

## **SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement (“Agreement” or “Settlement Agreement”) is entered into by and between Plaintiff William Starks (“Plaintiff”) individually and on behalf of the Settlement Class, and Defendant Joliet Cold Storage, LLC. (“Defendant”) and in the case of *Starks v. Joliet Cold Storage, LLC*, Case No. 2019 L 000182, currently pending in the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois (the “Underlying Action”). Plaintiff and Defendant are each referred to as a “Party” and are collectively referred to herein as the “Parties.”

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

1. On February 28, 2019, Plaintiff filed a class action complaint against Defendant alleging violations of the Illinois Biometric Information Privacy Act, 740 ILCS § 14/1, *et seq.* (“BIPA”) in the Circuit Court of Will County, Illinois (“Underlying Action” or the “Litigation”).

2. On May 22, 2019, Defendant filed an answer to the complaint. Defendant denied and continues to deny liability for the claims made in the Underlying Action.

3. Defendant also moved for a stay of the Underlying Action pending certain appeals, and the Court stayed the Underlying Action pending resolution of the appeal in *Marion v. Ring Container Technologies, LLC*, No. 3-20-0184 (3d Dist.) (“*Marion*”). The *Marion* appeal remains pending.

4. During the stay of the Underlying Action, the Parties exchanged information relevant to the putative class, including an estimate of the number of potential members of the Settlement Class, percentage of union members in the Settlement Class, and general information about the Biometric tracking system at issue.

5. Following arms-length negotiations, the Parties now seek to enter into this Settlement Agreement. Plaintiff and Class Counsel have concluded that a settlement according to the terms set forth below is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiff and the Settlement Class recognizing: (i) the existence of complex and contested issues of law and fact; (ii) the risks inherent in litigation; (iii) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement; and (iv) the benefits derived from the contemplated settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever.

6. Defendant denies and continues to deny each and every allegation and all charges of wrongdoing or liability of any kind whatsoever that Plaintiff or members of the Settlement Class presently have asserted in this Underlying Action or may in the future assert. Despite Defendant’s belief that it is not liable for, and has good defenses to, the claims alleged in the Underlying Action, Defendant desires to settle the Underlying Action,

and thus avoid the expense, risk, exposure, inconvenience, and distraction of continued litigation of any action or proceeding relating to the matters being fully settled by this Settlement Agreement. Neither this Settlement Agreement, nor any negotiation or act performed, or document created in relation to the Settlement Agreement or negotiation or discussion thereof is, or may be deemed to be, or may be used as, an admission of, or evidence of, any wrongdoing or liability.

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

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

## **II. DEFINITIONS**

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

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

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

11. “Class Counsel” shall mean David Fish, Mara Baltabols, or any other attorney from Fish Potter Bolaños, P.C.

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

13. “Court” shall mean the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois and the Honorable Judge Roger D. Rickmon and their legal representatives, heirs, successors, and assigns, if any.

14. “Defendant” shall mean Joliet Cold Storage, LLC.

15. “Defendant’s Counsel” shall mean Laura Bacon or any other attorney from the law firm of Nixon Peabody, LLP.

16. “Effective Date” shall mean the date when the Settlement Agreement becomes Final.

17. “Fee Award” means the amount of attorneys’ fees and reimbursement of expenses awarded by the Court to Class Counsel.

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

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

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

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

- a. Certifies the Settlement Class pursuant to 735 ILCS 5/2-801;
- b. Finds that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of this Agreement;
- c. Dismisses the Plaintiff’s claims pending before it with prejudice and without costs, except as explicitly provided for in this Agreement;
- d. Approves the Release provided in Section VII and orders that, as of the Effective Date, the Released Claims will be released as to Releasees;
- e. Reserves jurisdiction over the settlement and this Agreement; and
- f. Finds that, pursuant to 735 ILCS 5/2-1301, there is no just reason for delay of entry of final judgment with respect to the foregoing.

22. “Incentive Award” shall have the meaning ascribed to it as set forth in Section XV of this Agreement.

23. “Underlying Action” or “Litigation” shall mean the lawsuit styled *Starks v. Joliet Cold Storage, LLC*, Case No. 2019 L 000182, currently pending in the Court.

24. “Notice” shall mean the direct notice of this proposed Settlement, which is to be provided substantially in the manner set forth in this Agreement and Exhibit A and is consistent with the requirements of Due Process.

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

26. “Parties” shall mean the Defendant and Plaintiff, collectively.

27. “Plaintiff” or “Class Representative” shall mean the named class representative, William Starks, and his heirs, successors and assigns.

28. “Preliminary Approval Order” shall mean an order of the Court preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing notice of the Settlement to the Settlement Class substantially in the form of the Notice set forth in this Agreement.

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

30. “Released Claims” shall mean any and all claims against Releasees whatsoever arising out of, related to, or connected with the alleged capture, collection, storage, possession, transmission, conversion, disclosure, sale, and/or other use of biometric identifiers and/or biometric information in connection with the Time-Keeping System, including but not related to claims brought under 740 ILCS §14/10, *et seq.* “Released Claims” include all claims that arise from and/or are reasonably related to the claims (whether common law and/or statutory) that were and/or could have been asserted in the Litigation or Related Actions, regardless of whether such claims are known or unknown, filed or unfiled, asserted or as of yet unasserted, existing or contingent, whether in contract, tort, or otherwise, including statutory, common law, property, employment related, and any additional constitutional, common law and/or statutory claims.

31. “Releasees” shall refer, jointly and severally, and individually and collectively, to Defendant and their current, former and future owners, affiliates, parents, subsidiaries, divisions, officers, directors, shareholders, agents, employees, attorneys,

insurers, benefit plans, predecessors, assigns, and successors. Exceptions to release: Defendant's third-party vendors for the Time-Keeping System at issue.

32. "Releasers" shall refer, jointly and severally, individually and collectively, to Plaintiff, the Settlement Class Members, and to each of their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, through, or on behalf of them, but will not include any Settlement Class Member who has opted out of the Settlement Class by the end of the Objection/Exclusion deadline.

33. "Settlement Administrator" means, subject to Court approval Analytics, LLC, the entity mutually selected and supervised by the Parties to administer the settlement.

34. "Settlement Fund" means a cash settlement fund from which the Settlement Administrator will establish from funds by Defendant in the amount of \$248,500 or a gross amount of \$500 per person based upon an estimated Total Class Size of 497. The Gross Settlement Fund is the maximum amount that Defendant shall be obligated to pay under this Settlement. If the final Total Class Size is more than 497, the Settlement Fund will increase pro rata for each class member above 497. If the final Total Class Size is less than 497, the Settlement Fund will decrease pro rata for each class member below 497. The Settlement Administrator will distribute from the Settlement Fund all payments contemplated by this Agreement, including: (i) Incentive Award to the Plaintiff; (ii) a Fee Award; and (iii) the costs of administration of the Agreement to the Settlement Administrator, including without limitation payment of Administrative Expenses; (iv) an equal share of the remaining Settlement Fund to each Settlement Class Member; and (v) funds from checks not cashed by Class Members in 90 days will distributed 50% to the *cy pres* recipient Prairie State Legal Services and 50% to Defendant, subject to approval by the Court. For any Class Member who timely opts out of the settlement and does not receive a payment, those funds will revert to the Defendant.

35. "Time-Keeping System" shall mean the time-keeping technology used by Defendant at any time from February 28, 2014 to the date of the Preliminary Approval Order, which allegedly utilized a scan of a portion of Plaintiff's and the other Settlement Class Members' fingers or biometric information.

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

36. For the purposes of the Settlement only, the Parties stipulate and agree that: (1) the Class shall be certified in accordance with the definition contained herein; (2) Plaintiff shall represent the Class for settlement purposes and shall be the Class Representative; and (3) Plaintiff's Counsel shall be appointed as Class Counsel.

37. Defendant does not consent to certification of the Class for any purpose other than to effectuate the Settlement. If the Court does not enter final approval of the Settlement, or if for any other reason final approval of the Settlement does not occur, is successfully objected to, or challenged on appeal, any certification of any Class will be vacated and the Parties will be returned to their positions with respect to the Underlying

Action as if the Agreement had not been entered into. In the event that final approval of the Settlement is not achieved or the Settlement is not Final: (i) any Court orders preliminarily or finally approving the certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (ii) the fact of the settlement reflected in this Agreement, that Defendant did not oppose the certification of a Class under this Agreement, or that the Court preliminarily approved the certification of a Class, shall not be used or cited thereafter by any person or entity, including in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class.

38. Subject to Court approval, the following Settlement Class shall be certified for settlement purposes: “All individuals who used a hand scan or finger scan for timekeeping purposes at Defendant’s facility within the state of Illinois between February 28, 2014 and the date of the Preliminary Approval Order, and did not provide written consent in advance.”

39. Excluded from the Settlement Class are all persons who elect to exclude themselves from the Settlement Class and the legal representatives, heirs, successors or assigns of any such excluded persons, and the Court and staff to whom this case is assigned, and any member of the Court’s or staff’s immediate family.

40. If, for any reason, the Settlement is not granted preliminary and/or final approval, Defendant’s agreement to certification of the Settlement Class shall not be used for any purpose, including in any request for class certification in the Underlying Action or any other proceeding.

#### **IV. SETTLEMENT OF UNDERLYING ACTION AND ALL CLAIMS AGAINST RELEASEES**

41. Final approval of this Settlement Agreement will settle and resolve with finality, on behalf of Plaintiff and the Settlement Class, the Underlying Action, any Related Actions, and the Released Claims and any other claims that have been brought, could have been brought, or could be brought now or at any time in the future against the Releasees by the Releasers in the Underlying Action, Related Actions, or any other proceeding arising out of, in any manner related to, or connected in any way with the Released Claims.

#### **V. SETTLEMENT AMOUNT AND ALLOCATION**

##### **42. Establishment of Settlement Fund**

a. Within thirty (30) days of the entry of the Preliminary Approval Order, Defendant shall pay the total sum of the Settlement Fund to the Settlement Administrator. Provided that this Agreement is finally approved by the Court without material change, material amendment, or material modification, the Settlement Fund will be used to satisfy all payments contemplated by this Agreement in exchange for a release and the covenants set forth in this Agreement, including, without limitation, a full, fair and complete release

of all Releasees from Released Claims, and dismissal of the Underlying Action with prejudice.

b. The funds provided by Defendant to the Settlement Administrator will be maintained by an escrow agent as a Court-approved Qualified Settlement Fund pursuant to Section 1.468B-1 et seq. of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended, and shall be deposited in an interest-bearing account.

c. If a Final Approval Order is not entered by the Court finally approving the Settlement, or if this Settlement does not become Final, the Settlement Fund and interest earned thereon belongs to Defendant, less any Administrative Expenses paid to date. Plaintiff shall have no financial responsibility for any Administrative Expenses paid out of the Settlement Fund in the event that the Settlement Agreement is not finally approved.

d. The Settlement Fund shall be used to pay (i) Approved Claims to the Settlement Class Members; (ii) Incentive Award to the Class Representative; (iii) the Fee Award; and (iv) costs of administration of the Agreement to the Settlement Administrator, including without limitation payment of Administrative Expenses. Any remaining funds will be paid as provided for in paragraph 44(c) below.

e. Administrative Expenses, and any award of attorneys' fees or any other fees, costs, or benefits otherwise awarded in connection with the Settlement Agreement, shall be payable solely out of the Settlement Fund.

f. The Settlement Fund represents the total extent of the Releasees' monetary obligations under the Settlement Agreement. Defendant's contribution to the Settlement Fund shall be fixed under this Section and be final. Releasees shall have no obligation to make further payments into the Settlement Fund and shall have no financial responsibility or obligation relating to the settlement beyond the Settlement Fund.

43. **Procedure for Approving Settlement.**

a. **Unopposed Motion for Preliminary Approval of the Settlement by the Court.**

i. Plaintiff will file an unopposed motion for an order conditionally certifying the Class for settlement purposes, giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the "Unopposed Motion for Preliminary Approval").

ii. At the hearing on the Unopposed Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the Unopposed Motion for Preliminary Approval, and submit a proposed order granting conditional certification of the Class and preliminary approval of the Settlement; appointing the Class

Representative and Class Counsel; approving the forms of notice to the Class of the Settlement; and setting the Final Approval Hearing.

iii. For the purposes of the Settlement and the proceedings contemplated herein only, the Parties stipulate and agree that the Class shall be conditionally certified in accordance with the definition contained above, that Plaintiff shall be conditionally appointed class representatives for the Class, and that Plaintiff's Counsel shall be conditionally appointed as counsel for the Class. Should the Court decline to preliminarily approve any aspect of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it, and the Parties will revert to their prior positions in the Action as if the Settlement had not occurred.

44. **Direct Checks Without a Claims Process.**

a. Settlement Class Members do not need to submit a claim form or any information to participate in the Settlement or to otherwise receive payments from the Settlement Fund.

b. The Settlement Administrator shall notify the Parties that Settlement Class Members have been paid within five (5) business days of the last such payment.

c. In the event that checks sent to Settlement Class Members are not cashed within 90 days from the date of issuance, whether because the checks were not received or otherwise, those checks will become null and void, and 50% of such funds shall be distributed *cy pres* to Prairie State Legal Services, and the other 50% shall be distributed to Defendant, subject to approval of the Court. Within fourteen (14) days of the date checks issued to Settlement Class Members become null and void under this Section, the Settlement Administrator shall provide to Defendant an accounting of the checks cashed by Settlement Class Members and tender a check to both Defendant and the *cy pres* recipient in the amount owed, if any, under this Section. For any Class Member who timely opts out of the settlement and does not receive a payment, the funds allocated to each Class Member opting out will revert to the Defendant. The Court may revise the *cy pres* provision as necessary without terminating or otherwise impacting this Settlement Agreement, provided the Court's revision does not increase the amount that Defendant would otherwise pay under this Settlement Agreement.

**VI. PROSPECTIVE RELIEF**

45. Without admitting any liability or that it is required by law to do so, Defendant agrees to undertake the following practices, if any (as it has already discontinued use of the Time-Keeping System): Defendant agrees that, on or before the Effective Date, it shall implement procedures, if any, to comply with the BIPA should it continue to utilize the Time-Keeping System in Illinois or unless/until the BIPA is found by a court or the legislature to no longer be in effect or to be otherwise unenforceable. Alternatively, Defendant agrees that, on or before the Effective Date, it shall discontinue the use of the Time-Keeping System in the State of Illinois and implement procedures for the destruction of the biometric data previously collected in compliance with the BIPA.



## **VII. RELEASE**

46. In addition to the effect of any final judgment entered in accordance with this Agreement, upon final approval of this Agreement, and for other valuable consideration as described herein, Releasees shall be completely released, acquitted, and forever discharged from any and all Released Claims.

47. As of the Effective Date, and with the approval of the Court, all Releasers hereby fully, finally, and forever release, waive, discharge, surrender, forego, give up, abandon, and cancel any and all Released Claims against Releasees. As of the Effective Date, all Releasers will be forever barred and enjoined from prosecuting any action against the Releasees asserting any and/or all Released Claims. The Releasers acknowledge that they may discover facts in addition to the subject matter of this Agreement, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any unknown facts, legal theories, or claims they may have.

48. Each Releaser 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.

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

49. This Settlement shall be subject to approval of the Court. The Parties shall have the right to withdraw from the Settlement if the Court does not approve the Settlement.

50. Plaintiff, through Class Counsel, shall submit this Agreement, together with its Exhibits, to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement, certification of the Settlement Class, appointment of Class Counsel and the Class Representative, and entry of the Preliminary Approval Order, substantially in the form of Exhibit B, which order shall seek a Final Approval Hearing date and approve the Notices for dissemination in accordance with the Notice plan.

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

52. At least seven (7) days prior to the Final Approval Hearing, or by some other date if so directed by the Court, Plaintiff will move for: (i) final approval of the Settlement; (ii) final appointment of the Class Representative and Class Counsel; and (iii) final certification of the Settlement Class, including for the entry of a Final Order and Judgment identical in all material respects to the proposed Final Order and Judgment attached hereto as Exhibit C, and file a memorandum in support of the motion for final approval.

## **IX. NOTICE TO PROPOSED SETTLEMENT CLASS MEMBERS**

### **53. Class List**

a. Defendant, with the assistance of the Settlement Administrator as appropriate, shall create a Class List, based on readily available information already within their possession (“Class List”).

b. Within fourteen (14) days after entry of the Preliminary Approval Order, Defendant will provide an Excel spreadsheet to Plaintiff’s counsel and the third-party settlement administrator with Class Members’ last known contact information, including names, addresses, and dates of employment, and the last four digits of their social security numbers (if necessary to track down a class member) and phone numbers (if available), and email addresses (if available). Defendant shall provide a declaration from an individual describing the process by which the Class List is created. The Parties will discuss and work in good faith to mutually agree to the representations that need to be in the declaration. Defendant agrees to verify data upon request of Class Counsel and add Class Members on a pro rata basis to the Settlement Class if any individual has been erroneously omitted from the Class List.

### **54. Type of Notice Required**

a. The Notice, which shall be substantially in the form of Exhibit A hereto, shall be used for the purpose of prior to the Final Approval Hearing, informing proposed Settlement Class Members that there is a pending settlement and advise them regarding how to: (a) protect their rights regarding the settlement; (b) request exclusion from the Settlement Class and the proposed settlement, if desired; (c) object to any aspect of the proposed settlement, if desired; and (d) participate in the Final Approving Hearing, if desired. The Notice shall make clear the binding effect of the settlement on all persons who do not timely request exclusion from the Settlement Class.

b. Dissemination of the Notice shall be the responsibility of the Settlement Administrator. The text of the Notice shall be agreed upon by the Parties and shall be substantially in the forms attached as Exhibit A hereto.

c. Individual Notice (substantially in the form of Exhibit A shall) be sent via U.S. Mail to the current address Defendant has on file for Settlement Class Members who are current employees, and the last known address for Settlement Class Members who are former employees. If Notice is returned with a forwarding address, it shall be re-mailed. If Notice is returned without a forwarding address, the Settlement Administrator will cross-reference the names and addresses with the USPS’s National Change of Address Database and re-send notice per the address (if any) in the USPS database. Notice will also be sent via email where email addresses are available for Settlement Class Members.

### **55. Notice Deadline**

a. Within 21 days of entry of the Preliminary Approval Order, the Settlement Administrator shall disseminate by U.S. Mail the Notice, and email where available, in the form of Exhibit A to Settlement Class Members identified on the Class List and Class Counsel shall post a Notice of the settlement (substantially in the form of Exhibit A) on their firm website at [www.fishlawfirm.com/jolietcoldstorage](http://www.fishlawfirm.com/jolietcoldstorage).

## **X. EXCLUSIONS**

### **56. Exclusion Period**

a. Settlement Class Members will have up to and including sixty (60) days following the Preliminary Approval Order to exclude themselves from the Settlement in accordance with this Section. If the Settlement is finally approved by the Court, all Settlement Class Members who have not opted out by the end of the Objection/Exclusion Deadline will be bound by the Settlement and will be deemed a Releasor as defined herein, and the relief provided by the Settlement will be their sole and exclusive remedy for the claims alleged by the Settlement Class.

### **57. Exclusion Process**

a. A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice.

b. In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing the Settlement Class Member's name, address, and telephone number; the name and number of this case; a statement that the Settlement Class Member wishes to be excluded from the Settlement Class; and a signature. A request to be excluded that is sent to an address other than that designated in the Class Notice, or that is not postmarked within the time specified shall be invalid and the person serving such a request shall be considered a member of the Settlement Class and shall be bound by the Agreement, if approved.

c. Any member of the Settlement Class who elects to be excluded shall not: (i) be bound by any order or the Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement. A member of the Settlement Class who requests to be excluded from the Settlement Class cannot also object to the Settlement.

d. The request for exclusion must be personally signed by the person requesting exclusion. So-called "mass" or "class" exclusion requests shall not be allowed.

e. Within three (3) business days after the Objection/Exclusion Deadline, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel a written

list reflecting all timely and valid exclusions from the Settlement Class with copies of each such request for exclusion.

f. A list reflecting all individuals who timely and validly excluded themselves from the Settlement shall also be filed with the Court at the time of the motion for final approval of the settlement.

## **XI. OBJECTIONS**

58. The Notices shall advise Settlement Class Members of their rights, including the right to be excluded from or object to the Settlement Agreement and its terms. The Notices shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing, only if, on or before the Objection/Exclusion Deadline approved by the Court, the person making an objection shall file notice of their intention to do so and at the same time: (i) file copies of such papers they propose to submit at the Final Approval Hearing with the Clerk of the Court; and (ii) send copies of such papers via United States mail, hand delivery, or overnight delivery to both Class Counsel and Defendant's Counsel. A copy of the objection must also be mailed to the Settlement Administrator at the address that the Settlement Administrator will establish to receive requests for exclusion or objections, and any other communication relating to this Settlement.

59. Any Settlement Class Member who intends to object to this Settlement must include in any such objection: (i) their full name, address, and current telephone number; (ii) the case name and number of this Underlying Action; (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) if applicable, the identification of any other objections they have filed, or has had filed on their behalf, in any other class action cases in the last four years; and (vi) the objector's signature. If represented by counsel, the objecting Settlement Class Member must also provide the name and telephone number of their counsel. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, they must state as such in the written objection, and must also identify any witnesses they may call to testify at the Final Approval Hearing and all exhibits they intend to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection.

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

61. The Parties will request that the Court, within its discretion, exercise its right to deem any objection as frivolous and award appropriate costs and fees to the Parties opposing such objection(s).

## **XII. FINAL APPROVAL HEARING**

62. The Parties will jointly request that the Court hold a Final Approval Hearing. At the Final Approval Hearing, the Parties will request that the Court consider whether the Settlement Class should be certified as a class pursuant to 735 ILCS § 5/2-801 for settlement and, if so; (i) consider any properly-filed objections; (ii) determine whether the Settlement is fair, reasonable and adequate, was entered into in good faith and without collusion, and should be approved, and shall provide findings in connections therewith; and (iii) enter the Final Approval Order, including final approval of the Settlement Class and the Settlement Agreement, and a Fee Award.

## **XIII. FINAL APPROVAL ORDER**

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

64. The Parties shall jointly submit to the Court a proposed order, substantially in the form attached hereto as Exhibit C, that, without limitation:

- a. Finally approves this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of 735 ILCS 5/2-801 and directing its consummation according to its terms;
- b. Dismisses, with prejudice, all claims of the Settlement Class against Defendant in the Underlying Action, without costs and fees except as explicitly provided for in this Agreement; and
- c. Reserves continuing and exclusive jurisdiction over the settlement and this Agreement, including but not limited to the Underlying Action, the Settlement Class, the Settlement Class Members, Defendant, and the settlement for the purposes of administering, consummating, supervising, construing and enforcing the Settlement Agreement and the Settlement Fund.

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

## **XIV. TERMINATION OF THE SETTLEMENT**

66. The Settlement is conditioned upon preliminary and final approval of the Parties' written Settlement Agreement, and all terms and conditions thereof without

material change, material amendments, or material modifications by the Court (except to the extent such changes, amendments or modifications are agreed to in writing between the Parties). All Exhibits attached hereto are incorporated into this Settlement Agreement. Accordingly, this Settlement Agreement shall be terminated and canceled within ten (10) days of any of the following events:

- a. This Settlement Agreement is changed in any material respect to which the Parties have not agreed in writing;
- b. The Court refuses to grant Preliminary Approval of this Agreement;
- c. The Court refuses to grant final approval of this Agreement in any material respect;
- d. The Court refuses to enter a final judgment in this Underlying Action in any material respect;

67. In the event the Settlement Agreement is not approved or does not become Final, or the Settlement is terminated consistent with this Settlement Agreement, the Parties, pleadings, and proceedings will return to the status quo ante as if no settlement had been negotiated or entered into, the Settlement Fund and interest earned thereon will belong to Defendant less any Administrative Expenses paid to date; and the Parties will negotiate in good faith to establish a new schedule for the Underlying Action.

68. If more than 7.5% of the individuals on the Class List properly and timely opt-out of the Settlement, then Defendant may, but is not obligated to, void the Settlement Agreement. If the Defendant revokes the Settlement Agreement, the Parties will engage in a good faith effort to reach a modified settlement. If the Parties are unable to reach an agreement, the Underlying Action will proceed as if there was no attempt at settlement and the Parties will return to their positions prior to the filing of the Motion for Preliminary Approval of the Settlement Agreement, including but not limited to, the return to Defendant of the Settlement Fund and interest earned thereon less Administrative Expenses paid to date.

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

69. Defendant agrees not to oppose attorneys' fees by Class Counsel in an amount not more than thirty-five percent (35%) of the Settlement Fund to the extent consistent with applicable law and an award of their reasonable costs and expenses. Class Counsel, in turn, agrees not to seek or accept attorneys' fees in excess of this amount from the Court.

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

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

71. Class Counsel shall provide the Settlement Administrator with its completed IRS Form W-9 at least seven (7) business days prior to the payment of the Fee Award is due. Within three (3) business days after the Effective Date, the Settlement Administrator shall pay to Class Counsel from the Settlement Fund the amount awarded by the Court in the Fee Award. Any payment of the Fee Award shall be paid via paper check or by electronic wire transfer to an account designated by Class Counsel.

72. Prior to or at the same time as Plaintiff seeks final approval of the Settlement Agreement, Class Counsel shall move the Court for an Incentive Award for the Class Representative in an amount not to exceed Five Thousand Dollars and Zero Cents (\$5,000.00), and Defendant agrees that it will not oppose such a request. The Incentive Award shall be paid solely from the Settlement Fund by check written by the Settlement Administrator within seven (7) days of the Effective Date. If the Court does not approve any Incentive Award for the Class Representative, or if the Court approve and Incentive Award in an amount less than Five Thousand Dollars and Zero Cents (\$5,000.00) for the Class Representative, the remaining amount(s) shall be distributed to the remaining Settlement Class Members as set forth in this Agreement.

73. In no event will Defendant's liability for attorneys' fees, expenses, and costs, settlement administration costs, and/or Incentive Award exceed its funding obligations set out this Agreement. Defendant shall have no financial responsibility for this Settlement Agreement outside of the Settlement Fund. Defendant shall have no further obligation for attorneys' fees or expenses to any counsel representing or working on behalf of either one or more individual Settlement Class Members or the Settlement Class. Defendant will have no responsibility, obligation or liability for allocation of fees and expenses among Class Counsel.

## **XVI. MISCELLANEOUS REPRESENTATIONS**

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

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

76. The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff and the Settlement Class, and each or any of them, on the one hand, and against and among the Releasees, and each or any of the Releasees, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Underlying Action was brought by Plaintiff or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.

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

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

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

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

81. This Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents.

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

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

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

85. Except as otherwise provided herein, each Party shall bear its own costs.



86. Plaintiff represents and warrant that he has not assigned any claim or right or interest therein as against the Releasees to any other person or party.

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

88. The Parties specifically acknowledge, agree and admit that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders or other documents shall be considered a compromise within the meaning of Illinois Rules of Evidence Rule 408, and any other equivalent or similar rule of evidence, and shall not: (i) constitute, be construed, be offered, or received into evidence as an admission of the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Underlying Action or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party; or (ii) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue.

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

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

91. The provisions of this Settlement Agreement, and any orders, pleadings or other documents entered in furtherance of this Settlement Agreement, may be offered or received in evidence solely: (i) to enforce the terms and provisions hereof or thereof; (ii) as may be specifically authorized by a court of competent jurisdiction after an adversary hearing upon application of a Party hereto; (iii) in order to establish payment, or an affirmative defense of preclusion or bar in a subsequent case; (iv) in connection with any motion to enjoin, stay or dismiss any other action; or (v) to obtain Court approval of the Settlement Agreement.

92. This Agreement may be executed in one or more counterparts exchanged by mail or as an electronic mail attachment. All executed counterparts and each of them

shall be deemed to be one and the same instrument, provided that counsel for the Parties to this Agreement all exchange signed counterparts.

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

94. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and the Parties hereby submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

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

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

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

<p>If to Class Counsel:</p> <p>David Fish Fish Potter Bolaños, P.C. 200 East Fifth Avenue, Suite 123 Naperville, Illinois 60563 admin@fishlawfirm.com</p>	<p>If to Defendant's Counsel:</p> <p>Laura B. Bacon Nixon Peabody LLP 70 W. Madison Street, Suite 5200, Chicago, IL 60602 lbbacon@nixonpeabody.com</p>
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98. This Agreement shall be deemed executed as of the date that the last party signatory signs the Agreement.

IN WITNESS HEREOF, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below.

For William Starks, individually and as the Class Representative,

By:   
\_\_\_\_\_  
David Fish  
dfish@fishlawfirm.com  
Mara Baltabols  
mara@fishlawfirm.com  
Fish Potter Bolaños, P.C.

200 E 5th Ave, Suite 123  
Naperville, IL 60563  
(312) 861-1800

For Defendant Joliet Cold Storage, LLC

By: 

Laura B. Bacon  
lbbacon@nixonpeabody.com  
Nixon Peabody LLP  
70 W. Madison Street, Suite 5200,  
Chicago, IL 60602