

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
WILL COUNTY, ILLINOIS**

RICHARD MCGINNIS, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

UNITED STATES COLD STORAGE, INC.,

Defendant.

Case No. 19 L 9

**Judge John C. Anderson**

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (this “Agreement”) is entered into by and between Plaintiff Richard McGinnis (“Plaintiff”), on behalf of himself and the Class of individuals that he seeks to represent for settlement purposes only (as hereinafter defined) and Defendant United States Cold Storage, Inc. (“USCS” or “Defendant”). Plaintiff, Class Counsel (as hereinafter defined), and Defendant hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court (as hereinafter defined) of a Final Order and Judgment (as hereinafter defined), all claims of the Plaintiff and the Class Members (as hereinafter defined) in the action entitled *Richard McGinnis, individually and on behalf of all others similarly situated v. United States Cold Storage, Inc.*, Circuit Court of Will County, Illinois, Case No. 19-L-9 (the “Litigation”) shall be fully and completely settled, compromised, and released upon the terms and conditions contained herein.

**RECITALS**

WHEREAS, on November 7, 2017, Plaintiff filed a putative class action against Defendant in the United States District Court for the Northern District of Illinois (“NDIL”), Case No. 1:17-cv-8054, alleging violations of Sections 15(a) and (b) of the Biometric Information Privacy Act (“BIPA”). Plaintiff sought recovery on a class basis of, among other things, statutory damages under BIPA and an award of attorneys’ fees and costs.

WHEREAS, on January 3, 2019, Judge Edmond Chang dismissed the lawsuit for lack of subject matter jurisdiction because it did not assert a concrete injury necessary for Article III

standing (*i.e.*, an unauthorized disclosure to Defendant's biometric vendor). *McGinnis v. United States Cold Storage, Inc.*, 382 F. Supp. 3d 813, 820 (N.D. Ill. Jan. 3, 2019).

WHEREAS, Plaintiff re-filed his lawsuit in the Circuit Court for the Twelfth Judicial Circuit ("Will County") and added a Section 15(d) claim, alleging that Defendant disclosed his biometric data without authorization to Defendant's biometric vendor. BIPA. On February 8, 2019, Defendant removed the Will County complaint back to the NDIL where it was once again assigned to Judge Edmond Chang as Case No. 1:19-cv-00845. On March 18, 2019, Defendant filed a Rule 12(b)(6) Motion to Dismiss. Plaintiff subsequently filed a Motion to Remand, which Judge Chang granted on December 23, 2019, because the complaint purportedly did not allege a concrete injury sufficient to satisfy Article III, despite the added allegation of an unauthorized disclosure to defendant's biometric vendor. *McGinnis v. United States Cold Storage, Inc.*, 2019 WL 7049921, at \*5 (N.D. Ill. Dec. 23, 2019).

WHEREAS, Defendant filed a Section 2-619.1 Motion to Dismiss on April 30, 2020, after the case was returned to Will County. The motion argued that Plaintiff's claims accrued in mid-2012, when Defendant collected his alleged fingerprint while rolling out its biometric timekeeping equipment, and that his claims were time-barred whether the Court applied a one-year, two-year or five-year statute of limitations. The motion also argued that BIPA is arbitrary, unconstitutional "special legislation" in violation of Article IV, Section 13 of the Illinois Constitution. In a ruling dated November 4, 2020, this Court denied the Motion to Dismiss.

WHEREAS, Defendant filed a Motion to Reconsider or to Certify for Interlocutory Appeal on December 16, 2020. Defendant argued that an appellate court decision on "accrual" would materially advance the ultimate termination of this litigation by potentially ending it altogether. At the very least, it would provide much-needed clarity as to class size, the scope of discovery, and the value of Plaintiff's or any putative class member's claims.

WHEREAS, on April 6, 2021, this Court denied the motion to reconsider but certified the issue of when a BIPA claim "accrues" for purposes of when the statute of limitations begins to run. On May 5, 2021, Defendant timely filed its Application for Leave to Appeal Pursuant to Supreme Court Rule 308 with the Third District Appellate Court. Plaintiff filed an answer opposing defendant's application. The Third District Appellate Court accepted the application on June 7, 2021.

WHEREAS, Defendant filed its Appellant's Brief on September 20, 2021. Plaintiff filed his Appellee Brief on October 27, 2021. On December 20, 2021, the Seventh Circuit Court of appeals ruled that *Cothron v. White Castle System, Inc.* should be certified to the Illinois Supreme Court to decide the issue of when BIPA claims "accrue." Three days later on December 23, 2021, the Illinois Supreme Court agreed to take the case and answer the "accrual" question of law certified by the Seventh Circuit in *Cothron*. Because the Supreme Court's ruling would take precedence over any ruling by the Third District Appellate Court, Defendant moved to stay the *McGinnis* appeal in the Third District to conserve judicial resources and the parties' time and attorneys' fees, which the Appellate Court granted.

WHEREAS, on February 17, 2023, the Illinois Supreme Court issued a narrow 4-3 decision in *Cothron v. White Castle System, Inc.*, 2023 IL 128004, holding that a claim accrues under BIPA each time a private entity scans or transmits an individual's biometric identifier or information and further allowed per-scan damages. White Castle subsequently filed a Petition for Rehearing with the Illinois Supreme Court on March 10, 2023. Once White Castle's Petition for Rehearing was filed on March 10, 2023, the *Cothron* decision became "non-final" and subject to change. Defendant moved to extend the Third District Appellate Court's stay and this Court's stay pending the Petition for Rehearing in *Cothron*. Plaintiff did not oppose Defendant's motions to extend the stay. Accordingly, the underlying trial court case remains stayed as well as the interlocutory appeal before the Third District Appellate Court.

WHEREAS, on July 20, 2023, the Parties participated in a mediation session with experienced mediator Judge James Holderman (Ret.) (JAMS) in Chicago, Illinois. After the day-long mediation session, the Parties were able to reach agreement on the material terms of a settlement, which was memorialized in a term sheet and is now being finalized in this Agreement.

WHEREAS, Defendant while continuing to deny all allegations of wrongdoing and disclaiming all liability with respect to all claims, considers it desirable to resolve the action on the terms stated herein to avoid further expense, inconvenience, and burden, and therefore has determined that this settlement on the terms set forth herein is in Defendant's best interests. Neither the settlement agreement nor any actions taken to carry out the settlement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or of the validity of any claim, defense, or of any point of fact or law on the part of any party. Defendant denies the material allegations of the complaint in this action. Neither the settlement agreement, nor the fact of settlement, nor settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by Defendant or by any of the Released Parties (as defined below), or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by Defendant or by any of the Released Parties in any proceeding;

WHEREAS, Plaintiff and Class Counsel have agreed to settle the Litigation on the terms and conditions set forth in this Agreement to avoid the burden and expense of continuing the Litigation and the uncertain outcome in unsettled factual and legal issues pertaining to BIPA.

WHEREAS, this Agreement resulted from and is the product of good faith and arm's length negotiations and settlement discussions over the course of approximately six years of litigation, extensive motion practice, an appeal to the Third District Appellate Court, negotiations, and mediation.

WHEREAS, as a result of these efforts, the Parties entered into this Agreement, subject to preliminary approval and final approval by the Court as required by 735 ILCS 5/2-801 *et seq.*, to fully, finally, and forever resolve, discharge, and release all rights and claims of Plaintiff and the Class Members in exchange for Defendant's agreement to pay into a common fund a total amount of \$2,118,000 (1,765 x \$1,200 per capita), as set forth below.

WHEREAS, Class Counsel (as hereinafter defined) has conducted an extensive analysis of the instant claims, the viability of same, similar claims brought alleging BIPA violations, and have weighed such claims against the possible outcomes of unsettled matters of law under BIPA.

WHEREAS, Class Counsel has analyzed and evaluated the merits of the claims made against Defendant in the Litigation, and the impact of this Agreement on Plaintiff and the Class (as hereinafter defined).

WHEREAS, based upon their analysis and their evaluation of a number of factors, and recognizing the substantial risks of continued litigation with respect to certain defenses, including the possibility that the Litigation, if not settled now, might result in a recovery that is less favorable to the Class, and that would not occur for several years, or at all, Class Counsel (as hereinafter defined) is satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate and that this Agreement is in the best interests of the Class.

WHEREAS, the Parties understand, acknowledge, and agree that the execution of this Agreement constitutes the settlement and compromise of all claims and defenses asserted in the Litigation. It is the Parties' desire and intention to affect a full, complete, and final settlement and resolution of all disputes and claims as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties agree to a full and complete settlement of the Litigation on the following terms and conditions:

## 1. DEFINITIONS

The defined terms set forth herein shall have the meanings ascribed to them below or in the preamble.

- 1.1 **Agreement.** "Agreement" shall mean this Settlement Agreement and Release, and all exhibits.
- 1.2 **Claims Administrator.** "Claims Administrator" shall mean the entity selected by the Parties to provide notice to the Class and administer payment of the settlement to Class Members. The Claims Administrator shall perform the duties set forth in this Agreement including, but not limited to, serving as Escrow Agent for the Settlement Fund, creating and maintaining the Settlement website, putting reasonable anti-fraud measures in place to prevent theft of Qualified Class Members' settlement payments, overseeing the distribution of the Class Notices, processing the payments to the Qualified Class Members as set forth in this Agreement, and disbursing all approved payments out of the Settlement Fund, and handling the determination, payment and filing of forms related to all federal, state and/or local taxes of any kind (including any interest or penalties thereon) that may be owed on any income earned by the Settlement Fund.
- 1.3 **Class; Class Members.** "Class" shall mean "All individuals who worked or are currently working for Defendant in the State of Illinois who had their Biometric Identifiers and/or Biometric Information collected, captured, received, or otherwise obtained or disclosed by

Defendant or its agent(s) without first signing a written consent between November 7, 2012, and the date of the preliminary approval order (“Class Period”),” except that any individual who timely submitted or submits a valid, written request for exclusion shall not be included in the Class. A member of the Class is a “Class Member.” Plaintiff will move for class certification, for settlement purposes only, under 735 ILCS 5/2-801 *et seq.* in his motions for Preliminary Approval and/or Final Approval.

- 1.4 **Class Counsel.** “Class Counsel” shall mean Caffarelli & Associates Ltd., 224 South Michigan Avenue, Suite 300, Chicago, Illinois 60604.
- 1.5 **Court.** “Court” shall mean the Honorable John C. Anderson of the Twelfth Judicial Circuit, Will County, Illinois.
- 1.6 **Covered Period.** “Covered Period” shall mean the period from November 7, 2012 through the date of the Preliminary Approval order.
- 1.7 **Defendant.** “Defendant” shall mean United States Cold Storage, Inc.
- 1.8 **Defendant’s Counsel.** “Defendant’s Counsel” shall mean Ogletree, Deakins, Nash, Smoak & Stewart, P.C., 155 N. Wacker Drive, Suite 4300, Chicago, Illinois 60606.
- 1.9 **Effective; Effective Date.** The “Effective Date” is the seventh day after the last of the following dates:
  - a) All Parties, Class Counsel, and Defendant’s Counsel have executed this Agreement;
  - b) The Court has entered, without material change, the Final Order and Judgment; and
  - c) The final disposition of any related appeals, or in the case of no appeal or review being filed, expiration of the applicable appellate period following entry of the Final Order and Judgment.
- 1.10 **Escrow Account.** “Escrow Account” shall mean the FDIC insured interest-bearing account(s) created and controlled by the Claims Administrator. The Settlement Fund shall be deposited or caused to be deposited by Defendant or its insurers into the Escrow Account in accordance with the terms of this Agreement and the money in the Escrow Account shall be invested in the following types of accounts and/or instruments: (i) demand deposit accounts, and/or (ii) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or less. The costs of establishing and maintaining the Escrow Account shall be paid from the Settlement Fund. The Claims Administrator shall be responsible for all tax filings with respect to the Escrow Account.
- 1.11 **Fairness Hearing.** “Fairness Hearing” shall mean the hearing on the Motion for Judgment and Final Approval.

- 1.12 Final Order and Judgment.** “Final Order and Judgment” shall mean the final order entered by the Court after the Fairness Hearing approving the settlement and entering Judgment pursuant to this Agreement and in accordance with 735 ILCS 5/2-801 *et seq.* A proposed version of the Final Order and Judgment shall be submitted to the Court in the form attached hereto as Exhibit C or as otherwise further agreed to by the Parties.
- 1.13 Individual Settlement Amount.** “Individual Settlement Amount” shall mean the portion of the Settlement Fund that each Class Member is eligible to receive pursuant to Section 3.5.
- 1.14 Litigation.** “Litigation” shall mean *Richard McGinnis, individually and on behalf of all others similarly situated v. United States Cold Storage, Inc.*, Circuit Court of Will County, Illinois, Case No. 19-L-9.
- 1.15 Notice.** “Notice” shall mean the form that will be provided pursuant to Section 2.4(c) of this Agreement, subject to approval by the Court, substantially in the form attached hereto as Exhibit A.
- 1.16 Net Settlement Fund.** “Net Settlement Fund” shall mean the remainder of the Settlement Fund after deductions for court-approved attorneys’ fees, costs, and expenses as described in Section 3.2, any court-approved Enhancement Award (as defined herein) payment to Plaintiff as described in Section 3.3, and Settlement Administration Expenses (as defined herein). The Net Settlement Fund shall be used to pay all amounts due to Qualified Class Members.
- 1.17 Opt-Out Period.** “Opt-Out Period” shall mean the period of time in between the Claims Administrator’s mailing of the Notice and the Opt-Out Deadline.
- 1.18 Opt-Out Deadline.** “Opt-Out Deadline” shall mean the date that is forty-five (45) calendar days after the Claims Administrator mails the Notice to Class Members pursuant to Section 2.4(c) of this Agreement. If the Claims Administrator re-mails the Notice to any individual pursuant to Section 2.4(d) of this Agreement because the first mailing was returned as undeliverable, the Opt-Out Deadline for such individuals shall be the later of (a) forty-five (45) calendar days after the original mailing to all Class Members, or (b) twenty (20) calendar days after the re-mailing. If the Opt-Out Deadline falls on a Sunday or holiday, the deadline will be the next business day that is not a Sunday or holiday.
- 1.19 Order Granting Preliminary Approval.** “Order Granting Preliminary Approval” shall mean the Order entered by the Court preliminarily approving, *inter alia*, the terms and conditions of this Agreement, the manner and timing of providing notice to the Class Members, and the time period for opt-outs and objections. A proposed version of the Order Granting Preliminary Approval shall be submitted to the Court in the form attached hereto as Exhibit B.
- 1.20 Parties.** “Parties” shall refer to the Plaintiff and Defendant.
- 1.21 Plaintiff.** “Plaintiff” shall refer to Richard McGinnis.

- 1.22 Qualified Class Member.** “Qualified Class Member” shall mean a Class Member who does not opt out in the manner prescribed in Section 2.5 of this Agreement.
- 1.23 Related Action.** “Related Action” shall mean any proceeding, other than the Litigation, which alleges that any Released Parties (as hereinafter defined) violated or are liable under BIPA or any related or similar statutory or common law duties, that were or could have been brought by a plaintiff who alleged they had their biometric identifiers, biometric information and/or other biometric data scanned, captured, taken, otherwise obtained or collected or used in any way by Defendant or other Released Parties.
- 1.24 Released Claims.** Plaintiff and the Class Members release and forever discharge any and all claims or causes of action for actual damages, liquidated damages, penalties, injunctive relief, declaratory relief, attorneys’ fees and costs, expenses and interest, liabilities, demands, or lawsuits against the Released Parties under the Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.*, and all other related federal, state, and local privacy laws, including the common law, whether known or unknown, whether legal, statutory, equitable, or of any other type or form, and whether brought in an individual, representative, or any other capacity, of every nature and description whatsoever that were or could have been brought in any of the actions filed (or to be filed) by Plaintiff and the Class Members.
- 1.25 Released Parties.** “Released Parties” includes United States Cold Storage, Inc. and its current and former affiliates, parents, subsidiaries, divisions, related entities, joint venturers, predecessors, successors and assigns, and the past and present owners, members, shareholders, officers, directors, trustees, managers, agents, employees, insurers including but not limited to Zurich American Insurance Company, reinsurers and retrocessionaires, and attorneys of these entities, their benefit plans and the sponsors, fiduciaries and administrators of said employee benefit plans.
- 1.26 Releasors.** “Releasors” shall refer, jointly and severally, and individually and collectively, to Plaintiff, Qualified Class Members, and each of their respective current, former and future heirs, assigns, spouses, children, beneficiaries, conservators, executors, estates, administrators, assigns, successors in interest, attorneys and agents, and all other persons or entities acting by, through, under or in concert with any of them.
- 1.27 Settlement.** The “Settlement” shall mean the settlement recorded in this Agreement, and all exhibits.
- 1.28 Settlement Administration Expenses.** “Settlement Administration Expenses” are those expenses incurred and charged by the Claims Administrator in effectuating the Settlement, including without limitation all fees and costs associated with the Claims Administrator establishing any interest-bearing account or investment vehicle for the settlement fund (or liquidating/closing such account or vehicle) and providing Notice to Class Members, creating and maintaining the Settlement website, processing claims, responding to inquiries from members of the Class, mailing Settlement checks and related services, paying taxes and tax expenses related to the Settlement Fund (including all federal, state or local taxes

of any kind and interest or penalties thereon, as well as expenses incurred in connection with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants).

**1.29 Settlement Fund.** The “Settlement Fund” shall be the settlement fund created by the payment by Defendant or its insurers of \$2,118,000, plus all interest earned thereon. The Settlement Fund shall be kept in the Escrow Account with permissions granted to the Claims Administrator to access said funds at such time as the listed payments are made. The Settlement Fund includes all interest that shall accrue on the sums deposited in the Escrow Account, and the Claims Administrator shall be responsible for all tax filings with respect to any earnings on the Settlement Fund and the payment of all taxes that may be due on such earnings. The Settlement Fund represents the total extent of Defendant’s and its insurers’ monetary obligations under this Agreement. The payment of the Settlement amount by Defendant or its insurers fully discharges Defendant and the other Released Parties’ financial obligations (if any) in connection with the Settlement, meaning that no Released Party shall have any other obligation to make any payment into the Escrow Account or to any Qualified Class Member, or any other Person, under this Agreement. The total monetary obligation with respect to this Agreement shall not exceed \$2,118,000 USD, unless the final count of Qualified Class Members on the Class list is not 1,765 individuals, in which case Defendant shall either increase or decrease the Settlement Fund by an amount proportionate to the final count of Qualified Class Members (*i.e.*, \$1,200 multiplied by the final count of Qualified Class Members). If the settlement is not approved because the Court fails to enter the Final Approval Order or the Final Approval Order is reversed on appeal, the Claims Administrator shall promptly return to Defendant and its insurers the respective amounts paid by each into the Settlement Fund, plus the *pro rata* interest earned on those specific sums, less certain Settlement Administrative Expenses (*i.e.*, set up and notice).

## **2. APPROVAL AND CLASS NOTICE**

**2.0 Stipulation to Certification.** The Parties stipulate, for settlement purposes only, to certification by the Court of a class as to all BIPA and related claims during the Covered Period encompassed by this Settlement pursuant to Illinois law. If for any reason the Court does not approve this stipulation, or does not enter a Final Order and Judgment, or if this Settlement is lawfully terminated for any other reason, the preliminary and conditional certification of the class shall become null and void, and the fact of certification shall not be cited to, used, or admissible in any judicial, administrative, or arbitral proceeding or in any other forum or manner for any purpose or with respect to any issue, substantive or procedural.

**2.1 Retention of Claims Administrator.** The Claims Administrator shall be jointly selected by the Parties within five (5) days after the Court grants preliminary approval of this Settlement, and shall be responsible for the claims administration process and distributions to Qualified Class Members as provided herein, as well as for making any mailings and performing other services as required under this Agreement, including responding to Class Members’ general administration inquiries during and following the Notice Period. The



Parties agree to provide reasonable cooperation to the Claims Administrator and provide reasonable assistance to it in administering the Settlement. All Settlement Administration Expenses shall come out of the Settlement Fund. If the Settlement is not given final approval by the Court and does not become Effective, the Parties shall bear the Settlement Administration Expenses equally. The Parties shall have no liability whatsoever for the Claims Administrator's acts, omissions or nonperformance in setting up the Escrow Account, for providing Notice, for distribution of the Settlement Fund or the determination, calculation, or payment of any claim, for website set up, maintenance and compliance, for the payment or withholding of taxes (including interest and penalties) owed by the Settlement Fund, for any losses incurred in connection with Settlement Administration, or for any other acts, omissions or nonperformance of the Settlement Administrator.

**2.2 Preliminary Approval by the Court.** Upon execution of this Agreement, Plaintiff will submit to the Court a Motion for an Order Granting Preliminary Approval ("Preliminary Approval Motion"). In connection therewith, Plaintiff will submit to the Court, among other things: (a) proposed Notice of Class Action Settlement, which is attached hereto as Exhibit A, and (b) a proposed Agreed Order Granting Preliminary Approval, which is attached hereto as Exhibit B. The Preliminary Approval Motion will seek the setting of dates for the submission of opt-outs, objections, and a Fairness Hearing. Plaintiff will provide Defendant with a draft of the Preliminary Approval Motion and a draft of the Final Approval Motion at least ten (10) business days in advance of filing. All proceedings in the Litigation will be stayed following entry of the Preliminary Approval Order, except as may be necessary to implement the Settlement or comply with the terms of the Settlement. Pending determination of whether the motions for Preliminary Approval and/or Final Approval should be granted, the Parties agree not to pursue any claims or defenses in the Litigation. If the Court does not grant preliminary or final approval of the Settlement or the Court grants preliminary or final approval by making material modifications to the terms of the Settlement Agreement, the Parties will work together in good faith to address the concerns raised in denying or modifying preliminary or final approval. If the Parties are unable to jointly agree on solutions to address the Court's concerns, then the Parties shall request the assistance of Judge Holderman of JAMS or another mediator, if Judge Holderman is unavailable.

**2.3 Final Order and Judgment from the Court.** At least seven (7) calendar days before the Fairness Hearing scheduled by the Court, Plaintiff will submit to the Court a Motion for Final Approval ("Final Approval Motion"). Plaintiff will provide Defendant with a draft of the Final Approval Motion at least ten (10) business days in advance of the filing. In connection therewith, Plaintiff will submit to the Court, as a condition of settlement, a Final Order and Judgment in a form attached hereto as Exhibit C, except that the Parties may mutually agree to changes to the Proposed Agreed Final Order and Judgment prior to seeking the Court's final approval of the Settlement. The Proposed Agreed Final Order and Judgment will, among other things, (a) enter Judgment in accordance with this Agreement, (b) approve the Settlement as fair, adequate, reasonable, and binding on all Qualified Class Members, (c) dismiss the Litigation with prejudice, (d) enter an order permanently enjoining all Qualified Class Members from pursuing and/or seeking to reopen claims that have been released by this Agreement, and (e) incorporate the terms of this Agreement.

## 2.4 Class Notice

- a) Notice List to Claims Administrator. Within twenty-one (21) calendar days of the date of the Order Granting Preliminary Approval, Defendant will, to the extent known to the Defendant, provide the Claims Administrator with a list, in electronic form, of the names, last known addresses, last known e-mail addresses, last known telephone numbers of Class Members, and social security numbers (“Notice List”).
- b) Claims Administrator to Update Addresses. Prior to mailing the Notice, the Claims Administrator will update the addresses using the National Change of Address database and other available resources deemed suitable by the Claims Administrator. The Defendant will provide reasonable assistance to the Claims Administrator in updating addresses, if necessary, by responding to queries and providing additional information.
- c) Notice to Class Members. Within seven (7) calendar days after receiving the Notice List, or as soon thereafter as practicable, the Claims Administrator shall mail, via First Class United States mail, postage prepaid, and by email (where available) the Notice appended hereto as Exhibit A in both English and Spanish to all Class Members, using each individual’s last known address as provided by Defendant and as updated by Claims Administrator. The Claims Administrator may provide a copy of the Notice List to Class Counsel but with names only. The Claims Administrator shall give the Parties two (2) business days’ notice before the Notice is sent out. The Notices shall inform all Class Members of their rights under this Agreement and that unless they opt out of the Settlement they will receive \$1,200 minus their proportionate share of the court-approved award of attorneys’ fees, costs, and expenses to Class Counsel; a court-approved Enhancement Award; and Settlement Administration Expenses. Class members will not be required to submit a form or any other document in order to participate in and be bound by the Settlement. The Claims Administrator shall take all reasonable steps to obtain the correct address of any Class Members for whom the Notice is returned by the post office as undeliverable and shall attempt re-mailings as described below, including calling the Class Member when possible to ascertain a correct mailing address. The Claims Administrator shall also send Notice via e-mail to all Class Members for whom e-mail addresses are obtained and maintain a website with the URL and contents to be approved by the parties and with the Claims Administrator assuming all liability related to the website. The Settlement website shall also identify Class Counsel by name, firm name and address and provide an email address and toll-free telephone number to contact Class Counsel directly. It shall also identify the Claims Administrator by name, address and provide an email address and toll-free telephone number to contact the Claims Administrator directly. Defendant’s Counsel and Class Counsel have the right to make inquiries and receive any information from the Claims Administrator as is necessary to the administration of this Settlement.
- d) Undeliverable Notice. If any Notice is returned as undeliverable, the Claims Administrator shall forward it to any forwarding addresses provided by the U.S. Postal Service. If no such forwarding address is provided, the Claims Administrator shall call and email the Class Member to try and obtain an address, and if necessary, perform

skip traces to attempt to obtain the most recent addresses for these Class Members. If a new address is obtained, the Claims Administrator will promptly re-mail the applicable Notice Package to the Class Member, and that Class Member shall have the Opt-Out Period in which to decide whether to seek exclusion or to object. The Claims Administrator shall, within three (3) calendar days after the first mailing of Notice, notify Class Counsel and Defendant's Counsel of the precise date of the end of the Opt-Out Period.

## **2.5 Class Member Opt-Out.**

- a) Any Class Member may request exclusion from the Class by "opting out." Class Members who choose to opt-out of the class must mail a written, signed statement to the Claims Administrator stating that he or she is opting out of the Settlement ("Opt-Out Statement"). The Opt-Out Statement must contain the name, address and telephone number of the Class Member to be valid. It must also contain the words to the effect of "I elect to exclude myself from the settlement in *McGinnis v. United States Cold Storage, Inc.*" and be signed in order to be valid. To be effective, such Opt-Out Statements must also be sent via First Class United States mail and postmarked by the Opt-Out Deadline. Unless a Class Member opts out of the Settlement, he or she will be deemed to participate and be bound by it, including the release in Section 3.6.
- b) If a Class Member submits a deficient Opt-Out Statement, the Claims Administrator shall notify the Class Member of the deficiency within three (3) business days of receipt. The Class Member shall have ten (10) calendar days to cure said deficiencies, at which point his or her attempted opt-out will be rejected if not received. Class Members submitting untimely or deficient Opt-Out Statements shall be bound by the Settlement and the release in Section 3.6.
- c) Plaintiff shall not opt-out of the Settlement. Plaintiff's execution of this Agreement shall signal his agreement to all of the terms of the Settlement.

## **2.6 Objections to Settlement.**

- a) Class Members who wish to present objections to the Settlement at the Fairness Hearing must first do so in writing. To be considered, such statement must be filed with the Court and served upon Class Counsel by no later than forty-five (45) calendar days after the mailing of the Class Notice, which applies notwithstanding any argument regarding non-receipt of the notice. Any objection must also be mailed to Class Counsel at the address listed on the Class Notice, who shall promptly provide a list of the written objections and supporting documentation to Defendant's counsel. Anyone who fails to file and serve timely written objections in this manner shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement and from filing any appeal from any final approval order issued by the Court.
- b) An objector who has filed and served a timely written objection in accordance with Section 2.6(a) must also appear at the Fairness Hearing either in person or through

counsel hired by the objector. An objector may withdraw their objections at any time. No objector may appear at the Fairness Hearing unless they have filed a timely objection that complies with the procedures provided in Section 2.6(a). Only Class Members who are Qualified Class Members may object to the Settlement. Any Class Member who has submitted an Opt-Out Statement may not submit objections to the Settlement.

- c) To be heard at the Final Approval Hearing, any written objection must: (a) attach documents establishing, or provide information sufficient to allow the Parties to confirm, that the objector is a Class Member; (b) include a statement of such Class Member's specific objections; and (c) state the grounds for objection, as well as identify any documents which such objector desires the Court to consider.
- d) The Parties may, but are not required to, file with the Court written responses to any filed objections at or prior to the Fairness Hearing.
- e) Class Members cannot both object to and exclude themselves from the Settlement. Any Class Member who attempts to both object to and exclude themselves from the Settlement will be deemed to have excluded themselves, and will forfeit the right to object to the Settlement or any of its terms.

**2.7 Claims Administrator Reporting.** After issuing the Notice, the Claims Administrator shall provide weekly reports to counsel for the Parties with respect to the numbers of individuals submitting Opt-Out Statements or objections. Within ten (10) calendar days after the close of the Opt-Out Deadline, the Claims Administrator shall prepare a final declaration or affidavit regarding the administration of the settlement.

**2.8 Motion for Final Order and Judgment.** No later than seven (7) calendar days before the Fairness Hearing, Plaintiff will submit the Unopposed Motion for Judgment and Final Approval. The Fairness Hearing shall be held at the Court's convenience.

**2.9 Entry of Judgment.** At the Fairness Hearing, the Parties will request that the Court, among other things, (a) certify the Class for purposes of settlement only, (b) enter Judgment in accordance with the terms of this Agreement, (c) approve the settlement as fair, adequate, reasonable, and binding on all Qualified Class Members, (d) dismiss the Litigation with prejudice, (e) enter an order permanently enjoining all Qualified Class Members from pursuing and/or seeking to reopen claims that have been released by this Agreement, and (f) incorporate the terms of this Agreement.

**2.10 Right to Revoke.** Any Party has the right to withdraw from the Settlement at any time prior to the entry of the Final Order and Judgment if: (a) the Court does not certify the settlement class or a substantially similar settlement class, provided the Parties have worked together in good faith to address the concerns preventing approval of the Settlement, and if the Parties are unable to jointly agree on solutions to address those concerns, then the Parties shall request the assistance of Judge James Holderman of JAMS or another mediator, if Judge Holderman is unavailable, to resolve those concerns; or (b)

the opposing Party breaches the Agreement, but only after the non-breaching Party provides notice and a 21-day period to cure after working in good faith to resolve the issue and requesting the assistance of Judge Holderman or another mediator if he is unavailable to address and help resolve the purported breach. Notwithstanding any other provision of this Agreement, the withdrawing Party shall pay the Settlement Administration Expenses through the date of withdrawal.

**2.11 Effect of Revocation or Failure to Grant Final Approval.** In the event the Court fails to enter the Final Order and Judgment in accordance with this Agreement, or the Agreement does not become Effective, or any Party revokes the Settlement pursuant to Section 2.10, (i) this Agreement shall have no force or effect, other than the non-admission provisions in Paragraph 3.90; (ii) neither this Agreement, nor any other related papers or orders, nor the negotiations leading to the Settlement, shall be cited to, used, or admissible in any judicial, administrative, or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; (iii) the preliminary and conditional certification of the class shall become null and void, and the fact of certification shall not be cited to, used, or admissible in any judicial, administrative, or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; (iv) none of the Parties will be deemed to have waived any claims, objections, defenses, or arguments with respect to the issue of class action certification or the merits of Plaintiff's claims or any other issue; and (v) the Litigation will proceed as if no settlement had been attempted.

### **3. SETTLEMENT TERMS**

#### **3.1 Settlement Payment.**

- a) Defendant agrees to the gross amount of \$2,118,000 (the "Settlement Fund"). This Settlement Fund shall resolve and satisfy all obligations under this Agreement, including but not limited to all attorneys' fees, litigation costs and expenses, Settlement Administration Expenses, payments to Qualified Class Members, the Enhancement Award, and any other payments in connection with this Agreement or the Settlement.
- b) The Settlement Fund shall be \$2,118,000 unless Defendant, before or during the administration process, determines and demonstrates to Class Counsel that there are in fact more or less than 1,765 total Class Members, in which case the Settlement Fund shall be increased or decreased by an amount equal to \$1,200 multiplied by the number of Class Members added or subtracted to the Class.
- c) Defendant or its insurers shall deposit into the Escrow Account the Settlement Fund no later than forty (40) calendar days after the Order Granting Final Approval, provided however that Defendant or its insurers will deposit funds necessary to cover the notice costs (estimated to be approximately \$20,000) within 21 days after the Court's Preliminary Approval Order. Any interest accrued from the Escrow Account, net of taxes and any fees associated with investing such amount, shall immediately be added to and become part of the Settlement Fund.

- d) Settlement payments will be made to all Qualified Class Members by the Claims Administrator. The Claims Administrator will calculate the final amounts due to each such Qualified Class Member as the Final Individual Settlement Amount and issue checks payable to said Qualified Class Members.
- e) Within seven (7) calendar days following the Effective Date, the Claims Administrator will distribute the money in the Escrow Account by making the following payments:
  - i. Paying Class Counsel Court-approved attorneys' fees as described in Section 3.2.
  - ii. Reimbursing Class Counsel for all costs and expenses approved by the Court as described in Section 3.2.
  - iii. Paying the Claims Administrator as described in Section 2.1.
  - iv. Paying the Enhancement Award in the amount described in Section 3.3.
  - v. Paying Qualified Class Members their Final Individual Settlement Amounts as described in Section 3.5.

### **3.2 Settlement Amounts Payable as Attorneys' Fees and Costs.**

- a) At least ten calendar (10) days prior to the Fairness Hearing, Class Counsel shall petition the Court for attorneys' fees and reimbursement of reasonable litigation and mediation-related costs and expenses from the Settlement Fund. Class Counsel shall not seek more than one-third of the Settlement Fund in fees, and shall also seek reimbursement of the actual costs and expenses incurred in the litigation and mediation. Defendant shall have no additional liability for attorneys' fees and costs relating to this Agreement, the Litigation, the Settlement, or any claims released by the Settlement beyond its funding of the Settlement Fund.
- b) The substance of Class Counsel's application for attorneys' fees and costs is not part of this Agreement and is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of any proceeding related to Class Counsel's application for attorneys' fees, costs, and expenses shall not terminate this Agreement or otherwise have an effect on the Court's ruling on the Motion for Judgment and Final Approval.

**3.3 Enhancement Award to Plaintiff.** Prior to the Fairness Hearing, Class Counsel will apply to the Court for Plaintiff to receive an Enhancement Award of Seven Thousand Five Hundred Dollars (\$7,500) from the Settlement Fund for services rendered to the Class. Such Enhancement Award shall be at the sole discretion of the Court, and this Settlement is not contingent upon the Court's approval of such Enhancement Award. The outcome of the Court's ruling on the application for an Enhancement Award shall not terminate this Agreement or otherwise have an effect on the Court's ruling on the Motion for Judgment and Final Approval. Plaintiff shall not appeal any decision by the Court regarding the

Enhancement Award. Defendant shall have no additional liability for this Enhancement Award beyond its funding of the Settlement Fund.

### **3.4 Distribution to Qualified Class Members.**

- a) The Net Settlement Fund shall be the amount of money remaining from the Settlement Fund after deducting (a) any attorneys' fees, plus costs and expenses approved by the Court, pursuant to Section 3.2; (b) any Enhancement Award approved by the Court pursuant to Section 3.3; and (c) any amounts paid to the Claims Administrator pursuant to Section 2.1. The Net Settlement Fund shall then be allocated in equal shares to each Qualified Class Member.
- b) A direct payment by check will be made to each Qualified Class Member who did not opt-out of this Settlement. Each check will be issued on the date of mailing and will state on its face that the check will expire and become null and void unless cashed within 90 Days of the date of issuance. To the extent that a check issued to a Qualified Class Member is not cashed within 90 Days after the date of issuance, the check will be void and 50% of the funds will be deposited with the Illinois Treasurer as unclaimed funds, pro rata, for the benefit of all class members who did not cash a check and 50% will remain with Defendant or its insurers. Qualified Class Members who do not redeem their settlement checks shall remain bound by the Settlement and the Release in Section 3.6(a).
- c) All payments to Qualified Class Members made pursuant to this Agreement shall be deemed to be paid to such Qualified Class Members solely in the year in which such payments actually are received by the Qualified Class Members. It is expressly understood and agreed that any amount paid to any Qualified Class Member shall not create any credit or otherwise affect the calculation of benefits provided under any pension, retirement, retirement savings, excess or supplemental retirement or retirement savings, any deferred compensation, bonus, equity, incentive, severance, displacement, supplemental unemployment, health, life, or disability plan, or any benefit, pension, or other compensation or benefit plan, policy, program, or arrangement provided by Defendant or any Releasee, and no payment made pursuant to this Agreement or the Settlement will be considered as "Wages," "Compensation," "Earnings," "Salary," or any similar definition or form or payment.

### **3.5 Taxability of Settlement Payments.**

- a) For tax purposes, the Enhancement Award paid to Plaintiff pursuant to Section 3.5 shall be treated as a 1099-miscellaneous payment for statutory liquidated damages.
- b) For tax purposes, the payments to Plaintiff and Qualified Class Members pursuant to Section 3.5 shall be allocated as non-wage compensation. The Defendant shall cooperate with the Claims Administrator in order to facilitate all reporting with respect to all amounts payable to Qualified Class Members required pursuant to any federal, state, or local tax law or regulation. The Defendant shall also cooperate with the Claims

Administrator with respect to properly and timely filing and sending Form 1099s to any applicable recipient of the Settlement Funds.

- c) Within five (5) calendar days following the Effective Date, Class Counsel shall provide the Claims Administrator with a duly completed W-9. Payments of attorneys' fees and costs pursuant to Section 3.2 shall be reported by the Claims Administrator on the applicable IRS Form 1099 as required by the Internal Revenue Code and shall be made without withholding, provided the Claims Administrator has timely received a duly completed W-9 from Class Counsel.
- d) Plaintiff and each individual Qualified Class Member will be solely responsible for all taxes, interest, penalties, or other amounts due with respect to any payment received pursuant to the Settlement. Plaintiff, on behalf of the Class Members and the Qualified Class Members, acknowledges and agrees that he has not relied upon any advice from Defendant as to the taxability of the payments received pursuant to the Settlement. Defendant shall have no responsibility for any taxes, interest penalties or other amounts due with respect to any payments made pursuant to the Settlement.
- e) The Claims Administrator, with the cooperation of the Defendant, shall handle all tax reporting with respect to the payments made pursuant to the Settlement, and shall report the payments in accordance with applicable law.

### **3.6 Release of Claims by Plaintiff and Qualified Class Members.**

- a) Upon the entry of the Final Order and Judgment, and for good and valuable consideration as described herein, Released Parties shall be fully, finally and completely released, acquitted, and forever discharged from any and all Released Claims. Accordingly, upon entry of the Final Order and Judgment, Plaintiff and the Class Members release and forever discharge any and all claims or causes of action for actual damages, liquidated damages, penalties, injunctive relief, declaratory relief, attorneys' fees and costs, expenses and interest, liabilities, demands, or lawsuits against the Released Parties under the Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.*, and all other related federal, state, and local privacy laws, including the common law, whether known or unknown, whether legal, statutory, equitable, or of any other type or form, and whether brought in an individual, representative, or any other capacity, of every nature and description whatsoever that were or could have been brought in any of the actions filed (or to be filed) by Plaintiff and the Class Members. "Released Parties" includes United States Cold Storage, Inc. and its current and former affiliates, parents, subsidiaries, divisions, related entities, joint venturers, predecessors, successors and assigns, and the past and present owners, members, shareholders, officers, directors, trustees, managers, agents, employees, insurers including but not limited to Zurich American Insurance Company, reinsurers and retrocessionaires, and attorneys of these entities, their benefit plans and the sponsors, fiduciaries and administrators of said employee benefit plans.



- b) Upon the entry of the Final Order and Judgment, 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.
- c) Nothing in this release shall prohibit or restrict Plaintiff or Qualified Class Members from: (i) providing information to or cooperating with Congress, the Securities and Exchange Commission (“SEC”), the Commodity Futures Trading Commission (“CFTC”), the Consumer Financial Protection Bureau (“CFPB”), the EEOC, the Occupational Safety and Health Administration (“OSHA”), the National Labor Relations Board (“NLRB”) or any other federal, state or local government, regulatory, or law enforcement agency (“Government Agencies”), the Financial Industry Regulatory Authority (“FINRA”), or any other self-regulatory organization (“SRO”); (ii) reporting to Defendant’s management or directors regarding conduct the employee believes to be in violation of the law or prohibits or restricts the employee from providing information to or cooperating with any Government Agencies or any SROs; (iii) communicating with any Government Agencies or SRO or otherwise participating in any investigation or proceeding that may be conducted by any Government Agency or SRO, including providing documents or other information; or (iv) receiving an award for information provided to any Government Agencies.
- d) Class Counsel and Plaintiff, on behalf of the Class and each individual Qualified Class Member, hereby irrevocably and unconditionally release, acquit, and forever discharge any claim that he, she or they may have against Defendant or the Released Parties for attorneys’ fees or costs associated with Class Counsel’s representation of Plaintiff, the Class, and the Qualified Class Members in this Litigation, the Settlement, or any Released Claims. Class Counsel further understand and agree that any fee payments approved by the Court will be the full, final and complete payment of all attorneys’ fees and costs associated with Class Counsel’s representation of the Class in the Litigation.

**3.7 No Assignment.** Class Counsel and Plaintiff, on behalf of the Class and each individual Qualified Class Member, represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Litigation, or any Related Action.

**3.8 Non-Admission.** Nothing relating to this Agreement, the Settlement, or any communications, papers, or orders related to the Agreement or Settlement, shall be cited to as, construed to be, admissible as, or deemed an admission by Defendant or Released Parties of any liability, culpability, negligence, misconduct or other wrongdoing toward Plaintiff, the Class Members, Releasors, or any other person, and Defendant and Released Parties specifically disclaim and dispute any liability, culpability, negligence, misconduct or other wrongdoing toward Plaintiff, the Class Members, Releasors, or any other person, or that class certification is appropriate in this or any other matter. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and contingencies. This Agreement, and any

communications, papers, or orders related to the Settlement, may not be cited to, used, or admitted as evidence of liability or that class action certification is appropriate. There has been no determination by any Court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class should be certified, other than for settlement purposes only. Furthermore, nothing in this Agreement shall be cited to as, construed to be, admissible as, or considered any form of waiver of any alternative dispute resolution agreements, provisions, or policies by Defendant or Released Parties.

**3.9 Non-Interference with Settlement.** Pending the Court's decision on final approval of the Settlement and entry of the Court's Final Order and Judgment, Plaintiff and all Class Members and anyone acting on behalf of any Class shall be barred and enjoined from: (a) further prosecution of the Litigation; (b) filing, or taking any action directly or indirectly, to commence, prosecute, pursue or participate on an individual or class action basis any action, claim or proceeding against Defendant or Released Parties in any forum in which any of the claims subject to the Settlement are asserted, or which in any way would prevent any such claims from being extinguished; or (c) seeking, whether on a conditional basis or not, certification of a class action that involves any such claims.

### **3.10 Miscellaneous**

- a) **Cooperation Between the Parties; Further Acts.** The Parties shall cooperate fully with each other and shall use their reasonable best efforts to obtain the Court's approval of this Agreement and all of its terms.
- b) **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement.
- c) **Binding Effect.** This Agreement shall be binding upon the Parties and Class Counsel, with respect to Plaintiff, the Class Members, and each of their respective heirs, assigns, spouses, children, beneficiaries, conservators, executors, administrators, attorneys and agents.
- d) **Arm's Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arm's length, and through the representation of experienced counsel on both sides. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement.
- e) **Captions.** The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- f) **Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting


of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.

- g) **Governing Law.** This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of Illinois.
- h) **Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the Settlement contemplated thereby. The Court shall not have jurisdiction to modify the terms of this Agreement or to increase Defendant's payment obligations hereunder.
- i) **Waivers, etc. to Be in Writing.** No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification or amendment, subject to any required Court approval. Any failure by any Party to insist upon the strict performance by the other Party(ies) of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.
- j) **When Agreement Becomes Effective.** Except for provisions of this Agreement requiring any Party to act or seek Court action prior to Court approval, which provisions are intended to be binding on the Parties upon mutual execution hereof, this Agreement shall become fully effective upon the Effective Date.
- k) **Facsimile/Electronic Signatures.** Any signature made and transmitted by facsimile or email for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party whose counsel transmits the signature page by facsimile or email.
- l) **Extensions of Time.** If any deadlines related to the Settlement cannot be met, Class Counsel and counsel for Defendant shall meet and confer to reach agreement on any necessary revisions of the deadlines and timetables set forth in this Agreement. In the event that the Parties fail to reach such agreement, any of the Parties may apply to the Court via a noticed motion for modification of the dates and deadlines in this Agreement.
- m) **Counterparts.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

**IT IS SO AGREED TO BY THE PARTIES:**

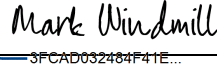
Dated: 09/28, 2023

**RICHARD MCGINNIS**

By:   
Richard McGinnis, individually and as representative of the Class

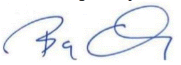
Dated: 10/2, 2023

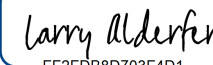
**UNITED STATES COLD STORAGE, INC.**

By:   
Name: Mark windmill  
Title: CFO

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Dan Dunfee

Senior, Risk Manager

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Barry Ominsky

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Larry Alderfer

VP - Treasurer & Secretary  
President & CEO

**IT IS SO STIPULATED BY COUNSEL:**

Dated: 9/28, 2023

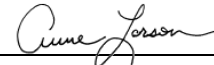
**CAFFARELLI & ASSOCIATES LTD.**

By: *Alejandro Caffarelli*  
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*Attorneys for Plaintiff and the Settlement Class*

Dated: 9/28, 2023

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