

**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

Hon. Timothy McJoynt

**[PROPOSED] FINAL JUDGMENT AND
ORDER OF DISMISSAL WITH PREJUDICE**

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

WHEREAS, Plaintiff David Bamberg (“Plaintiff”) and Defendant Dynamic Manufacturing, Inc. (“Defendant,” and together with Plaintiff, the “Parties”) 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 all claims asserted against Defendant upon the terms and conditions set forth therein (the “Settlement Agreement”); and

WHEREAS, on March 22, 2023, the Court granted Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, conditionally certifying for settlement purposes a Class pursuant to 735 ILCS 5/2-801 of “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.;

WHEREAS, the Court held a Final Approval Hearing on June 20, 2023, at which time, the Parties and all other interested persons were afforded the opportunity to be heard in support of and in opposition to the Settlement; and

WHEREAS, the Court has considered the Parties' class action Settlement Agreement, as well as Plaintiffs' Unopposed Motion for Final Approval of the Settlement Agreement, Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs, Expenses, And Incentive Awards, together with all exhibits thereto, the arguments and authorities presented by the Parties and their counsel at the Final Approval Hearing held on June 20, 2023, and the record in the Action, and good cause appearing;

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

1. Terms and phrases in this Final Judgment and Order of Dismissal with Prejudice shall have the same meaning as ascribed to them in the Parties' Settlement Agreement.
2. This Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all Settlement Class Members.
3. Based on the papers filed with the Court and the presentations made to the Court by the Parties and other interested persons at the Final Approval Hearing, this Court now gives final approval to the Settlement Agreement, and finds that the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class. The Settlement consideration provided under the Settlement Agreement constitutes fair value given in exchange for the Releasors' release of the Released Claims against the Released Parties. The Court finds that the consideration to be paid to members of the Settlement Class is reasonable, and in the best interests of the Settlement Class Members, considering the total value of their claims compared to (i) the disputed factual and legal circumstances of the Action, (ii) affirmative and other defenses

asserted in the Action, and (iii) the potential risks and likelihood of success of pursuing litigation on the merits. The complex legal and factual posture of this case, the exchange of relevant information between the Parties completed, and the fact that the Settlement is the result of arms'-length negotiations between the Parties support this finding. The Court finds that these facts, in addition to the Court's observations throughout the litigation, demonstrate that there was no collusion present in the reaching of the Settlement Agreement, implicit or otherwise.

4. The Court has specifically considered the factors relevant to class action settlement approval, including:

(1) the strength of the case for the plaintiff on the merits, balanced against the money or other relief offered in settlement; (2) the defendant's ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed.

City of Chicago v. Korshak, 206 Ill. App. 3d 968, 972 (1st Dist. 1990).

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

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.

6. With respect to the Settlement Class, this Court finds, for settlement purposes only, that (a) the Settlement Class defined above is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Settlement Class, and those

common questions predominate over any questions affecting only individual members; (c) the Class Representative and Class Counsel have fairly and adequately protected, and will continue to fairly and adequately protect, the interests of the Settlement Class; and (d) certification of the Settlement Class is an appropriate method for the fair and efficient adjudication of this controversy.

7. The Court has determined that the notice provided to the Settlement Class pursuant to the Settlement Agreement and order granting Preliminary Approval — including (i) direct notice to the Settlement Class via U.S. mail, based on the comprehensive Settlement Class List provided by Defendant, and (ii) creation of a Settlement website apprising the Settlement Class of the proposed Settlement and enabling the Settlement Class to submit Claim Forms online — fully complied with the requirements of 735 ILCS 5/2-803 and due process, and was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, the Settlement and Settlement Agreement, their right to object to or to exclude themselves from the Settlement and Settlement Agreement, and their right to appear at the Final Approval Hearing.

8. For settlement purposes only, the Court confirms the appointment of Plaintiff David Bamberg as Class Representative of the Settlement Class and the appointment of Plaintiff's counsel as Class Counsel.

9. The Court finds that the Class Representative and Class Counsel adequately represented the Settlement Class for the purposes of litigating this matter and entering into and implementing the Settlement Agreement.

10. Accordingly, the Settlement and Settlement Agreement are hereby finally approved in all respects.

11. The Parties are hereby directed to implement the Settlement Agreement according to its terms and provisions. The Settlement Agreement is hereby incorporated into this Final

Judgment and Order of Dismissal with Prejudice in full and shall have the full force of an Order of this Court.

12. This Court hereby dismisses the Action, as identified in the Settlement Agreement, on the merits and with prejudice.

13. The Court adjudges that the Released Claims and all of the claims described in the Settlement Agreement are released as against the Released Parties. The Court adjudges that the Plaintiff and all Settlement Class Members, Releasers, none of whom have opted out of the Settlement Class, shall be deemed to have fully, finally, and forever released, relinquished, and discharged all Released Claims as against the Released Parties, as defined in the Settlement Agreement. The Released Claims specifically extend to claims that Releasers, including Plaintiff and Settlement Class Members, do not know or suspect to exist at the time that the Settlement Agreement, and the releases contained therein, becomes effective.

14. The above release of claims and the Settlement Agreement will be binding on, and will have *res judicata* and preclusive effect on, all pending and future lawsuits or other proceedings maintained by or on behalf of Releasers, including Plaintiff and all other Settlement Class Members. Releasers, including Plaintiff and all other Settlement Class Members, are hereby permanently barred and enjoined from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or other action in any jurisdiction based on or arising out of any of the Released Claims. The Released Parties may file the Settlement Agreement and/or this Final Judgment and Order of Dismissal with Prejudice in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on the principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar, reduction or any other claim preclusion, issue preclusion or similar defense or counterclaim.

15. Releasors, including Plaintiff and Settlement Class Members, none of whom validly and timely requested exclusion from the Settlement, are permanently barred and enjoined from asserting, commencing, prosecuting, or continuing any of the Released Claims and any of the claims described in the Settlement Agreement as against any of the Released Parties.

16. The Court has also considered Plaintiff's Unopposed Motion For Attorneys' Fees, Costs, Expenses, And Incentive Awards, as well as the supporting memorandum and declarations, and adjudges that the payment of attorneys' fees, costs, and expenses in the amount of \$639,240.00 is reasonable in light of the multi-factor test used to evaluate fee awards in Illinois. *See McNiff v. Mazda Motor of Am., Inc.*, 384 Ill. App. 3d 401, 407 (4th Dist. 2008). Such payment shall be made pursuant to and in the manner provided by the terms of the Settlement Agreement.

17. The Court approves payment of settlement administration costs of up to \$18,705.00 to the Settlement Administrator, Analytics Consulting, LLC, in the manner provided by the terms of the Settlement Agreement.

18. The Court has also considered Plaintiff's Motion, memorandum of law, and supporting declarations for incentive award to the Class Representative, David Bamberg. The Court adjudges that the payment of an Incentive Award in the amount of \$5,000 to Plaintiff to compensate him for his efforts and commitment on behalf of the Settlement Class, is fair, reasonable, and justified under the circumstances of this case. Such payment shall be made pursuant to and in the manner provided by the terms of the Settlement Agreement.

19. The Settlement Class Members who made valid and timely claims will each receive approximately \$510 pursuant to the terms of the Settlement Agreement.

20. Agreement. Such payments to Settlement Class Members shall be made pursuant to, and in the manner provided by, the relevant terms of the Settlement Agreement.

21. All payments made to Settlement Class Members pursuant to the relevant terms of the Settlement Agreement that are not cashed within one hundred and eighty (180) days of issuance shall revert to Allied World Insurance Company at the direction of Defendant's counsel and the Settlement Class Member will be deemed to have waived irrevocably any right or claim to his or her payment from the Settlement and Settlement Agreement, but the terms of the Settlement and Settlement Agreement, including the release of claims, nevertheless will be binding upon that individual.

22. Except as otherwise set forth in this Order, the Parties shall bear their own costs and attorneys' fees.

23. Neither this Final Judgment and Order of Dismissal with Prejudice, nor the Settlement Agreement, nor the payment of any consideration in connection with the Settlement, shall be construed or used as an admission or concession by or against Defendant or any other of the Released Parties of any fault, omission, liability, or wrongdoing, or of the validity of any of the Released Claims. This Final Judgment and Order of Dismissal with Prejudice is not a finding of the validity or invalidity of any claims in this Action or a determination of any wrongdoing by Defendant or any of the other Released Parties. The final approval of the Settlement and Settlement Agreement does not constitute any position, opinion, or determination of this Court, one way or another, as to the merits of the claims or defenses of Plaintiff, the Settlement Class Members, Defendant or the other Released Parties.

24. The Parties, without further approval from the Court, are hereby permitted to agree and adopt such amendments, modifications, and expansions of the Settlement Agreement and its implementing documents (including all exhibits to the Settlement Agreement) so long as they are consistent in all material respects with this Final Judgment and Order of Dismissal with Prejudice

do not limit the rights of Settlement Class Members.

25. Without affecting the finality of this Final Judgment and Order of Dismissal with Prejudice for purposes of appeal, the Court shall retain jurisdiction over all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement until the Effective Date.

26. The Court finds that there is no just reason to delay, and therefore directs the Clerk of Court to enter this Final Judgment and Order of Dismissal with Prejudice as the final judgment of the Court forthwith.

IT IS SO ORDERED, this 20 day of June, 2023.



THE HONORABLE TIMOTHY MCJOYNT