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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.

