active member of the Moot Court Board and participated in moot court competitions throughout the United States. In 1994, Mr. Fisher received an award for Best Oral Argument in the first-year moot court competition.

In 1992, Mr. Fisher graduated with highest honors from the University of California at Berkeley and received a degree in political science. Prior to graduation, he authored an honors thesis for Professor Bruce Cain entitled "The Role of Minorities on the Los Angeles City Council." He is also a member of Phi Beta Kappa.

### Representative Cases

*Thomas v. Global Vision Products, Inc.* (Alameda County Superior Court). Mr. Fisher litigated claims against Global Vision Products, Inc. and other individuals in connection with the sale and marketing of a purported hair loss remedy known as Avacor. The case lasted more than seven years and involved two trials. The first trial resulted in a verdict for plaintiff and the class in the amount of \$40,000,000. The second trial resulted in a jury verdict of \$50,024,611, which led to a \$30 million settlement for the class.

*In re Cellphone Termination Fee Cases - Handset Locking Actions* (Alameda County Superior Court). Mr. Fisher actively worked on five coordinated cases challenging the secret locking of cell phone handsets by major wireless carriers to prevent consumers from activating them on competitive carriers' systems. Settlements have been approved in all five cases on terms that require the cell phone carriers to disclose their handset locks to consumers and to provide unlocking codes nationwide on reasonable terms and conditions. The settlements fundamentally changed the landscape for cell phone consumers regarding the locking and unlocking of cell phone handsets.

*In re Cellphone Termination Fee Cases - Early Termination Fee Cases* (Alameda County Superior Court and Federal Communications Commission). In separate cases that are a part of the same coordinated litigation as the Handset Locking Actions, Mr. Fisher actively worked on claims challenging the validity under California law of early termination fees imposed by national cell phone carriers. In one of those cases, against Verizon Wireless, a nationwide settlement was reached after three weeks of trial in the amount of \$21 million. In a second case, which was tried to verdict, the Court held after trial that the \$73 million of flat early termination

fees that Sprint had collected from California consumers over an eight-year period were void and unenforceable.

### *Selected Published Decisions*

*Melgar v. Zicam LLC*, 2016 WL 1267870 (E.D. Cal. Mar. 30, 2016) (certifying 10-jurisdiction class of purchasers of cold remedies, denying motion for summary judgment, and denying motions to exclude plaintiff's expert witnesses).

*Salazar v. Honest Tea, Inc.*, 2015 WL 7017050 (E.D. Cal. Nov. 12, 2015) (denying motion for summary judgment).

*Dei Rossi v. Whirlpool Corp.*, 2015 WL 1932484 (E.D. Cal. Apr. 27, 2015) (certifying California class of purchasers of refrigerators that were mislabeled as Energy Star qualified).

*Bayol v. Zipcar, Inc.*, 78 F.Supp.3d 1252 (N.D. Cal. 2015) (denying motion to dismiss claims alleging unlawful late fees under California Civil Code § 1671).

*Forcellati v. Hyland's, Inc.*, 2015 WL 9685557 (C.D. Cal. Jan. 12, 2015) (denying motion for summary judgment in case alleging false advertising of homeopathic cold and flu remedies for children).

*Bayol v. Zipcar, Inc.*, 2014 WL 4793935 (N.D. Cal. Sept. 25, 2014) (denying motion to transfer venue pursuant to a forum selection clause).

*Forcellati v. Hyland's Inc.*, 2014 WL 1410264 (C.D. Cal. Apr. 9, 2014) (certifying nationwide class of purchasers of homeopathic cold and flu remedies for children).

*Hendricks v. StarKist Co.*, 30 F.Supp.3d 917 (N.D. Cal. 2014) (denying motion to dismiss in case alleging underfilling of 5-ounce cans of tuna).

*Dei Rossi v. Whirlpool Corp.*, 2013 WL 5781673 (E.D. Cal. October 25, 2013) (denying motion to dismiss in case alleging that certain KitchenAid refrigerators were misrepresented as Energy Star qualified).

*Forcellati v. Hyland's Inc.*, 876 F.Supp.2d 1155 (C.D. Cal. 2012) (denying motion to dismiss complaint alleging false advertising regarding homeopathic cold and flu remedies for children).

*Clerkin v. MyLife.com*, 2011 WL 3809912 (N.D. Cal. August 29, 2011) (denying defendants' motion to dismiss in case alleging false and misleading advertising by a social networking company).

*In re Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380 (2010) (affirming order approving \$21 million class action settlement).

*Gatton v. T-Mobile USA, Inc.*, 152 Cal.App.4th 571 (2007) (affirming order denying motion to compel arbitration).

### *Selected Class Settlements*

*Melgar v. Zicam* (Eastern District of California) - \$16 million class settlement of claims alleging cold medicine was ineffective.

*Gastelum v. Frontier California Inc.* (San Francisco Superior Court) - \$10.9 million class action settlement of claims alleging that a residential landline service provider charged unlawful late

fees.

*West v. California Service Bureau, Inc.* (Northern District of California) - \$4.1 million class settlement of claims under the Telephone Consumer Protection Act.

*Gregorio v. Premier Nutrition Corp.* (Southern District of New York) - \$9 million class settlement of false advertising claims against protein shake manufacturer.

*Morris v. SolarCity Corp.* (Northern District of California) - \$15 million class settlement of claims under the Telephone Consumer Protection Act.

*Retta v. Millennium Products, Inc.* (Central District of California) - \$8.25 million settlement to resolve claims of bottled tea purchasers for alleged false advertising.

*Forcellati v. Hyland's* (Central District of California) – nationwide class action settlement providing full refunds to purchasers of homeopathic cold and flu remedies for children.

*Dei Rossi v. Whirlpool* (Eastern District of California) – class action settlement providing \$55 cash payments to purchasers of certain KitchenAid refrigerators that allegedly mislabeled as Energy Star qualified.

*In Re NVIDIA GTX 970 Graphics Chip Litigation* (Northern District of California) - \$4.5 million class action settlement of claims alleging that a computer graphics card was sold with false and misleading representations concerning its specifications and performance.

*Hendricks v. StarKist Co.* (Northern District of California) – \$12 million class action settlement of claims alleging that 5-ounce cans of tuna were underfilled.

*In re Zakskorn v. American Honda Motor Co. Honda* (Eastern District of California) – nationwide settlement providing for brake pad replacement and reimbursement of out-of-pocket expenses in case alleging defective brake pads on Honda Civic vehicles manufactured between 2006 and 2011.

*Correa v. Sensa Products, LLC* (Los Angeles Superior Court) - \$9 million settlement on behalf of purchasers of the Sensa weight loss product.

*In re Pacific Bell Late Fee Litigation* (Contra Costa County Superior Court) - \$38.6 million settlement on behalf of Pac Bell customers who paid an allegedly unlawful late payment charge.

*In re Haier Freezer Consumer Litigation* (Northern District of California) - \$4 million settlement, which provided for cash payments of between \$50 and \$325.80 to class members who purchased the Haier HNCM070E chest freezer.

*Thomas v. Global Vision Products, Inc.* (Alameda County Superior Court) - \$30 million settlement on behalf of a class of purchasers of a hair loss remedy.

*Guyette v. Viacom, Inc.* (Alameda County Superior Court) - \$13 million settlement for a class of cable television subscribers who alleged that the defendant had improperly failed to share certain tax refunds with its subscribers.

**JOSEPH I. MARCHESE**

Joseph I. Marchese is a Partner with Bursor & Fisher, P.A. Joe focuses his practice on consumer class actions, employment law disputes, and commercial litigation. He has represented corporate and individual clients in a wide array of civil litigation, and has substantial trial and appellate experience.

Joe has diverse experience in litigating and resolving consumer class actions involving claims of mislabeling, false or misleading advertising, privacy violations, data breach claims, and violations of the Servicemembers Civil Relief Act.

Joe also has significant experience in multidistrict litigation proceedings. Recently, he served on the Plaintiffs' Executive Committee in *In Re: Blue Buffalo Company, Ltd. Marketing And Sales Practices Litigation*, MDL No. 2562, which resulted in a \$32 million consumer class settlement. Currently, he serves on the Plaintiffs' Steering Committee for Economic Reimbursement in *In Re: Valsartan Products Liability Litigation*, MDL No. 2875.

Joe is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, and the Eastern District of Michigan, as well as the United States Court of Appeals for the Second Circuit.

Joe graduated from Boston University School of Law in 2002 where he was a member of The Public Interest Law Journal. In 1998, Joe graduated with honors from Bucknell University.

**Selected Published Decisions:**

*Boelter v. Hearst Communications, Inc.*, 269 F. Supp. 3d 172 (S.D.N.Y. Sept. 7, 2017), granting plaintiff's motion for partial summary judgment on state privacy law violations in putative class action.

*Boelter v. Hearst Communications, Inc.*, 192 F. Supp. 3d 427 (S.D.N.Y. June 17, 2016), denying publisher's motion to dismiss its subscriber's allegations of state privacy law violations in putative class action.

*In re Scotts EZ Seed Litigation*, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

*Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

*In re Michaels Stores Pin Pad Litigation*, 830 F. Supp. 2d 518 (N.D. Ill. 2011), denying retailer's motion to dismiss its customers' state law consumer protection and privacy claims in data breach putative class action.

**Selected Class Settlements:**

*Edwards v. Hearst Communications, Inc.*, Case No. 15-cv-09279-AT (S.D.N.Y. 2019) – final approval granted for \$50 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast*, Case No. 15-cv-05671-NRB (S.D.N.Y. 2019) – final approval granted for \$13.75 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*In re Scotts EZ Seed Litigation*, Case No. 12-cv-4727-VB (S.D.N.Y. 2018) – final approval granted for \$47 million class settlement to resolve false advertising claims of purchasers of combination grass seed product.

*In Re: Blue Buffalo Marketing And Sales Practices Litigation*, Case No. 14-MD-2562-RWS (E.D. Mo. 2016) – final approval granted for \$32 million class settlement to resolve claims of pet owners for alleged false advertising of pet foods.

*Rodriguez v. Citimortgage, Inc.*, Case No. 11-cv-4718-PGG (S.D.N.Y. 2015) – final approval granted for \$38 million class settlement to resolve claims of military servicemembers for alleged foreclosure violations of the Servicemembers Civil Relief Act, where each class member was entitled to \$116,785 plus lost equity in the foreclosed property and interest thereon.

*O'Brien v. LG Electronics USA, Inc., et al.*, Case No. 10-cv-3733-DMC (D.N.J. 2011) – final approval granted for \$23 million class settlement to resolve claims of Energy Star refrigerator purchasers for alleged false advertising of the appliances' Energy Star qualification.



**JOSHUA D. ARISOHN**

Joshua D. Arisohn is a Partner with Bursor & Fisher, P.A. Josh has litigated precedent-setting cases in the areas of consumer class actions and terrorism. He participated in the first ever trial to take place under the Anti-Terrorism Act, a statute that affords U.S. citizens the right to assert federal claims for injuries arising out of acts of international terrorism. Josh's practice continues to focus on terrorism-related matters as well as class actions.

Josh is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, the District Court for the District of Columbia, and the United States Courts of Appeals for the Second and Ninth Circuits.

Josh previously practiced at Dewey & LeBoeuf LLP and DLA Piper LLP. He graduated from Columbia University School of Law in 2006, where he was a Harlan Fiske Stone Scholar, and received his B.A. from Cornell University in 2002. Josh has been honored as a 2015, 2016 and 2017 Super Lawyer Rising Star.

**Selected Published Decisions:**

*Fields v. Syrian Arab Republic*, Civil Case No. 18-1437 (RJL), entering a judgment of approximately \$850 million in favor of the family members of victims of terrorist attacks carried out by ISIS with the material support of Syria.

*Farwell v. Google LLC*, 2022 WL 1568361 (C.D. Ill. Mar. 31, 2022), denying social media defendant's motion to dismiss BIPA claims brought on behalf of Illinois school students using Google's Workspace for Education platform on laptop computers.

*Weiman v. Miami University*, Case No. 2020-00614JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

*Smith v. The Ohio State University*, Case No. 2020-00321JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

*Watt v. Kent State University*, Case No. 2020-00392JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

*Duke v. Ohio University*, Case No. 2021-00036JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

*Keba v. Bowling Green State University*, Case No. 2020-00639JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

*Kirkbride v. The Kroger Co.*, Case No. 2:21-cv-00022-ALM-EPD, denying motion to dismiss claims based on the allegation that defendant overstated its usual and customary prices and thereby overcharged customers for generic drugs.

**Selected Class Settlements:**

*Morris v. SolarCity Corp.*, Case No. 3:15-cv-05107-RS (N.D. Cal.) - final approval granted for \$15 million class settlement to resolve claims under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*

*Marquez v. Google LLC*, Case No. 2021-CH-1460 (Cir. Ct. Cook Cnty. 2022) – final approval granted for \$100 million class settlement to resolve alleged BIPA violations of Illinois residents appearing in photos on the Google Photos platform.

**JOEL D. SMITH**

Joel D. Smith is a Partner with Bursor & Fisher, P.A. Joel is a trial attorney who has practiced in lower court and appeals courts across the country, as well as the U.S. Supreme Court.

Prior to joining Bursor & Fisher, Joel was a litigator at Crowell & Moring, where he represented Fortune 500 companies, privately held businesses, and public entities in a wide variety of commercial, environmental, and class action matters. Among other matters, Joel served as defense counsel for AT&T, Enterprise-Rent-A-Car, Flowers Foods, and other major U.S. businesses in consumer class actions, including a class action seeking to hold U.S. energy companies accountable for global warming. Joel represented four major U.S. retailers in a case arising from a devastating arson fire and ensuing state of emergency in Roseville, California, which settled on the eve of a trial that was expected to last several months and involve several dozen witnesses. Joel also was part of the trial team in a widely publicized trial over the death of a contestant who died after participating in a Sacramento radio station’s water drinking contest.

More recently, Joel’s practice focuses on consumer class actions involving automotive and other product defects, financial misconduct, false advertising, and privacy violations.

Joel received both his undergraduate and law degrees from the University of California at Berkeley. While at Berkeley School of Law, he was a member of the California Law Review, received several academic honors, externed for the California Attorney General’s office and published an article on climate change policy and litigation.

Joel is admitted to the State Bar of California, as well as the United States Courts of Appeals for the Second, Third and Ninth Circuits; all California district courts; the Eastern District of Michigan; and the Northern District of Illinois.

**Selected Published Decisions:**

*Javier v. Assurance IQ, LLC*, --- Fed App'x --- 2022 WL 1744107 (9th Cir. May 31, 2022), reversing dismissal in a class action alleging surreptitious monitoring of internet communications.

*Revitch v. DIRECTV, LLC*, 977 F.3d 713 (9th Cir. 2020), affirming denial of motion to compel arbitration in putative class action alleging unlawful calls under the Telephone Consumer Protection Act.

*Kaupelis v. Harbor Freight Tools USA, Inc.*, 2020 WL 5901116 (C.D. Cal. Sept. 23, 2020), granting class certification of consumer protection claims brought by purchasers of defective chainsaws.

### **Selected Class Settlements:**

*Recinos et al. v. The Regents of the University of California*, Superior Court for the State of California, County of Alameda, Case No. RG19038659 – final approval granted for a settlement providing debt relief and refunds to University of California students who were charged late fees.

*Crandell et al. v. Volkswagen Group of America*, Case No. 2:18-cv-13377-JSA (D.N.J.) – final approval granted for a settlement providing relief for Volkswagen Touareg owners to resolve allegations that defects in Touareg vehicles caused the engines to ingest water when driving in the rain.

*Isley et al. v. BMW of N. America, LLC*, Case No. 2:19-cv-12680-ESK (D.N.J.) – final approval granted for settlement providing BMW owners with reimbursements and credit vouchers to resolve allegations that defects in the BMW N63TU engine caused excessive oil consumption.

*Kaupelis v. Harbor Freight Tools USA, Inc.*, 8:19-cv-01203-JVS-DFM (C.D. Cal.) – final approval granted for a settlement valued up to \$40 million to resolve allegations that Harbor Freight sold chainsaws with a defective power switch that could prevent the chainsaws from turning off.

*Morris v. SolarCity Corp.*, Case No. 3:15-cv-05107-RS (N.D. Cal.) - final approval granted for \$15 million class settlement to resolve claims under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*

### **NEAL J. DECKANT**

Neal J. Deckant is a Partner with Bursor & Fisher, P.A., where he serves as the firm's Head of Information & e-Discovery. Neal focuses his practice on complex business litigation and consumer class actions. Prior to joining Bursor & Fisher, Neal counseled low-income homeowners facing foreclosure in East Boston.

Neal is admitted to the State Bars of California and New York, and is a member of the bars of the United States District Court for the Northern District of California, the United States District Court for the Eastern District of California, the United States District Court for the Central District of California, the United States District Court for the Southern District of

California, the United States District Court for the Southern District of New York, the United States District Court for the Eastern District of New York, and the bars of the United States Courts of Appeals for the Second and Ninth Circuits.

Neal received his Juris Doctor from Boston University School of Law in 2011, graduating cum laude with two Dean's Awards. During law school, Neal served as a Senior Articles Editor for the Review of Banking and Financial Law, where he authored two published articles about securitization reforms, both of which were cited by the New York Court of Appeals, the highest court in the state. Neal was also awarded Best Oral Argument in his moot court section, and he served as a Research Assistant for his Securities Regulation professor. Neal has also been honored as a 2014, 2015, 2016, and 2017 Super Lawyers Rising Star. In 2007, Neal graduated with Honors from Brown University with a dual major in East Asian Studies and Philosophy.

**Selected Published Decisions:**

*Martinelli v. Johnson & Johnson*, 2019 WL 1429653 (N.D. Cal. Mar. 29, 2019), granting class certification of false advertising and other claims brought by purchasers of Benecol spreads labeled with the representation "No Trans Fats."

*Dzielak v. Whirlpool Corp.*, 2017 WL 6513347 (D.N.J. Dec. 20, 2017), granting class certification of consumer protection claims brought by purchasers of Maytag Centennial washing machines marked with the "Energy Star" logo.

*Duran v. Obesity Research Institute, LLC*, 204 Cal. Rptr. 3d 896 (Cal. Ct. App. 2016), reversing and remanding final approval of a class action settlement on appeal, regarding allegedly mislabeled dietary supplements, in connection with a meritorious objection.

*Marchuk v. Faruqi & Faruqi, LLP, et al.*, 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting individual and law firm defendants' motion for judgment as a matter of law on plaintiff's claims for retaliation and defamation, as well as for all claims against law firm partners, Nadeem and Lubna Faruqi.

*Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

*Ebin v. Kangadis Food Inc.*, 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor's motion for summary judgment against nationwide class of purchasers of purported "100% Pure Olive Oil" product.

**Selected Class Settlements:**

*In Re NVIDIA GTX 970 Graphics Chip Litigation*, Case No. 15-cv-00760-PJH (N.D. Cal. Dec. 7, 2016) – final approval granted for \$4.5 million class action settlement to resolve claims that a computer graphics card was allegedly sold with false and misleading representations concerning its specifications and performance.

*Hendricks v. StarKist Co.*, 2016 WL 5462423 (N.D. Cal. Sept. 29, 2016) – final approval granted for \$12 million class action settlement to resolve claims that 5-ounce cans of tuna were allegedly underfilled.

*In re: Kangadis Food Inc.*, Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014) – class action claims resolved for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy, following claims that its olive oil was allegedly sold with false and misleading representations.

### **Selected Publications:**

Neal Deckant, *X. Reforms of Collateralized Debt Obligations: Enforcement, Accounting and Regulatory Proposals*, 29 Rev. Banking & Fin. L. 79 (2009) (cited in *Quadrant Structured Products Co., Ltd. v. Vertin*, 16 N.E.3d 1165, 1169 n.8 (N.Y. 2014)).

Neal Deckant, *Criticisms of Collateralized Debt Obligations in the Wake of the Goldman Sachs Scandal*, 30 Rev. Banking & Fin. L. 407 (2010) (cited in *Quadrant Structured Products Co., Ltd. v. Vertin*, 16 N.E.3d 1165, 1169 n.8 (N.Y. 2014)); *Lyon Village Venetia, LLC v. CSE Mortgage LLC*, 2016 WL 476694, at \*1 n.1 (Md. Ct. Spec. App. Feb. 4, 2016); Ivan Ascher, *Portfolio Society: On the Capitalist Mode of Prediction*, at 141, 153, 175 (Zone Books / The MIT Press 2016); Devon J. Steinmeyer, *Does State National Bank of Big Spring v. Geithner Stand a Fighting Chance?*, 89 Chi.-Kent. L. Rev. 471, 473 n.13 (2014)).

### **YITZCHAK KOPEL**

Yitzchak Kopel is a Partner with Bursor & Fisher, P.A. Yitz focuses his practice on consumer class actions and complex business litigation. He has represented corporate and individual clients before federal and state courts, as well as in arbitration proceedings.

Yitz has substantial experience in successfully litigating and resolving consumer class actions involving claims of consumer fraud, data breaches, and violations of the telephone consumer protection act. Since 2014, Yitz has obtained class certification on behalf of his clients five times, three of which were certified as nationwide class actions. Bursor & Fisher was appointed as class counsel to represent the certified classes in each of the cases.

Yitz is admitted to the State Bars of New York and New Jersey, the bar of the United States Court of Appeals for the Second, Eleventh, and Ninth Circuits, and the bars of the United States District Courts for the Southern District of New York, Eastern District of New York, Eastern District of Missouri, Eastern District of Wisconsin, Northern District of Illinois, and District of New Jersey.

Yitz received his Juris Doctorate from Brooklyn Law School in 2012, graduating *cum laude* with two Dean's Awards. During law school, Yitz served as an Articles Editor for the Brooklyn Law Review and worked as a Law Clerk at Shearman & Sterling. In 2009, Yitz graduated *cum laude* from Queens College with a B.A. in Accounting.

**Selected Published Decisions:**

*Bassaw v. United Industries Corp.*, --- F. Supp. 3d ---, 2020 WL 5117916 (S.D.N.Y. Aug. 31, 2020), denying motion to dismiss claims in putative class action concerning insect foggers.

*Poppiti v. United Industries Corp.*, 2020 WL 1433642 (E.D. Mo. Mar. 24, 2020), denying motion to dismiss claims in putative class action concerning citronella candles.

*Bakov v. Consolidated World Travel, Inc.*, 2019 WL 6699188 (N.D. Ill. Dec. 9, 2019), granting summary judgment on behalf of certified class in robocall class action.

*Krumm v. Kittrich Corp.*, 2019 WL 6876059 (E.D. Mo. Dec. 17, 2019), denying motion to dismiss claims in putative class action concerning mosquito repellent.

*Crespo v. S.C. Johnson & Son, Inc.*, 394 F. Supp. 3d 260 (S.D.N.Y. 2019), denying defendant's motion to dismiss fraud and consumer protection claims in putative class action regarding Raid insect fogger.

*Bakov v. Consolidated World Travel, Inc.*, 2019 WL 1294659 (N.D. Ill. Mar. 21, 2019), certifying a class of persons who received robocalls in the state of Illinois.

*Bourbia v. S.C. Johnson & Son, Inc.*, 375 F. Supp. 3d 454 (S.D.N.Y. 2019), denying defendant's motion to dismiss fraud and consumer protection claims in putative class action regarding mosquito repellent.

*Hart v. BHH, LLC*, 323 F. Supp. 3d 560 (S.D.N.Y. 2018), denying defendants' motion for summary judgment in certified class action involving the sale of ultrasonic pest repellents.

*Hart v. BHH, LLC*, 2018 WL 3471813 (S.D.N.Y. July 19, 2018), denying defendants' motion to exclude plaintiffs' expert in certified class action involving the sale of ultrasonic pest repellents.

*Penrose v. Buffalo Trace Distillery, Inc.*, 2018 WL 2334983 (E.D. Mo. Feb. 5, 2018), denying bourbon producers' motion to dismiss fraud and consumer protection claims in putative class action.

*West v. California Service Bureau, Inc.*, 323 F.R.D. 295 (N.D. Cal. 2017), certifying a nationwide class of "wrong-number" robocall recipients.

*Hart v. BHH, LLC*, 2017 WL 2912519 (S.D.N.Y. July 7, 2017), certifying nationwide class of purchasers of ultrasonic pest repellents.

*Browning v. Unilever United States, Inc.*, 2017 WL 7660643 (C.D. Cal. Apr. 26, 2017), denying motion to dismiss fraud and warranty claims in putative class action concerning facial scrub product.

*Brenner v. Procter & Gamble Co.*, 2016 WL 8192946 (C.D. Cal. Oct. 20, 2016), denying motion to dismiss warranty and consumer protection claims in putative class action concerning baby wipes.

*Hewlett v. Consolidated World Travel, Inc.*, 2016 WL 4466536 (E.D. Cal. Aug. 23, 2016), denying telemarketer's motion to dismiss TCPA claims in putative class action.

*Bailey v. KIND, LLC*, 2016 WL 3456981 (C.D. Cal. June 16, 2016), denying motion to dismiss fraud and warranty claims in putative class action concerning snack bars.

*Hart v. BHH, LLC*, 2016 WL 2642228 (S.D.N.Y. May 5, 2016) denying motion to dismiss warranty and consumer protection claims in putative class action concerning ultrasonic pest repellents.

*Marchuk v. Faruqi & Faruqi, LLP, et al.*, 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting clients' motion for judgment as a matter of law on claims for retaliation and defamation in employment action.

*In re Scotts EZ Seed Litigation*, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

*Brady v. Basic Research, L.L.C.*, 101 F. Supp. 3d 217 (E.D.N.Y. 2015), denying diet pill manufacturers' motion to dismiss its purchasers' allegations for breach of express warranty in putative class action.

*Ward v. TheLadders.com, Inc.*, 3 F. Supp. 3d 151 (S.D.N.Y. 2014), denying online job board's motion to dismiss its subscribers' allegations of consumer protection law violations in putative class action.

*Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

*Ebin v. Kangadis Food Inc.*, 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor's motion for summary judgment against nationwide class of purchasers of purported "100% Pure Olive Oil" product.

#### **Selected Class Settlements:**

*Hart v. BHH, LLC*, Case No. 1:15-cv-04804 (S.D.N.Y. Sept. 22, 2020), resolving class action claims regarding ultrasonic pest repellents.

*In re: Kangadis Food Inc.*, Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014), resolving class action claims for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy following the certification of nationwide claims alleging that its olive oil was sold with false and misleading representations.

*West v. California Service Bureau*, Case No. 4:16-cv-03124-YGR (N.D. Cal. Jan. 23, 2019), resolving class action claims against debt-collector for wrong-number robocalls for \$4.1 million.

### **FREDERICK J. KLORCZYK III**

Frederick J. Klorczyk III is a Partner with Bursor & Fisher, P.A. Fred focuses his practice on complex business litigation and consumer class actions.

Fred has substantial experience in successfully litigating and resolving consumer class actions involving claims of mislabeling, false or misleading advertising, and privacy violations. In 2019, Fred certified both a California and a 10-state express warranty class on behalf of purchasers of a butter substitute. In 2014, Fred served on the litigation team in *Ebin v. Kangadis Food Inc.* At class certification, Judge Rakoff adopted Fred's choice of law fraud analysis and research directly into his published decision certifying a nationwide fraud class.

Fred is admitted to the State Bars of California, New York, and New Jersey, and is a member of the bars of the United States District Courts for the Northern, Central, Eastern, and Southern Districts of California, the Southern, Eastern, and Northern Districts of New York, the District of New Jersey, the Northern District of Illinois, the Eastern District of Missouri, the Eastern District of Wisconsin, and the Eastern District of Michigan, as well as the bars of the United States Court of Appeals for the Second and Ninth Circuits.

Fred received his Juris Doctor from Brooklyn Law School in 2013, graduating *magna cum laude* with two CALI Awards for the highest grade in his classes on conflict of laws and criminal law. During law school, Fred served as an Associate Managing Editor for the Brooklyn Journal of Corporate, Financial and Commercial Law and as an intern to the Honorable Alison J. Nathan of the United States District Court for the Southern District of New York and the Honorable Janet Bond Arterton of the United States District Court for the District of Connecticut. In 2010, Fred graduated from the University of Connecticut with a B.S. in Finance.

### **Selected Published Decisions:**

*Revitch v. New Moosejaw, LLC*, 2019 WL 5485330 (N.D. Cal. Oct. 23, 2019), denying defendants' motions to dismiss consumer's allegations of state privacy law violations in putative class action.

*In re Welspun Litigation*, 2019 WL 2174089 (S.D.N.Y. May 20, 2019), denying retailers' and textile manufacturer's motion to dismiss consumers' allegations of false advertising relating to purported "100% Egyptian Cotton" linen products.

*Martinelli v. Johnson & Johnson*, 2019 WL 1429653 (E.D. Cal. Mar. 29, 2019), granting class certification of California false advertising claims and multi-state express warranty claims brought by purchasers of a butter substitute.

*Porter v. NBTY, Inc.*, 2016 WL 6948379 (N.D. Ill. Nov. 28, 2016), denying supplement manufacturer's motion to dismiss consumers' allegations of false advertising relating to whey protein content.



*Weisblum v. Prophase Labs, Inc.*, 88 F. Supp. 3d 282 (S.D.N.Y. 2015), denying supplement manufacturer's motion to dismiss consumers' allegations of false advertising relating to a homeopathic cold product.

*In re Scotts EZ Seed Litigation*, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

*Marchuk v. Faruqi & Faruqi, LLP, et al.*, 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting individual and law firm defendants' motion for judgment as a matter of law on plaintiff's claims for retaliation and defamation, as well as for all claims against law firm partners, Nadeem and Lubna Faruqi.

*Ebin v. Kangadis Food Inc.*, Case No. 13-4775 (2d Cir. Apr. 15, 2015), denying olive oil manufacturer's Rule 23(f) appeal following grant of nationwide class certification.

*Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

*Ebin v. Kangadis Food Inc.*, 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor's motion for summary judgment against nationwide class of purchasers of purported "100% Pure Olive Oil" product.

#### **Selected Class Settlements:**

*Gregorio v. Premier Nutrition Corp.*, Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for \$9 million class settlement to resolve claims of protein shake purchasers for alleged false advertising.

*Ruppel v. Consumers Union of United States, Inc.*, Case No. 16-cv-02444-KMK (S.D.N.Y. 2018) – final approval granted for \$16.375 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*In Re: Blue Buffalo Marketing And Sales Practices Litigation*, Case No. 14-MD-2562-RWS (E.D. Mo. 2016) – final approval granted for \$32 million class settlement to resolve claims of pet owners for alleged false advertising of pet foods.

*In re: Kangadis Food Inc.*, Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014) – resolved class action claims for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy following the certification of nationwide claims alleging that its olive oil was sold with false and misleading representations.

#### **YEREMEY O. KRIVOSHEY**

Yeremey O. Krivoshey is a Partner with Bursor & Fisher, P.A. Mr. Krivoshey has particular expertise in COVID-19 related consumer litigation, unlawful fees and liquidated

damages in consumer contracts, TCPA cases, product recall cases, and fraud and false advertising litigation. He has represented clients in a wide array of civil litigation, including appeals before the Ninth Circuit.

Mr. Krivoshey served as trial counsel with Mr. Bursor in *Perez v. Rash Curtis & Associates*, where, in May 2019, the jury returned a verdict for \$267 million in statutory damages under the Telephone Consumer Protection Act. Since 2017, Mr. Krivoshey has secured over \$200 million for class members in consumer class settlements. Mr. Krivoshey has been honored multiple times as a Super Lawyers Rising Star.

Mr. Krivoshey is admitted to the State Bar of California. He is also a member of the bars of the United States Court of Appeals for the Ninth Circuit and the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, as well as the District of Colorado.

Mr. Krivoshey graduated from New York University School of Law in 2013, where he was a Samuel A. Herzog Scholar. Prior to Bursor & Fisher, P.A., Mr. Krivoshey worked as a Law Clerk at Vladeck, Waldman, Elias & Engelhard, P.C, focusing on employment discrimination and wage and hour disputes. In law school, he has also interned at the American Civil Liberties Union and the United States Department of Justice. In 2010, Mr. Krivoshey graduated *cum laude* from Vanderbilt University.

#### **Representative Cases:**

*Perez v. Rash Curtis & Associates*, Case No. 16-cv-03396-YGR (N.D. Cal. May 13, 2019). Mr. Krivoshey litigated claims against a national health-care debt collection agency on behalf of people that received autodialed calls on their cellular telephones without their prior express consent. Mr. Krivoshey successfully obtained nationwide class certification, defeated the defendant's motion for summary judgment, won summary judgment as to the issue of prior express consent and the use of automatic telephone dialing systems, and navigated the case towards trial. With his partner, Scott Bursor, Mr. Krivoshey obtained a jury verdict finding that the defendant violated the Telephone Consumer Protection Act ("TCPA") 534,712 times. Under the TCPA, class members are entitled to \$500 per each call made in violation of the TCPA – in this case, \$267 million for 534,712 unlawful calls.

#### **Selected Published Decisions:**

*Goodrich, et al. v. Alterra Mountain Co., et al.*, 2021 WL 2633326 (D. Col. June 25, 2021), denying ski pass company's motion to dismiss its customers' allegations concerning refunds owed due to cancellation of ski season due to COVID-19.

*Bayol v. Zipcar, Inc.*, 2014 WL 4793935 (N.D. Cal. Sept. 25, 2014), denying enforcement of forum selection clause based on public policy grounds.

*Bayol v. Zipcar, Inc.*, 78 F. Supp. 3d 1252 (N.D. Cal. Jan. 29, 2015), denying car-rental company's motion to dismiss its subscriber's allegations of unlawful late fees.

*Brown v. Comcast Corp.*, 2016 WL 9109112 (C.D. Cal. Aug. 12, 2016), denying internet service provider's motion to compel arbitration of claims alleged under the Telephone Consumer Protection Act.

*Chaisson, et al. v. University of Southern California* (Cal. Sup. Ct. Mar. 25, 2021), denying university's demurrer as to its students' allegations of unfair and unlawful late fees.

*Choi v. Kimberly-Clark Worldwide, Inc.*, 2019 WL 4894120 (C.D. Cal. Aug. 28, 2019), denying tampon manufacturer's motion to dismiss its customer's design defect claims.

*Horanzy v. Vemma Nutrition Co.*, Case No. 15-cv-298-PHX-JJT (D. Ariz. Apr. 16, 2016), denying multi-level marketer's and its chief scientific officer's motion to dismiss their customer's fraud claims.

*McMillion, et al. v. Rash Curtis & Associates*, 2017 WL 3895764 (N.D. Cal. Sept. 6, 2017), granting nationwide class certification of Telephone Consumer Protection Act claims by persons receiving autodialed and prerecorded calls without consent.

*McMillion, et al. v. Rash Curtis & Associates*, 2018 WL 692105 (N.D. Cal. Feb. 2, 2018), granting plaintiffs' motion for partial summary judgment on Telephone Consumer Protection Act violations in certified class action.

*Perez v. Indian Harbor Ins. Co.*, 2020 WL 2322996 (N.D. Cal. May 11, 2020), denying insurance company's motion to dismiss or stay assigned claims of bad faith and fair dealing arising out of \$267 million trial judgment.

*Perez v. Rash Curtis & Associates*, 2020 WL 1904533 (N.D. Cal. Apr. 17, 2020), upholding constitutionality of \$267 million class trial judgment award.

*Salazar v. Honest Tea, Inc.*, 2015 WL 7017050 (E.D. Cal. Nov. 12, 2015), denying manufacturer's motion for summary judgment as to customer's false advertising claims.

*Sholopa v. Turk Hava Yollari A.O., Inc. (d/b/a Turkish Airlines)*, 2022 WL 976825 (S.D.N.Y. Mar. 31, 2022), denying airline's motion to dismiss its customers claims for failure to refund flights cancelled due to COVID-19.

#### **Selected Class Settlements:**

*Perez v. Rash Curtis & Associates*, Case No. 16-cv-03396-YGR (N.D. Cal. Oct. 1, 2021) granting final approval to a \$75.6 million non-reversionary cash common fund settlement, the largest ever consumer class action settlement stemming from a violation of the Telephone Consumer Protection Act.

*Strassburger v. Six Flags Theme Parks Inc., et al.* (Ill. Cir. Ct. 2022) granting final approval to \$83.6 million settlement to resolve claims of theme park members for alleged wrongful charging of fees during the COVID-19 pandemic.

*Juarez-Segura, et al. v. Western Dental Services, Inc.* (Cal. Sup. Ct. Aug. 9, 2021) granting final approval to \$35 million settlement to resolve claims of dental customers for alleged unlawful late fees.

*Moore v. Kimberly-Clark Worldwide, Inc.* (Ill. Cir. Ct. July 22, 2020) granting final approval to \$11.2 million settlement to resolve claims of tampon purchasers for alleged defective products.

*Retta v. Millennium Prods., Inc.*, 2017 WL 5479637 (C.D. Cal. Aug. 22, 2017) granting final approval to \$8.25 million settlement to resolve claims of kombucha purchasers for alleged false advertising.

*Cortes v. National Credit Adjusters, L.L.C.* (E.D. Cal. Dec. 7, 2020) granting final approval to \$6.8 million settlement to resolve claims of persons who received alleged autodialed calls without prior consent in violation of the TCPA.

*Bayol et al. v. Health-Ade LLC, et al.* (N.D. Cal. Oct. 11, 2019) – granting final approval to \$3,997,500 settlement to resolve claims of kombucha purchasers for alleged false advertising.

### **PHILIP L. FRAIETTA**

Philip L. Fraietta is a Partner with Bursor & Fisher, P.A. Phil focuses his practice on data privacy, complex business litigation, consumer class actions, and employment law disputes. Phil has been named a “Rising Star” in the New York Metro Area by Super Lawyers<sup>®</sup> every year since 2019.

Phil has significant experience in litigating consumer class actions, particularly those involving privacy claims under statutes such as the Michigan Preservation of Personal Privacy Act, the Illinois Biometric Information Privacy Act, and Right of Publicity statutes. Since 2016, Phil has recovered over \$100 million for class members in privacy class action settlements. In addition to privacy claims, Phil has significant experience in litigating and settling class action claims involving false or misleading advertising.

Phil is admitted to the State Bars of New York, New Jersey, Illinois, and Michigan, the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, the Western District of New York, the Northern District of New York, the District of New Jersey, the Eastern District of Michigan, the Western District of Michigan, the Northern District of Illinois, the Central District of Illinois, and the United States Court of Appeals for the Second, Third, and Ninth Circuits. Phil was a Summer Associate with Bursor & Fisher prior to joining the firm.

Phil received his Juris Doctor from Fordham University School of Law in 2014, graduating cum laude. During law school, Phil served as an Articles & Notes Editor for the Fordham Law Review, and published two articles. In 2011, Phil graduated cum laude from Fordham University with a B.A. in Economics.

### **Selected Published Decisions:**

*Fischer v. Instant Checkmate LLC*, 2022 WL 971479 (N.D. Ill. Mar. 31, 2022), certifying class of Illinois residents for alleged violations of Illinois' Right of Publicity Act by background reporting website.

*Kolebuck-Utz v. Whitepages Inc.*, 2021 WL 157219 (W.D. Wash. Apr. 22, 2021), denying defendant's motion to dismiss for alleged violations of Ohio's Right to Publicity Law.

*Bergeron v. Rochester Institute of Technology*, 2020 WL 7486682 (W.D.N.Y. Dec. 18, 2020), denying university's motion to dismiss for failure to refund tuition and fees for the Spring 2020 semester in light of the COVID-19 pandemic.

*Porter v. NBTY, Inc.*, 2019 WL 5694312 (N.D. Ill. Nov. 4, 2019), denying supplement manufacturer's motion for summary judgment on consumers' allegations of false advertising relating to whey protein content.

*Boelter v. Hearst Communications, Inc.*, 269 F. Supp. 3d 172 (S.D.N.Y. 2017), granting plaintiff's motion for partial summary judgment on state privacy law violations in putative class action.

#### **Selected Class Settlements:**

*Edwards v. Hearst Communications, Inc.*, Case No. 15-cv-09279-AT (S.D.N.Y. 2019) – final approval granted for \$50 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Ruppel v. Consumers Union of United States, Inc.*, Case No. 16-cv-02444-KMK (S.D.N.Y. 2018) – final approval granted for \$16.375 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast*, Case No. 15-cv-05671-NRB (S.D.N.Y. 2019) – final approval granted for \$13.75 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Benbow v. SmileDirectClub, LLC*, Case No. 2020-CH-07269 (Cir. Ct. Cook Cnty. 2021) – final approval granted for \$11.5 million class settlement to resolve claims for alleged TCPA violations.

*Gregorio v. Premier Nutrition Corp.*, Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for \$9 million class settlement to resolve claims of protein shake purchasers for alleged false advertising.

*Taylor v. Trusted Media Brands, Inc.*, Case No. 16-cv-01812-KMK (S.D.N.Y. 2018) – final approval granted for \$8.225 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Moeller v. American Media, Inc.*, Case No. 16-cv-11367-JEL (E.D. Mich. 2017) – final approval granted for \$7.6 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Rocchio v. Rutgers, The State University of New Jersey*, Case No. MID-L-003039-20 (Sup. Ct. Middlesex Cnty. 2022) – final approval granted for \$5 million class settlement to resolve claims for failure to refund mandatory fees for the Spring 2020 semester in light of the COVID-19 pandemic.

*Heigl v. Waste Management of New York, LLC*, Case No. 19-cv-05487-WFK-ST (E.D.N.Y. 2021) – final approval granted for \$2.7 million class settlement to resolve claims for charging allegedly unlawful fees pertaining to paper billing.

*Frederick v. Examsoft Worldwide, Inc.*, Case No. 2021L001116 (Cir. Ct. DuPage Cnty. 2022) – final approval granted for \$2.25 million class settlement to resolve claims for alleged BIPA violations.

### **SARAH N. WESTCOT**

Sarah N. Westcot is the Managing Partner of Bursor & Fisher's Miami office. She focuses her practice on consumer class actions, complex business litigation, and mass torts.

She has represented clients in a wide array of civil litigation, and has substantial trial and appellate experience. Sarah served as trial counsel in *Ayyad v. Sprint Spectrum L.P.*, where Bursor & Fisher won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

Sarah also has significant experience in high-profile, multi-district litigations. She currently serves on the Plaintiffs' Steering Committee in *In re Zantac (Ranitidine) Products Liability Litigation*, MDL No. 2924 (S.D. Florida). She also serves on the Plaintiffs' Executive Committee in *In re Apple Inc. App Store Simulated Casino-Style Games Litigation*, MDL No. 2985 (N.D. Cal.) and *In Re: Google Play Store Simulated Casino-Style Games Litigation*, MDL No. 3001 (N.D. Cal.).

Sarah is admitted to the State Bars of California and Florida, and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, the United States District Courts for the Southern and Middle Districts of Florida, and the bars of the United States Courts of Appeals for the Second, Eighth, and Ninth Circuits.

Sarah received her Juris Doctor from the University of Notre Dame Law School in 2009. During law school, she was a law clerk with the Cook County State's Attorney's Office in Chicago and the Santa Clara County District Attorney's Office in San Jose, CA, gaining early trial experience in both roles. She graduated with honors from the University of Florida in 2005.

Sarah is a member of The National Trial Lawyers Top 100 Civil Plaintiff Lawyers, and was selected to The National Trial Lawyers Top 40 Under 40 Civil Plaintiff Lawyers for 2022.

**ALEC M. LESLIE**

Alec Leslie is a Partner with Bursor & Fisher, P.A. He focuses his practice on consumer class actions, employment law disputes, and complex business litigation.

Alec is admitted to the State Bar of New York and is a member of the bar of the United States District Courts for the Southern and Eastern Districts of New York. Alec was a Summer Associate with Bursor & Fisher prior to joining the firm.

Alec received his Juris Doctor from Brooklyn Law School in 2016, graduating *cum laude*. During law school, Alec served as an Articles Editor for Brooklyn Law Review. In addition, Alec served as an intern to the Honorable James C. Francis for the Southern District of New York and the Honorable Vincent Del Giudice, Supreme Court, Kings County. Alec graduated from the University of Colorado with a B.A. in Philosophy in 2012.

**Selected Class Settlements:**

*Gregorio v. Premier Nutrition Corp.*, Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for class settlement to resolve claims of protein shake purchasers for alleged false advertising.

*Wright v. Southern New Hampshire Univ.*, Case No. 1:20-cv-00609-LM (D.N.H. 2021) – final approval granted for class settlement to resolve claims over COVID-19 tuition and fee refunds to students.

*Mendoza et al. v. United Industries Corp.*, Case No. 21PH-CV00670 (Phelps Cnty. Mo. 2021) – final approval granted for class settlement to resolve false advertising claims on insect repellent products.

*Kaupelis v. Harbor Freight Tools USA, Inc.*, Case No. 8:19-cv-01203-JVS-DFM (C.D. Cal. 2021) – final approval granted for class settlement involving allegedly defective and dangerous chainsaws.

*Rocchio v. Rutgers Univ.*, Case No. MID-L-003039-20 (Middlesex Cnty. N.J. 2021) – final approval granted for class settlement to resolve claims over COVID-19 fee refunds to students.

*Malone v. Western Digital Corporation*, Case No. 5:20-cv-03584-NC (N.D. Cal.) – final approval granted for class settlement to resolve false advertising claims on hard drive products.

*Frederick et al. v. ExamSoft Worldwide, Inc.*, Case No. 2021L001116 (DuPage Cnty. Ill. 2021) – final approval granted for class settlement to resolve claims over alleged BIPA violations with respect to exam proctoring software.

**STEPHEN BECK**

Stephen is an Associate with Bursor & Fisher, P.A. Stephen focuses his practice on complex civil litigation and class actions.

Stephen is admitted to the State Bar of Florida and is a member of the bars of the United States District Courts for the Southern and Middle Districts of Florida.

Stephen received his Juris Doctor from the University of Miami School of Law in 2018. During law school, Stephen received an Honors distinction in the Litigation Skills Program and was awarded the Honorable Theodore Klein Memorial Scholarship for excellence in written and oral advocacy. Stephen also received the CALI Award in Legislation for earning the highest grade on the final examination. Stephen graduated from the University of North Florida with a B.A. in Philosophy in 2015.

**BRITTANY SCOTT**

Brittany Scott is an Associate with Bursor & Fisher, P.A. Brittany focuses her practice on data privacy, complex civil litigation, and consumer class actions. Brittany was an intern with Bursor & Fisher prior to joining the firm.

Brittany has substantial experience litigating consumer class actions, including those involving data privacy claims under statutes such as the Illinois Biometric Information Privacy Act, the Fair Credit Reporting Act, and the Michigan Preservation of Personal Privacy Act. In addition to data privacy claims, Brittany has significant experience in litigating class action claims involving false and misleading advertising.

Brittany is admitted the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, the Eastern District of Wisconsin, and the Northern District of Illinois.

Brittany received her Juris Doctor from the University of California, Hastings College of the Law in 2019, graduating cum laude. During law school, Brittany was a member of the Constitutional Law Quarterly, for which she was the Executive Notes Editor. Brittany published a note in the Constitutional Law Quarterly entitled “Waiving Goodbye to First Amendment Protections: First Amendment Waiver by Contract.” Brittany also served as a judicial extern to the Honorable Andrew Y.S. Cheng for the San Francisco Superior Court. In 2016, Brittany graduated from the University of California Berkeley with a B.A. in Political Science.

**Selected Class Settlements:**

*Morrissey v. Tula Life, Inc.*, Case No. 2021L0000646 (18th Judicial Circuit Court DuPage County 2021) – final approval granted for \$4 million class settlement to resolve claims of cosmetics purchasers for alleged false advertising.



**MAX S. ROBERTS**

Max Roberts is an Associate in Bursor & Fisher's New York office. Max focuses his practice on class actions concerning data privacy and consumer protection. Max was a Summer Associate with Bursor & Fisher prior to joining the firm and is now Co-Chair of the firm's Appellate Practice Group.

Max received his Juris Doctor from Fordham University School of Law in 2019, graduating *cum laude*. During law school, Max was a member of Fordham's Moot Court Board, the Brennan Moore Trial Advocates, and the Fordham Urban Law Journal, for which he published a note entitled [\*Weaning Drug Manufacturers Off Their Painkiller: Creating an Exception to the Learned Intermediary Doctrine in Light of the Opioid Crisis\*](#). In addition, Max served as an intern to the Honorable Vincent L. Briccetti of the Southern District of New York and the Fordham Criminal Defense Clinic. Max graduated from Johns Hopkins University in 2015 with a B.A. in Political Science.

Outside of the law, Max is an avid triathlete.

**Selected Published Decisions:**

*Jackson v. Amazon.com, Inc.*, --- F.4th ---, 2023 WL 2997031 (9th Cir. Apr. 19, 2023), affirming district court's denial of motion to compel arbitration. Max personally argued the appeal before the Ninth Circuit, which can be viewed [here](#).

*Javier v. Assurance IQ, LLC*, 2022 WL 1744107 (9th Cir. May 31, 2022), reversing district court and holding that Section 631 of the California Invasion of Privacy Act requires prior consent to wiretapping. Max personally argued the appeal before the Ninth Circuit, which can be viewed [here](#).

*Mora v. J&M Plating, Inc.*, --- N.E.3d ---, 2022 WL 17335861 (Ill. App. Ct. 2d Dist. Nov. 30, 2022), reversing circuit court and holding that Section 15(a) of Illinois' Biometric Information Privacy Act requires an entity to establish a retention and deletion schedule for biometric data at the first moment of possession. Max personally argued the appeal before the Second District, which can be listened to [here](#).

*Cristostomo v. New Balance Athletics, Inc.*, 2022 WL 17904394 (D. Mass. Dec. 23, 2022), denying motion to dismiss and motion to strike class allegations in case involving sneakers marketed as "Made in the USA."

*Carroll v. Myriad Genetics, Inc.*, 2022 WL 16860013 (N.D. Cal. Nov. 9, 2022), denying in part motion to dismiss in case involving non-invasive prenatal testing product.

*Louth v. NFL Enterprises LLC*, 2022 WL 4130866 (D.R.I. Sept. 12, 2022), denying motion to dismiss alleged violations of the Video Privacy Protection Act.

*Sholopa v. Turk Hava Yollari A.O., Inc. d/b/a Turkish Airlines*, 2022 WL 976825 (S.D.N.Y. Mar. 31, 2022), denying motion to dismiss passenger’s allegations that airline committed a breach of contract by failing to refund passengers for cancelled flights during the COVID-19 pandemic.

*Saleh v. Nike, Inc.*, 562 F. Supp. 3d 503 (C.D. Cal. 2021), denying in part motion to dismiss alleged violations of California Invasion of Privacy Act.

*Soo v. Lorex Corp.*, 2020 WL 5408117 (N.D. Cal. Sept. 9, 2020), denying defendants’ motion to compel arbitration and denying in part motion dismiss consumer protection claims in putative class action concerning security cameras.

### **Selected Class Settlements:**

*Miranda v. Golden Entertainment (NV), Inc.*, Case No. 2:20-cv-534-AT (D. Nev. 2021) – final approval granted for class settlement valued at over \$4.5 million to resolve claims of customers and employees of casino company stemming from data breach.

*Malone v. Western Digital Corp.*, Case No. 5:20-cv-3584-NC (N.D. Cal. 2021) – final approval granted for class settlement valued at \$5.7 million to resolve claims of hard drive purchasers for alleged false advertised.

*Frederick v. ExamSoft Worldwide, Inc.*, Case No. 2021-L-001116 (18th Judicial Circuit Court DuPage County, Illinois 2021) – final approval granted for \$2.25 million class settlement to resolve claims of Illinois students for alleged violations of the Illinois Biometric Information Privacy Act.

### **Bar Admissions**

- New York State
- Southern District of New York
- Eastern District of New York
- Northern District of New York
- Northern District of Illinois
- Central District of Illinois
- Eastern District of Michigan
- District of Colorado
- Ninth Circuit Court of Appeals
- Seventh Circuit Court of Appeals

### **CHRISTOPHER R. REILLY**

Chris Reilly is an Associate with Bursor & Fisher, P.A. Chris focuses his practice on consumer class actions and complex business litigation.

Chris is admitted to the State Bar of Florida and is a member of the bar of the United States District Courts for the Southern and Middle Districts of Florida.

Chris received his Juris Doctor from Georgetown University Law Center in 2020. During law school, Chris clerked for the Senate Judiciary Committee, where he worked on antitrust and food and drug law matters under Senator Richard Blumenthal. He has also clerked for the Mecklenburg County District Attorney's Office, the ACLU Prison Project, and the Pennsylvania General Counsel's Office. Chris served as Senior Editor of Georgetown's Journal of Law and Public Policy. In 2017, Chris graduated from the University of Florida with a B.A. in Political Science.

### **JULIA K. VENDITTI**

Julia Venditti is an Associate with Bursor & Fisher, P.A. Julia focuses her practice on complex civil litigation and class actions. Julia was a Summer Associate with Bursor & Fisher prior to joining the firm.

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Julia received her Juris Doctor in 2020 from the University of California, Hastings College of the Law, where she graduated *cum laude* with two CALI Awards for the highest grade in her Evidence and California Community Property classes. During law school, Julia was a member of the UC Hastings Moot Court team and competed at the Evans Constitutional Law Moot Court Competition, where she finished as a national quarterfinalist and received a best brief award. Julia was also inducted into the UC Hastings Honors Society and was awarded Best Brief and an Honorable Mention for Best Oral Argument in her First-Year Moot Court section. In addition, Julia served as a Research Assistant for her Constitutional Law professor, as a Teaching Assistant for Legal Writing & Research, and as a Law Clerk at the San Francisco Public Defender's Office. In 2017, Julia graduated *magna cum laude* from Baruch College/CUNY, Weissman School of Arts and Sciences, with a B.A. in Political Science.

### **JULIAN DIAMOND**

Julian Diamond is an Associate with Bursor & Fisher, P.A. Julian focuses his practice on privacy law and class actions. Julian was a Summer Associate with Bursor & Fisher prior to joining the firm.

Julian received his Juris Doctor from Columbia Law School, where he was a Harlan Fiske Stone Scholar. During law school, Julian was Articles Editor for the Columbia Journal of Environmental Law. Prior to law school, Julian worked in education. Julian graduated from California State University, Fullerton with a B.A. in History and a single subject social science teaching credential.

**MATTHEW GIRARDI**

Matt Girardi is an Associate with Bursor & Fisher, P.A. Matt focuses his practice on complex civil litigation and class actions, and has focused specifically on consumer class actions involving product defects, financial misconduct, false advertising, and privacy violations. Matt was a Summer Associate with Bursor & Fisher prior to joining the firm.

Matt is admitted to the State Bar of New York, and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, and the Eastern District of Michigan

Matt received his Juris Doctor from Columbia Law School in 2020, where he was a Harlan Fiske Stone Scholar. During law school, Matt was the Commentary Editor for the Columbia Journal of Tax Law, and represented fledgling businesses for Columbia's Entrepreneurship and Community Development Clinic. In addition, Matt worked as an Honors Intern in the Division of Enforcement at the U.S. Securities and Exchange Commission. Prior to law school, Matt graduated from Brown University in 2016 with a B.A. in Economics, and worked as a Paralegal Specialist at the U.S. Department of Justice in the Antitrust Division.