

## **SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement (“Agreement” or “Settlement Agreement”) is entered into by and between Marigold, Inc. (“Defendant”), and Tyrone L. Helm (“Plaintiff”) individually and on behalf of the Settlement Class, in the case of *Tyrone L. Helm v. Marigold, Inc.*, Case No. 2020-CH-003971, currently pending in the Circuit Court of Cook County Illinois, Chancery Division. Plaintiff and Defendant is each referred to as a “Party” and are collectively referred to herein as the “Parties.”

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

1. On April 24, 2020, Plaintiff Tyrone L. Helm filed a class action lawsuit against Defendant alleging violations of the Illinois Biometric Information Privacy Act, 740 ILCS § 14/1, *et seq.* (“BIPA”) in the Circuit Court of Cook County Illinois.

2. Following the filing, the Parties exchanged preliminary information, including an estimate of the number of potential members of the Settlement Class and general information about the time-keeping system at issue, and the parties informally engaged in arms-length settlement negotiations.

3. Following arms-length negotiations, the Parties now seek to enter into this Settlement Agreement. Plaintiff and Class Counsel have conducted an investigation into the facts and the law regarding the Litigation and 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 (1) the existence of complex and contested issues of law and fact, (2) the risks inherent in litigation; (3) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement, (4) the magnitude of 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, and (5) the Plaintiff’s determination that the settlement is fair, reasonable, adequate, and will substantially benefit the Settlement Class Members.

4. The Parties have agreed to settle the Litigation on the terms and conditions set forth herein in recognition that the outcome of the Litigation is uncertain and that achieving a final result through litigation would require substantial additional risk, discovery, time, and expense.

5. 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 Litigation or may in the future assert. Despite Defendant’s belief that they are not liable for, and have good defenses to, the claims alleged in the Litigation, Defendant desires to settle the Litigation, 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 and finally put to rest in 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.

6. [Intentionally left blank].

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

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 Litigation be settled and compromised, and that the Releasers 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 another attorney from the Fish Law Firm, 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 Cook County, Illinois and the Honorable Judge David B. Atkins and his legal representatives, heirs, successors, and assigns, if any.

14. “Defendant” shall mean Marigold, Inc.

15. “Defendant’s Counsel” shall mean Kenneth Vanko or another attorney from the law firm of Clingen Callow & McLean, LLC

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 an Incentive Award to the Class Representative(s).

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. “Litigation” or “Action” shall mean the lawsuit pending in the Circuit Court of Cook County, Illinois, Case No. 2020-CH-003971.

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 Defendant and Plaintiff, collectively.

27. “Plaintiff” or “Class Representative” shall mean the named class representative, Tyrone L Helm, 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 Litigation, 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 limited to claims brought under 740 ILCS §14/10, et seq. (“BIPA”). “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 Marigold, Inc. and its respective past and present parents, predecessors, successors, affiliates, holding companies, brands, subsidiaries, insurers, attorneys, officers, directors, employees, directors, board members, contractors, joint venturers, and partners.

32. “Releasors” 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.

33. Marigold shall mean Marigold, Inc and each of its respective past and present parents, predecessors, successors, affiliates, holding companies, investors, subsidiaries, partners, brands, insurers, attorneys, employees, agents, assigns, shareholders, board members, venturers, directors, officers, and contractors.

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

35. "Settlement Fund" means a cash settlement fund from which the Settlement Administrator will establish from funds by Defendant in the amount of Seventy-Three Thousand Five Hundred and Four Dollars (\$73,504.00) or a gross amount of \$1,065.28 per person. If the Settlement Class is less than 69 individuals, the Settlement Fund shall be decreased pro rata by \$1,000.00. If the Settlement Class is greater than 69 individuals, the Settlement Fund shall be increased pro rata by \$1,000.00. The Settlement Administrator will distribute from the Settlement Fund all payments contemplated by this Agreement, including: (a) an Incentive Award to Plaintiff; (b) a Fee Award; (c) the costs of administration of the Agreement to the Settlement Administrator, including without limitation payment of Administrative Expenses; (d) an equal share of the remaining Settlement Fund to each Settlement Class Member; and (e) if applicable, any amounts to *cy pres*, Farmworker and Landscaper Advocacy Project.

36. "Time-Keeping System" shall mean the time-keeping technology used by Defendant at any time from April 24, 2015 through the date of entry of the Preliminary Approval Order, which utilized a scan of a portion of Plaintiff's and the other Settlement Class Members' fingers or biometric information to record their time.

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

37. 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.

38. 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 Action as if the Agreement had not been entered into. In the event that Final Approval of the Settlement is not achieved: (a) 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 (b) 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.

39. Subject to Court approval, the following Settlement Class shall be certified for settlement purposes: “All individuals who had their fingerprints collected through Marigold’s Time-Keeping System between April 24, 2015 and the entry of the Preliminary Approval Order.”

40. Excluded from the Settlement Class are all person 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.

41. 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 Litigation or any other proceeding.

#### **IV. SETTLEMENT OF LITIGATION AND ALL CLAIMS AGAINST RELEASEES**

42. Final approval of this Settlement Agreement will settle and resolve with finality, on behalf of Plaintiff and the Settlement Class, the Litigation, 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 Releasors in the Litigation, 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**

##### **43. Establishment of Settlement Fund**

a. Within twenty-one (21) days of the entry of the Preliminary Approval Order, Defendant shall pay to the Settlement Administrator the total sum of Seventy-Three Thousand Five Hundred and Four Dollars (\$73,504.00) based upon an estimated Settlement Class size of 69 individuals. If the Settlement Class is less than 69 individuals, the Settlement Fund shall be decreased pro rata by \$1,000.00. If the Settlement Class is greater than 69 individuals, the Settlement Fund shall be increased pro rata by \$1,000.00. 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 Litigation 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 the Settlement Agreement is not finally approved, the Settlement Fund 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) an 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 to Defendant.

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.

44. [Intentionally left blank].

**45. 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, giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice, and Claim Form (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 Claim Form and 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 representative 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.

**46. 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 120 days from the date of issuance, whether because the checks were not received or otherwise, those checks will become null and void. The amount of the uncashed checks after the expiration date, less any funds necessary for settlement administration, will be distributed to the Farmworker and Landscaper Advocacy Project.

## **VI. PROSPECTIVE RELIEF**

47. Without admitting any liability or that it is required by law to do so, Defendant acknowledges that promptly after receiving the Complaint in this Action, it implemented procedures to comply with BIPA's notice, informed consent, records retention, and other statutory requirements. Defendant acknowledges and agrees that it will keep its policies and procedures in effect should it continue to utilize the Time-Keeping System in Illinois or unless/until BIPA is found by a court or the legislature to no longer be in effect or to be otherwise unenforceable.

## **VII. RELEASE**

48. 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.

49. As of the Effective Date, and with the approval of the Court, all Releasors 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 Releasors will be forever barred and enjoined from prosecuting any action against the Releasees asserting any and/or all Released Claims.

50. 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.

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

51. 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.

52. 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 and Claim Form for dissemination in accordance with the Notice Plan.

53. 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 eighty (80) days after entry of the Preliminary Approval Order and approve the settlement of the Litigation as set forth herein.

54. 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**

55. 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. The Class List shall include the names, social security number (where known), and the last known mailing addresses, email (if known) and telephone numbers of the 69 Settlement Class Members. Defendant shall provide to the Settlement Administrator and Class Counsel the Class List within seven days after entry of the Preliminary Approval Order.

56. 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 Marigold 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. In addition, if available, the Settlement Administrator shall send notice via email and text message.

57. Notice Deadline

- a. Within 21 days of entry of the Preliminary Approval Order, the Settlement Administrator shall disseminate by U.S. Mail the Notice 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 his/its firm website at [www.fishlawfirm.com/\\_\\_\\_\\_\\_](http://www.fishlawfirm.com/).

**X. EXCLUSIONS**

58. 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.

59. 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 his/her name, address, and telephone number; the name and number of this case, a statement that he/she 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 member of the Settlement Class and shall be bound as Settlement Class Members 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 also cannot 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**

60. 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 his/her intention to do so and at the same

time: (i) file copies of such papers he/she proposes 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, Claim Forms, and any other communication relating to this Settlement.

61. Any Settlement Class Member who intends to object to this Settlement must include in any such objection: (i) his/her full name, address, and current telephone number; (ii) the case name and number of this Litigation; (iii) the date range during which he/she was 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 he/she has filed, or has had filed on his/her 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 his/her counsel. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he/she must state as such in the written objection, and must also identify any witnesses he/she may call to testify at the Final Approval Hearing and all exhibits he/she intends to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection.

62. 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.

63. 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**

642. 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**

65. 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 with prejudice and waiving any rights of appeal.

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

- a. Approves finally 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 Litigation, 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 Litigation, 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.

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

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

68. 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; or

- d. The Court refuses to enter a final judgment in this Litigation in any material respect.

69. In the event the Settlement Agreement is not approved or does not become final, or 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, and the Parties will negotiate in good faith to establish a new schedule for the Litigation.

**XV. ATTORNEYS' FEES, COSTS AND EXPENSES, AND INCENTIVE AWARDS**

70. At least seven 7 days prior to the Objection/Exclusion Deadline, Class Counsel will move the Court for an award of attorneys' fees not to exceed 35% of the Settlement Fund as well as, costs and expenses.

71. Defendant agrees not to oppose an application for attorneys' fees by Class Counsel in an amount not more than 35% of the Settlement Fund and an award of his/its reasonable costs and expenses. Class Counsel, in turn, agrees not to seek or accept attorneys' fees in excess of this amount from the Court.

72. 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.

73. 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.

74. 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 Two Thousand Dollars (\$2,500.00), 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 approves an Incentive Award in an amount less than \$2,500, the remaining amount(s) shall be distributed to the reaming Settlement Class Members.

75. In no event will Defendant's liability for attorneys' fees, expenses, and costs, settlement administration costs, and/or an 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**

76. 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.

77. 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.

78. 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, against 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 Litigation was brought by Plaintiff or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.

79. 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 Releasors.

80. 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.



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

82. 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.

83. 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.

84. 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.

85. 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.

86. 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.

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

88. Plaintiff represents and warrants that she has not assigned any claim or right or interest therein as against the Releasees to any other person or party.

89. 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.

90. 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 (1) 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 Litigation 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 (2) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue.

91. 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.

92. 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.

93. 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 (1) to enforce the terms and provisions hereof or thereof, (2) as may be specifically authorized by a court of competent jurisdiction after an adversary hearing upon application of a Party hereto, (3) in order to establish payment, or an affirmative defense of preclusion or bar in a subsequent case, (4) in connection with any motion to enjoin, stay or dismiss any other action, or (5) to obtain Court approval of the Settlement Agreement.

94. This Agreement may be executed in one or more counterparts exchanged by hand, messenger, facsimile, or PDF 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.

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

96. 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.

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

98. 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.

99. 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 Law Firm P.C. 200 East Fifth Avenue, Suite 123 Naperville, Illinois 60563 dfish@fishlawfirm.com</p>	<p>If to Defendant's Counsel:</p> <p>Ken Vanko Clingen Callow &amp; McLean, LLC 2300 Cabot Drive, Suite 500 Lisle, Illinois 60532 vanko@ccmlawyer.com</p>
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100. 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 Tyrone L. Helm, individually and as the Class Representative

By: \_\_\_\_\_  
David Fish  
Fish Law Firm P.C.  
200 E 5th Ave, Suite 123  
Naperville, IL 60563  
(630) 355-7590  
dfish@fishlawfirm.com

For Marigold, Inc.

By: \_\_\_\_\_  
Ken Vanko  
Clingen Callow & McLean, LLC  
2300 Cabot Drive, Suite 500  
Lisle, Illinois 60532  
vanko@ccmlawyer.com





# EXHIBIT A

## **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

**PLEASE READ THIS NOTICE CAREFULLY. YOU MAY BE ENTITLED TO A CASH PAYMENT FROM A CLASS ACTION SETTLEMENT IF YOU WERE REQUIRED TO PROVIDE YOUR FINGERPRINT OR OTHER BIOMETRIC INFORMATION FOR EMPLOYEE TIMEKEEPING PURPOSES TO MARIGOLD, INC. AT ANY TIME BETWEEN APRIL 24, 2015 AND [INSERT DATE OF PRELIMINARY APPROVAL ORDER] \_\_\_\_\_ 2020.**

*This is a notice of a proposed class action settlement. This is not a solicitation from a lawyer and is not notice of a lawsuit against you.*

### **WHY DID I GET THIS NOTICE?**

This is a notice of a proposed settlement in a class action lawsuit, *Tyrone L. Helm v. Marigold, Inc.*, Case No. 2020-CH-003971, pending in the Cook County Circuit Court, Richard J. Daley Center, 50 West Washington, Chicago, Illinois 60602. The settlement would resolve a lawsuit brought on behalf of persons who allege that Marigold, Inc. (“Defendant”) required its employees to provide their biometric information (e.g. fingerprints, etc.) for timekeeping purposes without first providing them with legally-required written disclosures and obtaining written consent.

If you received this notice, you have been identified as someone who may have been required to submit your biometric information (e.g. fingerprints, etc.) to Defendants for timekeeping purposes between April 24, 2015 through **[insert date of Preliminary Approval Order]** \_\_\_\_\_ 2020. The Court has granted preliminary approval of the settlement and has conditionally certified the Settlement Class for purposes of settlement only. This notice explains the nature of the class action lawsuit, the terms of the settlement, and the legal rights and obligations of the Settlement Class Members. Please read the instructions and explanations below so that you can better understand your legal rights.

### **WHAT IS THIS LAWSUIT ABOUT?**

The Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*, prohibits private entities from: 1) collecting, capturing or otherwise obtaining biometric identifiers and/or information, such as fingerprints, of another person without first providing such individual with certain written disclosures and obtaining written consent; 2) possessing biometric identifiers and/or information without developing a written policy, publicly available, establishing a retention schedule and guidelines for permanently destroying the biometric identifiers and/or information; and 3) disclosing biometric identifiers and/or information without consent.

This lawsuit alleges that Defendant violated BIPA by requiring its current and/or former employees to submit their fingerprints for timekeeping purposes without first providing the requisite disclosures or obtaining the requisite consent. Defendant contests these claims and denies that it violated BIPA.

### **WHY IS THIS A CLASS ACTION?**

A class action is a lawsuit in which an individual called a “Class Representative” brings a single lawsuit on behalf of other people who have similar claims. All of these people together are a “Class” or “Class Members.” Once a Class is certified, a class action settlement finally approved by the Court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement Class.

### **WHY IS THERE A SETTLEMENT?**

To resolve this matter without the expense, delay, and uncertainties of litigation, the Parties have reached a settlement, which resolves all claims against Defendant and its affiliated entities. The settlement requires Defendant to pay money to the Settlement Class, as well as pay settlement administration expenses, attorneys’ fees and costs to Class Counsel, and an incentive award to the Class Representative, if approved by the Court. The Settlement is not an admission of wrongdoing by Defendants and does not imply that there has been, or would be, any finding that Defendant violated the law.

The Court has already preliminarily approved the settlement. Nevertheless, because the settlement of a class action determines the rights of all members of the class, the Court overseeing this lawsuit must give formal approval of the settlement before it can become effective. The Court has conditionally certified the Settlement Class for settlement purposes only, so that members of the Settlement Class can be given this notice and the opportunity to exclude themselves from the Settlement Class, and to voice their support of or opposition to final approval of the settlement. If the Court does not give final approval to the settlement, or if the settlement is terminated by the Parties, the settlement will be void, and the lawsuit will proceed as if there had been no settlement and no certification of the Settlement Class.

### **WHO IS IN THE SETTLEMENT CLASS?**

You are a member of the Settlement Class if, at any time between April 24, 2015 and [insert date of Preliminary Approval Order] \_\_\_\_\_ 2020, you were required to provide your biometric information (e.g. fingerprint, etc.) for timekeeping purposes to Marigold, Inc. If you provided your biometric information (e.g. fingerprints, etc.) for timekeeping purposes at any time during this time period, then you are an eligible Settlement Class Member.

### **WHAT ARE MY OPTIONS?**

#### **(1) Accept the Settlement.**

To receive your pro rata share of the settlement payment and be bound by the Settlement Agreement, including the release of claims against Defendant and the Releasees (as that term is defined in the Settlement Agreement), you do not need to do anything.

#### **(2) Exclude yourself.**



You may exclude yourself from the settlement. If you do so, you will not receive any cash payment, but you will not release any claims you may have against Defendant and the Releasees (as that term is defined in the Settlement Agreement). To exclude yourself from the settlement, you must mail a signed letter to the Settlement Administrator at \_\_\_\_\_, postmarked by **[insert date approximately 60 days after date of Preliminary Approval Order]** \_\_\_\_\_ 2020. The exclusion letter must: 1) contain a statement that you exclude yourself from this Settlement; 2) refer to the case name and case number of this litigation, 3) contain your full name, address, telephone number; and 3) contain your signature.

**(3) Object to the Settlement.**

If you wish to object to the settlement, you must submit your objection in writing to the Clerk of the Cook County Circuit Court, Richard J. Daley Center, 50 West Washington, Chicago, Illinois 60602. The objection must be received by the Court no later than **[insert date approximately 60 days after the date of the Preliminary Approval Order]** \_\_\_\_\_, 2020. You must also send a copy of your objection to the attorneys for all Parties to the lawsuit, including Class Counsel (David Fish, Fish Law Firm, P.C., 200 E 5th Ave Ste. 123, Naperville, IL 60563), as well as the attorneys representing Defendant Marigold, Inc, Ken Vanko, Clingen Callow & McLean, LLC 2300 Cabot Drive, Suite 500, Lisle, Illinois 60532 vanko@ccmlawyer.com, postmarked no later than XX, XX, 2020. Any objection to the proposed settlement must include your (i) full name, address, and telephone number; (ii) the case name and number of this Litigation; (iii) the date range during which you 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 you have filed, or have had filed on your behalf, in any other class action cases in the last four years; and (vi) your signature. If you hire an attorney in connection with making an objection, that attorney must also file with the Court a notice of appearance by the objection deadline of **[insert date approximately 60 days after the date of the Preliminary Approval Order]** \_\_\_\_\_, 2020. If you do hire your own attorney, you will be solely responsible for payment of any fees and expenses the attorney incurs on your behalf. If you exclude yourself from the settlement, you cannot file an objection.

You may appear at the Final Approval Hearing, which to be held on \_\_\_\_\_ 2020 at \_\_\_\_\_ a.m./p.m. in Courtroom 2102 of the Cook County Circuit Court, Richard J. Daley Center, 50 West Washington, Chicago, Illinois 60602, in person or through counsel, to show cause of 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, the request for attorneys' fees and expenses, 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 hearing on their own behalf or through counsel and to identify the names of any witnesses they intend to call to testify at the Final Approval Hearing, as well as any exhibits they intend to introduce at the Final Approval Hearing.

## **WHAT DOES THE SETTLEMENT PROVIDE?**

Cash Payments. Defendant has agreed to create a \$73,504.00 Settlement Fund for the Class Members. The attorneys who brought this lawsuit (listed below) will ask the Court to award them attorneys' fees of 35% plus costs and expenses for the time, expense and effort expended in investigating the facts, litigating the case and negotiating the settlement. The Class Representative also will apply to the Court for a payment of up to \$2,500 for his time, effort, and service in this matter. The amounts paid to the attorneys who brought this lawsuit, the Class Representative, and to the Settlement Administrator for expenses associated with this settlement process will be taken from the Settlement Fund. Class Members who do not exclude themselves from the settlement will receive an equal share of the Settlement Fund remaining after all of the aforementioned expenses are paid. The exact amount each Class Member will receive is unknown at this time as it depends on several factors, including the number of Class Members who cash their checks and the costs of the other items to be paid from the Settlement Fund. The Settlement Administrator will issue a check to each Class Member who does not otherwise exclude him or herself following the final approval of the settlement. All checks issued to Settlement Class Members will expire and become void 120 days after they are issued. Uncashed checks will either be reissued to Settlement Class Members who cashed their first check and/or donated to the Farmworker and Landscaper Advocacy Project. It is believed that each Class Member will receive approximately \$500.00 from the Settlement Fund, but the exact amount is not yet known and could be more or less.

## **WHAT RIGHTS AM I GIVING UP IN THIS SETTLEMENT?**

Unless you exclude yourself from this settlement, you will be considered a Settlement Class Member, which means you give up your right to file or continue a lawsuit against Defendant and its related entities, agents, and vendors (as defined in the Settlement Agreement), and relating to the use of Defendant's biometric Time-Keeping System. Giving up your legal claims is called a release. The precise terms of the release are in the Settlement Agreement, which is available at [www.fishlawfirm.com/\\_\\_\\_\\_\\_](http://www.fishlawfirm.com/). Unless you formally exclude yourself from this settlement, you will release your claims. If you have any questions, you can talk for free to the attorneys identified below who have been appointed by the Court to represent the Settlement Class, or you are welcome to talk to any other lawyer of your choosing at your own expense.

## **WHEN WILL THE COURT RULE ON THE SETTLEMENT?**

The Court has already given preliminary approval to the Settlement. A final hearing on the settlement, called a Final Approval Hearing, will be held to determine the fairness of the settlement. At the Final Approval Hearing, the Court will also consider whether to make final the certification of the Class for settlement purposes, hear any proper objections and arguments to the settlement, as well as any requests for an award of attorneys' fees, costs, and expenses and a Class Representative Incentive Award that may be sought by Class Counsel. The Court will hold the Final Approval Hearing on \_\_\_\_\_, 2020 at \_\_\_\_\_ am/pm at Courtroom 2102 of the Cook County Circuit Court, Richard J. Daley Center, 50 West Washington, Chicago, Illinois 60602.

If the settlement is given final approval, the Court will not make any determination as to the merits of the claims against Defendant or its defenses to those claims. Instead, the settlement's terms will take effect and the lawsuit will be dismissed on the merits with prejudice. Both sides have agreed to the settlement in order to achieve an early and certain resolution to the lawsuit, in a manner that provides specific and valuable benefits to the members of the Settlement Class.

If the Court does not approve the settlement, if it approves the settlement and the approval is reversed on appeal, or if the settlement does not become final for some other reason, you will not be paid at this time and Class Members will receive no benefits from the settlement. Plaintiff, Defendant, and all of the Class Members will be in the same position as they were prior to the execution of the Settlement Agreement, and the settlement will have no legal effect, no class will remain certified (conditionally or otherwise), and the Plaintiff and Defendant will continue to litigate the lawsuit. There can be no assurance that if the settlement is not approved, the Settlement Class will recover more than is provided in the settlement, or indeed, anything at all.

#### **WHEN WILL I BE PAID?**

The Parties cannot predict exactly when (or whether) the Court will give final approval to the settlement, so please be patient. However, if the Court finally approves the settlement, you will be paid as soon as possible after the court order becomes final, which should occur within approximately 60 days after the settlement has been finally approved. If there is an appeal of the settlement, payment may be delayed. All checks will expire and become void 120 after they are issued. Uncashed checks will either be reissued to Settlement Class Members who cashed their first check and/or donated to the Prairie State Legal Services.

Updated information about the case is available by calling the Settlement Administrator at \_\_\_\_\_, or contact Class Counsel at the information provided below.

#### **WHO REPRESENTS THE CLASS?**

The Court has approved the following attorney to represent the Settlement Class, whom is referred to as "Class Counsel." You will not be charged for this lawyer. Fish Law Firm, P.C., 200 E 5th Ave Ste. 123, Naperville, IL 60563, dfish@fishlawfirm.com, (630) 355-7590. If you want to be represented by your own lawyer instead, you may hire one at your own expense.

#### **WHERE CAN I GET ADDITIONAL INFORMATION?**

This Notice is only a summary of the proposed Settlement of this lawsuit. More details are in the Settlement Agreement which, along with other documents, can be obtained at [www.fishlawfirm.com/](http://www.fishlawfirm.com/)\_\_\_\_\_. If you have any questions, you can also contact the Settlement Administrator at XXXXXXXX or Class Counsel at the numbers or email addresses set forth above. In addition, all pleadings and documents filed in court may be

reviewed or copied in the Office of the Clerk. Please do not call the Judge or the Clerk of the Court about this case. They will not be able to give you advice on your options.

**EXHIBIT A**

# EXHIBIT B

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

TYRONE L. HELM, individually and on behalf  
of all others similarly situated,

*Plaintiff,*

v.

MARIGOLD, INC.,

*Defendant.*

Case No. : 2020CH03971

**[PROPOSED] 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 and Memorandum in support of the Motion, the Class Action Settlement Agreement ("Settlement Agreement") between Defendant, Marigold, Inc, (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. The terms of the Settlement Agreement are preliminarily approved as fair, reasonable, and adequate. There is good cause to find that the Settlement Agreement was

**EXHIBIT B**

negotiated at arms-length between the Parties, who were represented by experienced counsel.

3. 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.

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, the following Settlement Class consisting of:

**All individuals who had their fingerprints collected through the Defendant’s Time-Keeping System between April 24, 2015 through [insert the date of the Preliminary Approval Order] \_\_\_\_\_, 2020.**

5. For settlement purposes only, Plaintiff Tyrone Helm 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 Law Firm P.C.  
200 East Fifth Avenue, Suite 123  
Naperville, Illinois 60563

7. 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.

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

9. 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 and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

10. 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.

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



12. 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.

13. 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.

14. Any person within the Settlement Class may request exclusion from the Settlement Class by expressly stating his/her 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 **[insert 60 days from the date of the Preliminary Approval Order]** \_\_\_\_\_ 2020.

15. 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 his/her name, address, telephone number, the name and number of the case, a statement that he or she wishes 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.

16. 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.

17. The Court preliminary approves the Farmworker and Landscaper Advocacy Project as the *cy pres* recipient.

18. Class Counsel may file any motion seeking an award of attorneys' fees plus reasonable their costs and expenses, as well as an Incentive Award of two thousand five dollars (\$2,500.00) for the Class Representative, no later than **[insert date seven days prior to Final Approval Hearing]** \_\_\_\_\_, 2020.

19. 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 19 of this Order, with the Clerk of the Court, and served upon Class Counsel, Defendant's Counsel, and the Settlement Administrator no later than **[insert date approximately 60 days following the date of the Preliminary Approval Order]** \_\_\_\_\_ 2020.

20. 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) his/her full name, address, and telephone number; (ii) the case name and number of this Litigation; (iii) the date range during which he/she was 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 he/she has filed, or has had filed on his/her 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.

21. 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 his/her

intention to appear at the Final Approval Hearing on their own behalf or through counsel, such Settlement Class Member must also include in his/her written objection the identity of any witnesses he/she may call to testify, and all exhibits he/she intends to introduce into evidence at the Final Approval Hearing, which shall be attached.

22. 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.

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

24. A hearing (the “Final Approval Hearing”) shall be held before the Court on **[Insert date]** \_\_\_\_\_, 2020 at **[insert time]** \_\_\_\_\_ a.m./p.m. in Courtroom 20\_\_ (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; and

(g) to rule upon such other matters as the Court may deem appropriate.

25. 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.

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

27. All discovery and other proceedings (including the Defendant's responsive pleading deadline) 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:

**EXHIBIT B**

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Honorable Judge

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Date

# EXHIBIT C

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

TYRONE L. HELM, individually and on behalf  
of all others similarly situated,

*Plaintiff,*

v.

MARIGOLD, INC.,

*Defendant.*

Case No. : 2020CH03971

**[PROPOSED] FINAL ORDER AND JUDGMENT**

This matter coming to be heard on Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement ("the Motion"), due and adequate notice having been given to the Settlement Class, and the Court having considered the papers filed and proceedings in this matter, and being fully advised in the premises, IT IS HEREBY ORDERED, ADJUDGED, and DECREED as follows:

1. Unless otherwise noted, all capitalized terms in this Final Order and Judgment shall have the same meaning as ascribed to them in the Settlement Agreement between Defendant, Marigold, Inc, and Plaintiff, (together, "the "Parties").
2. This Court has jurisdiction over the subject matter of the Litigation and personal jurisdiction over all parties to the Litigation, including all Settlement Class Members.
3. The Court preliminarily approved the Settlement Agreement by Preliminary

**EXHIBIT C**



Approval Order dated \_\_\_\_\_, 2020, and the Court finds that adequate notice was given to all members of the Settlement Class pursuant to the terms of the Preliminary Approval Order.

4. The Court has read and considered the papers filed in support of this Motion for Final Approval, including the Settlement Agreement and exhibits thereto and supporting declarations.

5. The Court held a Final Approval Hearing on \_\_\_\_\_, 2020, at which time the Parties and all other interested persons were afforded the opportunity to be heard in support of and in opposition to the Settlement.

6. Based on the papers filed with the Court and the presentations made to the Court by the Parties and other interested persons at the Final Approval Hearing, the Court now gives final approval to the Settlement and finds that the Settlement Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class. The complex legal and factual posture of the Litigation, and the fact that the Settlement Agreement is the result of arms-length negotiations presided over by a neutral mediator, further support this finding.

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

**All individuals who had their fingerprints collected through the Defendant's Time-Keeping System between April 24, 2015 through [insert the date of the Preliminary Approval Order] \_\_\_\_\_, 2020.**

8. The persons who are listed on Exhibit 1 to this order, if any, have made timely and valid requests for exclusion and are excluded from the Settlement Class and are not bound by this Final Order and Judgment.

9. For settlement purposes only, the Court confirms the appointment of Plaintiff Tyrone Helm as Class Representative of the Settlement Class.

10. For settlement purposes only, the Court confirms the appointment of the following counsel as Class Counsel, and finds they are experienced in class litigation and have adequately represented the Settlement Class:

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

11. With respect to the Settlement Class, this Court finds, for settlement purposes only, that: (a) the Settlement Class defined above is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement Class, and those common questions predominate over any questions affecting only individual members; (c) the Class Representatives and Class Counsel have fairly and adequately protected, and will continue to fairly and adequately protect, the interests of the Settlement Class; and (d) certification of the Settlement Class is an appropriate method for the fair and efficient adjudication of this controversy.

12. The Court has determined that the Notice given to the Settlement Class Members, in accordance with the Preliminary Approval Order, fully and accurately informed Settlement Class Members of all material elements of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of 735 ILCS 5/2-803, applicable law, and the Due Process Clauses of the U.S. Constitution and Illinois Constitution.

13. The Court orders the Parties to the Settlement Agreement to perform their obligations thereunder. The terms of the Settlement Agreement shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an order of this Court.

14. The Court dismisses the Litigation with prejudice and without costs (except as otherwise provided herein and in the Settlement Agreement) as to Plaintiff and all Settlement Class Members' claims against Defendant. The Court adjudges that the Released Claims and all of the claims described in the Settlement Agreement are released against the Releasees.

15. The Court adjudges that the Plaintiff and all Settlement Class Members who have not opted out of the Settlement Class shall be deemed to have fully, finally, and forever released, relinquished, and discharged all Released Claims against the Releasees, as defined under the Settlement Agreement.

16. The Court further adjudges that, upon entry of this Order, the Settlement Agreement and the above-described release of the Released Claims will be binding on, and have *res judicata* preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all other Settlement Class Members who did not validly and timely exclude themselves from the Settlement, and their respective predecessors, successors, heirs, executors, administrators, and assigns, as set forth in the Settlement Agreement. The Releasees may file the Settlement Agreement and/or this Final Order and Judgment in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel,

release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

17. Plaintiff and Settlement Class Members who did not validly and timely request exclusion from the Settlement are permanently barred and enjoined from asserting, commencing, prosecuting, or continuing any of the Released Claims or any of the claims described in the Settlement Agreement against any of the Released Parties.

18. The Court approves payment of attorneys' fees, costs and expenses to Class Counsel in the amount of \$ \_\_\_\_\_. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement. The Court, having considered the materials submitted by Class Counsel in support of final approval of the Settlement and their request for attorneys' fees, costs and expenses and in response to any timely filed objections thereto, finds the award of attorneys' fees, costs and expenses appropriate and reasonable for the following reasons: First, the Court finds that the Settlement provides substantial benefits to the Settlement Class. Second, the Court finds the payment fair and reasonable in light of the substantial work performed by Class Counsel. Third, the Court concludes that the Settlement was negotiated at arms-length without collusion, and that the negotiation of the attorneys' fees only followed agreement on the settlement benefits for the Settlement Class Members. Finally, the Court notes that the Class Notice specifically and clearly advised the Settlement Class that Class Counsel would seek an award in the amount sought.

19. The Court approves the incentive award in the amount of \$2,500.00 for the Class Representative Tyrone Helm, and specifically finds such amount to be reasonable in light of the services performed by Plaintiff for the Settlement Class, including taking on

the risks of litigation and helping achieve the results to be made available to the Settlement Class. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement.

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

21. Any objections to the Settlement Agreement are overruled and denied in all respects. The Court finds that no reason exists for delay in entering this Final Order and Judgment. Accordingly, the Clerk is hereby directed forthwith to enter this Final Order and Judgment.

22. The Parties, without further approval from the Court, are hereby permitted to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to the Settlement Agreement) so long as they are consistent in all material respects with the Final Order and Judgment and do not limit the rights of the Settlement Class Members.

IT IS SO ORDERED.

ENTERED:

**EXHIBIT C**

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Honorable Judge

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Date