

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

ZACK WYPYCH, individually and on behalf of  
all others similarly situated,

*Plaintiff,*

v.

CHEESE MERCHANTS OF AMERICA,  
L.L.C,

*Defendant,*

Case No.: 2020 CH 02437

**PRELIMINARY APPROVAL ORDER**

This matter having come before the Court on Plaintiff’s Unopposed Motion in Support of Preliminary Approval of Class Action Settlement (the “Motion”), the Court having reviewed in detail and considered the Motion, the Class Action Settlement Agreement (“Settlement Agreement”) between Plaintiff, Zack Wypych (“Plaintiff” or “Class Representative”) and Defendant, Cheese Merchants of America, LLC (“Defendant”) (together, “the Parties”), and all other papers that have been filed with the Court related to the Settlement Agreement, including all exhibits and attachments to the Motion and the Settlement Agreement, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms used in this Order that are not otherwise defined herein have the same meaning assigned to them as in the Settlement Agreement.
2. For settlement purposes only, the Court finds that the prerequisites to class action treatment under Section 2-801 of the Illinois Code of Civil Procedure — including numerosity, commonality and predominance, adequacy, and appropriateness of class treatment of these claims — have been preliminarily satisfied.

3. The Court preliminarily approves the terms of the Settlement Agreement as fair, reasonable, and adequate, and orders Notice to be sent to the Class.

4. The Court hereby conditionally certifies, pursuant to Section 2-801 of the Illinois Code of Civil Procedure, and for the purposes of settlement only, a Settlement Class of the following Subclasses:

**Subclass 1:** All of Defendant's workers who used Defendant's Biometric System in Illinois between February 27, 2015 and March 6, 2020 without signing a Handbook Acknowledgment Form in advance.

**Subclass 2:** All of Defendant's workers who used Defendant's Biometric System in Illinois between February 27, 2015 and March 6, 2020 who signed a Handbook Acknowledgment Form in advance.

5. For settlement purposes only, Plaintiff Zack Wypych is hereby appointed as Class Representative.

6. For settlement purposes only, the following counsel are hereby appointed as Class Counsel:

David Fish  
Mara Baltabols  
Fish Potter Bolaños, P.C.  
200 East Fifth Avenue, Suite 123  
Naperville, Illinois 60563

7. Analytics LLC, or such other entity that the parties mutually agreed upon, is hereby appointed Settlement Administrator to supervise and administer the notice process, as well as to oversee the administration of the Settlement, as more fully set forth in the Settlement Agreement.

8. The Settlement Administrator may proceed with the distribution of Class Notice as set forth in the Settlement Agreement.

9. The Court approves, in form and content, the Notice, attached to the Settlement Agreement as Exhibit A, and finds that it meets the requirements of Section 2-803 of the Illinois Code of Civil Procedure and satisfies Due Process.

10. The Court preliminarily approves a Settlement Fund of \$526,344 or a gross allocation (before deductions of fees and expenses) of \$840 per person for members of Subclass 1 and \$336 per person for members of Subclass 2 based upon an estimated total Settlement Class size of 1,118.

11. The Court preliminarily approves a net award to Class Members (after deduction of fees and expenses) in the form of a direct check in the amount of \$503.51 to the 299 members of Subclass 1, and \$201.40 for members of Subclass 2.

12. The Court preliminarily approves Administration Expenses not to exceed \$9,332, and payment of Administration Expenses from the Settlement Fund.

13. The Court reserves ruling on the following:

- (1) Class counsel's requested attorney fee award of 35% of the Settlement Fund (\$184,220.40);
- (2) Class counsel's requested fees and expenses of \$9,791.68 (mediation, Westlaw and filing fees);
- (3) The requested incentive award to the Class Representative (\$7,500);  
and
- (4) Approval of the *cypres* recipient and distribution of uncashed funds.

14. A hearing (the "Final Approval Hearing") shall be held before the Court on **April 7, 2022 at 10:00 a.m.** in Courtroom 2403 via Zoom Video Conference Meeting ID: 990 0014 8007, Password: 545631 (or at such other time or location as the Court may without further notice direct) for the following purposes:

- (a) to finally determine whether the applicable prerequisites for settlement class action treatment under 735 ILCS 5/2-801 have been met;
- (b) to determine whether the Settlement is fair, reasonable and adequate, and should be approved by the Court;
- (c) to determine whether the judgment as provided under the Settlement Agreement should be entered, including an order prohibiting Settlement Class Members from further pursuing claims released in the Settlement Agreement;
- (d) to consider the application for an award of attorneys' fees, costs and expenses of Class Counsel;
- (e) to consider the application for an Incentive Award to the Class Representative;
- (f) to consider the distribution of the Settlement Fund pursuant to the Settlement Agreement, including distribution of uncashed checks and *cy pres* award; and
- (g) to rule upon such other matters as the Court may deem appropriate.

15. Class Counsel may file any motion seeking an award of attorneys' fees and costs not to exceed 35% of the Settlement Fund (\$184,220.40) in attorneys' fees, plus their reasonable costs and expenses, not to exceed \$9,791.67, as well as a Service Award to the Named Plaintiff of \$7,500 no later than seven (7) days prior to the Final Approval Hearing, by **March 31, 2022**.

16. The Court recognizes that, pursuant to the Settlement Agreement, Defendant retains all rights to object to the propriety of class certification in the litigation in all other contexts and for all other purposes should the Settlement not be finally approved. Therefore, as more fully set forth below, if the Settlement is not finally approved, and litigation resumes, this Court's preliminary findings regarding the propriety of class

certification shall be of no further force or effect whatsoever, and this Order will be vacated in its entirety.

17. The Court finds that the planned notice set forth in the Settlement Agreement meets the requirements of Section 2-803 of the Illinois Code of Civil Procedure and constitutes the best notice practicable under the circumstances, where Class Members are current or former employees of Defendant and may be readily ascertained by Defendant's records, and satisfies fully the requirements of Due Process, and any other applicable law, such that the Settlement Agreement and Final Approval Order will be binding on all Settlement Class Members. 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 Class Notice in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

18. Settlement Class Members who wish to receive benefits under the Settlement Agreement do not need to take any affirmative action to claim their pro rata share of the Settlement Fund.

19. Settlement 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 request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. 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.

20. Any person within the Settlement Class may request exclusion from the Settlement Class by expressly stating their request in a written exclusion request. Such exclusion requests must be received by the Settlement Administrator in written form, by first class mail, postage prepaid, and postmarked, no later than **February 4, 2022**.

21. In order to exercise the right to be excluded, a person within the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing their name, address, telephone number, the name and number of the case, a statement that they wish to be excluded from the Settlement Class, and must be personally signed by the person requesting exclusion. No person within the Settlement Class, or any person acting on behalf of, in concert with, or in participation with that person within the Settlement Class, may request exclusion from the Settlement Class of any other person within the Settlement Class.

22. Any person in the Settlement Class who elects to be excluded shall not: (i) be bound by any orders or the Final Approval Order; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement.

23. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who wishes to object to any aspect of the Settlement Agreement, including the amount of the attorneys' fees, costs, and expenses that Class Counsel intend to seek and the payment of the Incentive Award to the Class Representative, may do so, either personally or through an attorney, by filing a written objection, together with the

supporting documentation set forth below in Paragraph 24 of this Order, with the Clerk of the Court, and served upon Class Counsel, Defendant's Counsel, and the Settlement Administrator no later than **February 4, 2022**.

24. Any Settlement Class Member who has not requested exclusion and who intends to object to the Settlement must state, in writing, all objections and the basis for any such objection(s), and must also state in writing: (i) their full name, address, and telephone number; (ii) the case name and number of this Litigation; (iii) the date range during which they were employed by Defendant; (iv) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (v) the identification of any other objections they have filed, or have had filed on their behalf, in any other class action cases in the last four years; and (vi) the objector's signature. Objections not filed and served in accordance with this Order shall not be received or considered by the Court. Any Settlement Class Member who fails to timely file and serve a written objection in accordance with this Order shall be deemed to have waived, and shall be forever foreclosed from raising, any objection to the Settlement, to the fairness, reasonableness, or adequacy of the Settlement, to the payment of attorneys' fees, costs, and expenses, to the payment of an Incentive Award, and to the Final Approval Order and the right to appeal same.

25. A Settlement Class Member who has not requested exclusion from the Settlement Class and who has properly submitted a written objection in compliance with the Settlement Agreement may appear at the Final Approval Hearing in person or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons

wishing to be heard orally in opposition to the approval of the Settlement and/or Plaintiff's Counsel's Fee and Expense Application and/or the request for an Incentive Award to the Class Representative are required to indicate in their written objection their intention to appear at the Final Approval Hearing on their own behalf or through counsel. For any Settlement Class Member who files a timely written objection and who indicates their intention to appear at the Final Approval Hearing on their own behalf or through counsel, such Settlement Class Member must also include in their written objection the identity of any witnesses they may call to testify, and all exhibits they intend to introduce into evidence at the Final Approval Hearing, which shall be attached.

26. No Settlement Class Member shall be entitled to be heard, and no objection shall be considered, unless the requirements set forth in this Order and in the Settlement Agreement are fully satisfied. Any Settlement Class Member who does not make his or her objection to the Settlement in the manner provided herein, or who does not also timely provide copies to the designated counsel of record for the Parties at the addresses set forth herein, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Final Approval Order.

27. The Final Approval Hearing may be postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class. At or following the Final Approval Hearing, the Court may enter a judgment approving the Settlement Agreement and a Final Approval Order in accordance with the Settlement Agreement that adjudicates the rights of all Settlement Class Members.

28. All papers in support of the final approval of the proposed settlement shall be filed no later than seven (7) days before the Final Approval Hearing.

29. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

30. All discovery and other proceedings in the Litigation as between Plaintiff and Defendant are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Settlement Agreement and this Order.

IT IS SO ORDERED.

ENTERED:

	<p style="text-align: center;"><b>ENTERED</b> Judge Moshe Jacobius-1556 <b>DEC 06 2021</b> <b>IRIS Y. MARTINEZ</b> CLERK OF THE CIRCUIT COURT OF COOK COUNTY, IL DEPUTY CLERK</p>
Date	