

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

KATHERINE MARTINEZ, individually and  
behalf of all others similarly situated,

Plaintiff,

v.

NANDO’S RESTAURANT GROUP, INC.,

Defendant.

Case No. 1:19-cv-07012

District Judge Sara L. Ellis

**JOINT STIPULATION AND CLASS ACTION SETTLEMENT AGREEMENT**

This Stipulation and Class Action Settlement Agreement (“Settlement Agreement”) is entered into by and among Plaintiff Katherine Martinez (“Martinez” or “Plaintiff”), for herself individually and on behalf of all members of the Settlement Class, Class Counsel, and Defendant Nando’s Restaurant Group, Inc. (“Nando’s” or “Defendant”) (Plaintiff and Nando’s are referred to individually as a “Party” and collectively referred to as the “Parties”). This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims upon and subject to the terms and conditions hereof, and is subject to the approval of the Court. Words and phrases with initial letters capitalized have the meanings given to them in this Settlement Agreement.

**RECITALS**

A. Plaintiff filed a putative class action complaint against Defendant alleging a claim for damages and an injunction under the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 et seq. (“BIPA”), related to the alleged unauthorized collection, storage, and dissemination of fingerprint data.

B. Defendant denies all allegations of violation of BIPA and denies that Plaintiff or the Settlement Class are entitled to any damages. On November 21, 2019, Defendant filed an Answer denying the substantive allegations in the Complaint and asserting numerous defenses.

C. Beginning in November 2019, the Parties began discussing the potential for class-wide settlement and exchanged information on the underlying facts of the case and size of the class.

D. On March 12, 2020, the Parties participated in a settlement conference with the Honorable Jeffrey Cole and reached a settlement.

E. Plaintiff and Class Counsel conducted a comprehensive examination of the law and facts relating to the allegations in the Complaint and Defendant's potential defenses. Plaintiff believes that the claims asserted in the Action have merit, that she would have ultimately succeeded in obtaining adversarial certification of the proposed Settlement Class, and that she would have prevailed on the merits at summary judgment or at trial. But Plaintiff and Class Counsel recognize that Defendant has raised factual and legal defenses in the Action that present a risk that Plaintiff may not prevail and/or that a Class might not be certified for trial. Plaintiff and Class Counsel have also taken into account the uncertain outcome and risks of any litigation, especially in complex actions, as well as the difficulty and delay inherent in such litigation, and the collectability of any monetary judgment. Plaintiff and Class Counsel believe that this Agreement presents an exceptional result for the Settlement Class, and one that will be provided to the Settlement Class without delay. Therefore, Plaintiff and Class Counsel believe that it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice, and barred pursuant to the terms and conditions set forth in the Settlement Agreement.

F. Defendant denies the material allegations in the Complaint, as well as all allegations of wrongdoing and liability, including that it is subject to or violated BIPA, but Defendant has similarly concluded that this Settlement Agreement is desirable to avoid the time, risk, and expense of defending protracted litigation, and to avoid the risk posed by the Settlement Class's claim for liquidated damages under BIPA. Defendant thus desires to resolve, finally and completely, the pending and potential claims of Plaintiff and the Settlement Class.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff, the Settlement Class, and Defendant that, subject to the Court's approval after a hearing as provided for in this Agreement, and in consideration of the benefits flowing to the Parties from the Settlement set forth herein, the Released Claims shall be fully and finally compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions set forth in this Settlement Agreement.

## **AGREEMENT**

### **1. DEFINITIONS**

As used herein, in addition to any definitions set forth elsewhere in this Settlement Agreement, the following terms shall have the meanings set forth below:

1.1 “**Action**” means the case captioned *Katherine Martinez v. Nando's Restaurant Group, Inc.*, Case No. 1:19-cv-07012 currently pending in the United States District Court for the Northern District of Illinois.

1.2 “**Agreement**” or “**Settlement Agreement**” means this Joint Stipulation and Class Action Settlement and Exhibits referenced herein.

1.3 “**CAFA Notice**” refers to the notice to be sent by Defendant to appropriate federal and state officials pursuant to the requirements of the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715(b), substantially in the form of Exhibit A, attached hereto.

1.4 “**Class Counsel**” means attorneys David J. Fish, John Kunze, and Mara A. Baltabols of the Fish Law Firm P.C.

1.5 “**Class Representative**” means the named Plaintiff in the Action, Katherine Martinez.

1.6 “**Class Representative Service Award**” refers to the payment of Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00), or such other amount approved by the Court, to the Class Representative.

1.7 “**Court**” means the United States District Court for the Northern District of Illinois.

1.8 “**Defendant**” or “**Nando’s**” means Nando’s Restaurant Group, Inc.

1.9 “**Defendant’s Counsel**” or “**Nando’s Counsel**” means attorneys Patricia J. Martin of Littler Mendelson, P.C. of St. Louis, Missouri and Melissa A. Logan of Littler Mendelson, P.C. in Chicago, Illinois.

1.10 “**Effective Date**” refers to the first date after all of the following events and conditions have been met or have occurred: (i) the Court enters the Preliminary Approval Order; (ii) the time period for Rule 23 Class Members to Opt-Out or Object has passed; (iii) the Court enters a Final Approval Order; (iv) the deadline has passed without action for counsel for the Parties to terminate the Settlement Agreement; and (v) the time to appeal from the Final Approval Order has expired and no Notice of Appeal has been filed or in the event that an appeal is filed, the appellate process is exhausted and the Final Approval Order has remained intact in all material

respects. The Parties agree that the Court shall retain jurisdiction to enforce the terms of this Settlement Agreement unless specifically set forth otherwise herein.

1.11 **“Qualified Settlement Fund”** means the separate account to be established by the Settlement Administrator under terms acceptable to Class Counsel and Defendant’s Counsel at a depository institution insured by the Federal Deposit Insurance Corporation. The Settlement Administrator shall be responsible for opening and administering a qualified settlement fund in such a manner as to qualify and maintain it as a “Qualified Settlement Fund” under Section 468B of the Code and Treas. Reg. Section 1.468B-1. The Qualified Settlement Fund shall be non-interest bearing, to the extent permitted by applicable law or regulations. If a non-interest bearing account is not permitted, any interest earned shall revert to Defendant.

1.12 **“Endorsement Acknowledgement”** refers to the following statement:

“By endorsing this check, payee acknowledges full payment of the amount approved for payee for this payment under the Final Approval Order entered in Case Number 1:19-cv-07012 in the United States District Court for the Northern District of Illinois, and agrees to be bound by the Settlement Agreement and Final Judgment entered therein.”

1.13 **“Fee Award”** means the amount of attorneys’ fees and reimbursement of costs to Class Counsel by the Court to be paid out of the Settlement Fund.

1.14 **“Final Approval Hearing”** means the hearing before the Court where Plaintiff will request that the Final Approval Order and Final Judgment be entered by the Court finally approving the Settlement as fair, reasonable and adequate, and approving the Fee Award and the incentive award to the Class Representative.

1.15 **“Final Approval Order”** refers to the order of the Court: (i) granting Final Judgment; (ii) adjudicating the terms of the Settlement Agreement to be fair, reasonable and adequate, and directing consummation of its terms and provisions; (iii) approving Class Counsel’s

application for an award of Class Counsel's Fee Award; (iv) certifying the Settlement Class for purposes of settlement only; and (v) dismissing the Action on the merits and with prejudice and permanently enjoining all members of the Settlement Class who do not timely Opt-Out from the Settlement Class or this Action from prosecuting against Defendant and the Released Entities, any Released Claims.

1.16 **“Final Judgment”** means the final judgment to be entered by the Court dismissing the Action with prejudice and approving the settlement of the Action in accordance with this Settlement Agreement after the Final Approval Hearing.

1.17 **“Maximum Gross Settlement Amount”** is One Million Four Hundred Twenty Seven Thousand Dollars and No Cents \$1,427,000.00. The Maximum Gross Settlement Amount represents the maximum amount Defendant will pay pursuant to this Settlement Agreement, regardless of distribution, and is inclusive of all Class Counsel's Fee Award (which includes attorneys' fees and litigation costs), settlement administration expenses, payments to the Settlement Class, the incentive awards, and any other payments or other monetary obligations contemplated by this Agreement or the Settlement.

1.18 **“Net Settlement Fund”** means the Maximum Gross Settlement Amount minus Class Counsel's Fee Award, Settlement Administration Expenses, and the Class Representative Service Award.

1.19 **“Notice”** means the notice of this proposed Settlement and Final Approval Hearing, which is to be disseminated to the Settlement Class substantially in the manner set forth in this Settlement Agreement, fulfills the requirements of Due Process and is substantially in the form of Exhibit B attached hereto.

1.20 “**Notice Date**” means the date by which the Notice is disseminated to the Settlement Class, which shall be a date no later than twenty-eight (28) days after entry of Preliminary Approval.

1.21 “**Opt-Out**” is the election by a member of the Settlement Class to be excluded from this Settlement Agreement,

1.22 “**Objection/Opt-Out Deadline**” means the date by which a written objection to the Settlement Agreement or a request for exclusion submitted by a person within the Settlement Class must be filed with the Court and/or postmarked, which shall be designated as a date forty-two (42) days after the Notice Date, as approved by the Court. The Objection/Opt-Out Deadline will be set forth in the Notice.

1.23 “**Opt-Out Response Notification**” means the notification to Defendant by the Settlement Administrator of the names of the members of the Settlement Class who have effectively elected to Opt-Out and the respective amounts that each would have received as a Settlement Award but for the election to Opt-Out.

1.24 “**Plaintiff**” or “**Martinez**” means the named Plaintiff in the Action, Katherine Martinez.

1.25 “**Preliminary Approval Order**” means the Court’s Order preliminarily approving the Agreement, certifying the Settlement Class for settlement purposes, and approving the form and manner of the Notice.

1.26 “**Released Claims**” means any and all causes of actions or claims against the Released Parties whatsoever arising out of, relating to, or connected with the alleged capture, collection, storage, possession, transmission, disclosure, re-disclosure, dissemination, protection, conversion and/or use of data collected in connection with the finger-scan Point of Sale system at

Nando's locations, including but not limited to causes of action or claims under the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.* ("BIPA") or any related or similar statutes or common law. Released Claims also include without limitation all causes of action or claims that arise from, are connected or associated with, or are related to the claims (whether common law and/or statutory) that were or could have been asserted in the Action, 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. For the avoidance of doubt, "Released Claims" includes any current or future claim that is based on the same or a series of related or repeated acts, errors or omissions, or from any continuing acts, errors or omissions, that were alleged in the Action.

1.27 "**Released Parties**" means jointly and severally, and individually and collectively, Nando's Restaurant Group, Inc. and any of its predecessors and successors and, in their capacities as such, all of its present, past, and future directors, officers, employees, representatives, attorneys, insurers, reinsurers, agents, vendors, and assigns, as well as all of these entities' affiliates, parent or controlling corporations, partners, divisions and subsidiaries.

1.28 "**Releasing Parties**" means, jointly and severally, and individually and collectively, Plaintiff and other Settlement Class Members and their respective past, present and future heirs, children, spouses, beneficiaries, conservators, executors, estates, administrators, assigns, agents, consultants, independent contractors, insurers, attorneys, accountants, financial and other advisors, investment bankers, underwriters, lenders, and any other representatives of any of these persons and entities.



1.29 “**Settlement**” means the final resolution of the Action as embodied by the terms and conditions of this Agreement.

1.30 “**Settlement Administration Expenses**” means the reasonable fees, costs and expenses incurred by the Settlement Administrator in performing the services authorized in this Settlement Agreement and/or ordered to be performed by the Court. Settlement Administration Expenses are included in and to be paid from the Maximum Gross Settlement Amount. Settlement Administration Expenses shall not exceed Twenty Five Thousand Dollars and no cents (\$25,000.00).

1.31 “**Settlement Administrator**” means Analytics LLC subject to approval of the Court, which will provide the Notice, sending of Settlement Payments to Settlement Class Members, tax reporting, and performing such other settlement administration matters set forth herein, contemplated by the Settlement, or ordered by the Court.

1.32 “**Settlement Class**” means all individuals who worked at a Nando’s restaurant in Illinois and who enrolled in the fingertip scanning feature of the Point of Sale device at any Nando’s location in the state of Illinois from May 20, 2015 to October 1, 2019.

1.33 “**Settlement Class List**” refers to the individuals making up the Settlement Class and who are identified by name on Exhibit C, attached hereto.

1.34 “**Settlement Class Members**” refers to members of the Settlement Class who have not effectively elected to Opt-Out.

1.35 “**Settlement Award**” means the amount each member of the Settlement Class will be entitled to receive from the Maximum Gross Settlement Amount through the application of the Settlement Formula under this Settlement Agreement.

1.36 **“Settlement Formula”** is the method of determining the Settlement Awards and other utilization of the Maximum Gross Settlement Amount.

## **2. THE SETTLEMENT**

2.1 **Agreements by Defendant.** Provided that the preconditions to payment are satisfied, Defendant agrees to pay the Maximum Gross Settlement Amount in full settlement of this Action. In regard to the foregoing payment commitment by Defendant:

a. The Maximum Gross Settlement Amount shall be allocated as follows:

i. Subject to final Court approval, Class Counsel accepts to be paid, One-Third of the Maximum Gross Settlement Amount. Class Counsel shall also petition the Court for an award of unreimbursed costs. The attorneys’ fees awarded by the Court together with the unreimbursed costs approved by the Court comprise Class Counsel’s Fee Award;

ii. Subject to final Court approval, the Class Representative shall receive a Class Representative Service Award of Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00), or such other amount approved by the Court, to the Class Representative, to be paid from the Maximum Gross Settlement Amount for her contributions and services as Class Representative, including, but not limited to, investigative work, meetings with Class Counsel, assumption of the risk, serving as the class representative, and participation in settlement-related activities.;

iii. Subject to final Court approval, Settlement Administration Expenses of up to Twenty Five Thousand Dollars and No Cents (\$25,000.00) shall

be distributed to the Settlement Administrator and paid from the Maximum Gross Settlement Amount;

iv. After accounting for the Class Counsel Fee Award, the Class Representative Service Award, and Settlement Administration Expenses, the remaining portion of the Maximum Gross Settlement Amount (i.e. the Net Settlement Fund), will be allocated equally to each of the 1,427 individuals in the Settlement Class. The equal allocation to each of the 1,427 individuals in the Settlement Class on the Net Settlement Fund is the Settlement Formula.

v. Defendant shall be entitled to retain from the Maximum Gross Settlement Amount any amount that would have been payable as a Settlement Award to an individual of the Settlement Class who Opts-Out. In addition, the Settlement Administrator shall return to Defendant within 30 days the amount of any Settlement Awards that become void for not having been presented to drawee-bank for payment within 150 days after the date of the check.

b. Within 14 days after Preliminary Approval, Defendant shall pay into the Qualified Settlement Fund the amount of Twenty Five Thousand Dollars and Zero Cents (\$25,000.00) for payment of Settlement Administration Expenses.

c. Within thirty-five (35) days following the Effective Date, Defendant shall pay or caused to be paid One Million Three Hundred Twenty Five Thousand Dollars and Zero Cents (\$1,325,000.00) into the Qualified Settlement Fund.

d. Within eighteen (18) months following the Effective Date, Defendant shall pay into the Qualified Settlement Fund the amount of Seventy Seven Thousand Dollars and Zero Cents (\$77,000.00).

e. Defendant shall not be responsible for errors made by Class Counsel or the Settlement Administrator relative to determination of Settlement Award Amounts.

f. Defendant agrees to duly perform in a timely manner the duties expressly assigned to them in this Settlement Agreement and to cause the due performance by Counsel for Defendant of the duties expressly assigned to Counsel for Defendant in this Settlement Agreement.

2.2 **Agreement by Class Counsel.** Class Counsel agree to accept Class Counsel's Fee Award in full and complete payment of any and all amounts which are or may otherwise become owing to it by Defendant with respect to this Action.

2.3 **Agreements by Class Representative.** Class Representative agrees to accept the Class Representative Service Award for herself and for all Settlement Class Members agrees to accept payment of Class Counsel's Fees and the Settlement Awards in full settlement of the claims of the Class Members in this Action. In regard to the foregoing:

a. Class Counsel shall take the lead in pursuing completion of the settlement approval procedures, through preparation and presentation of the motions and supporting information. Class Counsel shall consult and keep Counsel for Defendant contemporaneously informed as to the status of each step of the settlement approval and implementation process. Matters of disagreement that cannot be resolved by Class Counsel and Counsel for Defendants shall be submitted to the Court for resolution.

b. Plaintiff agrees to duly perform in a timely manner the duties expressly assigned to her in this Settlement Agreement and to cause the performance by Class Counsel of the duties expressly assigned to Class Counsel in this Settlement Agreement.

2.4 **Settlement Payments to Settlement Class Members.**

a. Provided the preconditions to payment are satisfied, each Settlement Class Member shall be issued a total Settlement Award that is equal to the Net Settlement Amount divided by 1,427. The Settlement Award shall be issued in two payments as set forth below.

b. The Parties agree that the each Settlement Award issued to Settlement Class Members represents liquidated damages, penalties and other relief and shall be considered as non-wage income to each recipient and reported on an I.R.S. Form 1099. The Parties agree that the Settlement Awards shall not be considered compensation for work performed or compensation of any kind under any 401k plan, profit sharing plan, pension plan, or other employer-sponsored benefit plan.

c. The Settlement Administrator shall send each Settlement Class Member a Settlement Payment by check for their portion of the First Distribution within twenty-eight (28) days after receiving the First Distribution via First Class U.S. Mail to their last known mailing address, as updated through the National Change of Address database, if necessary, by the Settlement Administrator. Each Settlement Class Member shall receive as his or her portion of the First Distribution the following amount:  $1/1,427^{\text{th}}$  of (\$1,350,000.00 less \$25,000 (for Settlement Administrator Expenses less the Class Counsel Fees approved by the Court) less the Class Counsel's Fee Award less the Class Representative's Service Award)

d. The Settlement Administrator shall send each Settlement Class Member who cashed the check from the First Distribution a Settlement Payment by check for their portion of the Second Distribution within twenty-eight (28) days after the funds are available to be paid from the Qualified Settlement Fund to their last known mailing address, as updated through the National Change of Address database, if necessary, by the

Settlement Administrator. Each Settlement Class Member shall receive as his or her portion of the Second Distribution the amount of Fifty Three Dollars and Ninety Six Cents (\$53.96), which represents 1/1427<sup>th</sup> of the Second Distribution amount of Seventy Seven Thousand Dollars and No Cents.

e. All Settlement Payments will state on the face of the check that the check will expire and become null and void unless cashed within one hundred and fifty (150) days after the date of issuance.

f. To the extent that a check issued to a Settlement Class Member is not cashed within one hundred and fifty (150) days after the date of issuance, the check will be void. The Settlement Administrator shall return such funds to Defendant within forty-five (45) days of the date the check expires.

g. Each Settlement Class Member shall be responsible for paying any taxes due on his or her Settlement Award.

### **3. RELEASE**

3.1 **The Release.** Upon the Effective Date, and in consideration of the settlement relief and other consideration described herein, the Releasing Parties, and each of them, shall be deemed to have released, and by operation of the Final Judgment shall have, fully, finally, and forever released, acquitted, relinquished and completely discharged the Released Parties from any and all Released Claims. For the avoidance of doubt, upon the Effective Date, and by operation of the Final Judgment, all Releasing Parties hereby fully, finally, and forever waive, discharge, surrender, forego, give up, and abandon any and all Released Claims against the Released Parties, but not those specifically excluded, and shall be forever barred and enjoined from prosecuting any action against the Released Parties asserting any Released Claims.

3.2 **No Limitation.** In addition to the provisions in Section 3.1, upon the Effective Date, and by operation of the Final Judgment, each Releasing Party waives any and all provisions, rights and benefits that may be conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, that, absent such waiver, may limit the extent or effect of the release contained in this Agreement.

#### 4. NOTICE TO THE CLASS

4.1 The Notice shall include:

a. *Class List.* Nando's shall provide the Settlement Administrator and Class Counsel the last known U.S. mail addresses, email (if known), and last known phone numbers of all persons on the Settlement Class List, to the extent such information is available in readily accessible form, as soon as practicable, but by no later than fourteen (14) days after Preliminary Approval. The Settlement Administrator shall keep all personal information obtained from the Class List strictly confidential. The Class List may not be used by the Settlement Administrator for any purpose other than advising persons in the Settlement Class of procedural issues under the Settlement, mailing Settlement Payments, and otherwise effectuating the terms of the Settlement Agreement or the duties arising thereunder, including the provision of Notice of the Settlement.

b. *Update Addresses.* Prior to mailing Notice, the Settlement Administrator will attempt to update the addresses of former employees using the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. The Settlement Administrator shall take all reasonable steps to obtain the correct address

of any Class Members for whom Notice is returned by the U.S. Postal Service as undeliverable and shall attempt re-mailings as described below.

*c. Direct Notice.* No later than the Notice Date, the Settlement Administrator shall send notice via First-Class U.S. Mail substantially in the form attached as Exhibit B to each physical address in the Class List and may also send notice via email and/or text.

4.2 The Notice shall advise the Settlement Class of their rights under the Settlement, including the right to be excluded from or object to the Settlement Agreement or its terms. The Notice 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/Opt-Out Deadline approved by the Court and specified in the Notice, the person making an objection shall file notice of his or her intention to do so and at the same time: (a) file copies of such papers he or she proposes to submit at the Final Approval Hearing with the Clerk of the Court; (b) file copies of such papers through the Court's eFile system; and (c) send copies of such papers via e-mail, U.S. mail, hand, or overnight delivery service to Class Counsel and Defendant's Counsel.

4.3 **Undeliverable Notice.** If any Notice is returned as undeliverable, the Settlement Administrator shall forward it to any forwarding addresses provided by the U.S. Postal Service. If no such forwarding address is provided, the Settlement Administrator shall perform skip traces to attempt to obtain the most recent addresses for such Class Members and may call last known telephone number determined for such individual to get a more current address.

4.4 **Right to Object or Comment.** Any person in the Settlement Class who intends to object to this Settlement Agreement must present the objection in writing, which must be personally signed by the objector and must include: (a) the Settlement Class Member's full name



and current address; (b) a statement that he or she believes himself or herself to be a member of the Settlement Class; (c) the specific grounds for the objection; (d) all documents or writings that the Settlement Class Member desires the Court to consider; (e) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection; and (f) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel, who must file an appearance or seek *pro hac vice* admission). All written objections must be filed with the Court and postmarked, e-mailed or delivered to Class Counsel and Defendant's Counsel no later than the Objection/Opt-Out Deadline. Any person in the Settlement Class who fails to timely file a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Section and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Settlement Agreement or Final Judgment by appeal or other means and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other action or proceeding.

4.5 **Right to Request Exclusion.** Any person in the Settlement Class may submit a request for exclusion from the Settlement on or before the Objection/Opt-Out Deadline. To be valid, any request for exclusion must: (a) be in writing; (b) identify the case name *Martinez v. Nando's Restaurant Group, Inc.*, and case number, Case No. 1:19-cv-07012 (c) state the full name and current address of the person in the Settlement Class seeking exclusion; (d) be physically signed by the person(s) seeking exclusion; and (e) be postmarked or received by the Settlement

Administrator on or before the Objection/Opt-Out Deadline. Each request for exclusion must also contain a statement to the effect that “I hereby request to be excluded from the proposed Settlement Class in *Martinez v. Nando’s Restaurant Group, Inc.*” A request for exclusion that does not include all of the foregoing information, that is sent to an address other than that designated in the Notice, or that is not postmarked or delivered to the Settlement Administrator within the time specified, shall be invalid and the persons serving such a request shall be deemed to remain Settlement Class Members and shall be bound as Settlement Class Members by this Settlement Agreement, if approved. Any person who effectively Opts-Out of the Settlement Class shall not: (a) be bound by any orders or Final Judgment entered in the Action; (b) receive a Settlement Payment under this Settlement Agreement; (c) gain any rights by virtue of this Settlement Agreement; or (d) be entitled to object to any aspect of this Settlement Agreement or Final Judgment. No person may request to be excluded from the Settlement Class through “mass” or “class” opt-outs.

## **5. SETTLEMENT ADMINISTRATION**

### **5.1 Settlement Administrator’s Duties.**

a. *Dissemination of Notices.* The Settlement Administrator shall disseminate Notice as provided in Section 4 of this Settlement Agreement.

b. *Maintenance of Records.* The Settlement Administrator shall maintain reasonably detailed records of its activities under this Settlement Agreement. The Settlement Administrator shall maintain all such records as required by applicable law in accordance with its business practices and such records will be made available to Class Counsel and Defendant’s Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. Upon request, the Settlement Administrator shall provide Class Counsel and Defendant’s Counsel with information

concerning Notice, requests for exclusion, administration and implementation of the Settlement.

c. *Receipt of Requests for Exclusion.* The Settlement Administrator shall receive requests for exclusion from persons in the Settlement Class and provide to Class Counsel and Defendant's Counsel a copy thereof within five (5) days of the Objection/Opt-Out Deadline. If the Settlement Administrator receives any requests for exclusion or other requests from Settlement Class Members after the deadline for the submission of requests for exclusion, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel.

d. *Timing of Settlement Payments.* The Settlement Administrator shall make the First Distribution Settlement Payments contemplated in Section 2 of this Settlement Agreement by check and mail them to Settlement Class Members within twenty-eight (28) days after the First Distribution of funds are available to be paid from the Qualified Settlement Fund. The Settlement Administrator shall make the Second Distribution Settlement Payments contemplated in Section 2 of this Settlement Agreement by check and mail them to Settlement Class Members within twenty-eight (28) days after the funds are available to be paid from the Qualified Settlement Fund.

e. *Tax reporting.* The Settlement Administrator shall be solely responsible for properly reporting all payments from the Qualified Settlement Fund to the Internal Revenue Service as required by law. The Settlement Administrator shall also be solely responsible for determining and paying any necessary tax withholding to the Internal Revenue Service and appropriate state agencies. The Settlement Administrator shall be

solely responsible for all tax filings and tax withholdings related to the Qualified Settlement Fund.

## **6. PRELIMINARY APPROVAL AND FINAL APPROVAL**

**6.1 Preliminary Approval.** Promptly after execution of this Settlement Agreement, Class Counsel shall submit this Settlement Agreement to the Court and shall move the Court to enter an order granting Preliminary Approval. Class Counsel shall also notify the Court of Plaintiff's separate agreement with Nando's regarding her Charge of Discrimination and shall attach a copy of that Agreement as an exhibit to the Motion. In addition, Class Counsel's Motion for Preliminary Approval shall include, among other provisions, a request that the Court:

- a. Appoint Katherine Martinez as Class Representative of the Settlement Class;
- b. Appoint Class Counsel to represent the Settlement Class;
- c. Preliminarily certify the Settlement Class for settlement purposes only;
- d. Preliminarily approve this Settlement Agreement generally and the Settlement Formula specifically as to fairness, adequacy, and reasonableness for the Plaintiff and Settlement Class, including the Maximum Gross Settlement Amount;
- e. Approve the form and contents of the Notice and the method of its dissemination to members of the Settlement Class; and
- f. Schedule a Final Approval Hearing to review comments and/or objections regarding this Settlement Agreement, to consider its fairness, reasonableness and adequacy, to consider the application for a Fee Award and incentive awards to the Class Representatives, and to consider whether the Court shall issue a Final Judgment approving

this Settlement Agreement, to consider Class Counsel's application for the Fee Award and the incentive award to the Class Representatives, and dismissing the Action with prejudice.

6.2 **Final Approval.** After Notice to the Settlement Class is given and the Objection/Opt-Out Deadline has passed, and provided Defendant does not exercise a termination election under Section 7, Class Counsel shall move the Court for entry of a Final Judgment. Class counsel's motion shall:

- a. certify to the Court as to compliance with the Class Notice requirements;
- b. inform the Court as to members of the Settlement Class who have effectively elected to Opt-Out;
- c. inform the Court of the Settlement Awards determined under the Settlement formula;
- d. inform the Court as to the Class Representative's Service Award and Class Counsel's Fee Award;
- e. inform the Court as to the amount which Defendant shall retain from the Maximum Gross Settlement Amount due to the election by members of the Settlement Class to Opt-Out opted-out;
- f. request that the Court enter a Final Approval Order and Final Judgment which:
  - i. finds that the Court has personal jurisdiction over all Settlement Class Members and subject matter jurisdiction to approve this Settlement Agreement, including all attached Exhibits;
  - ii. certifies the Settlement Class as a valid class for purposes of settlement;

- iii. lists and determines the members of the Settlement Class who have effectively opted-out;
- iv. approves the Settlement as fair, reasonable and adequate as to, and in the best interests of, the Settlement Class Members;
- v. directs the Parties and their counsel to implement and consummate the Settlement according to its terms and conditions;
- vi. declares the Settlement to have released all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all other Settlement Class Members and Releasing Parties as provided herein;
- vii. finds that the Notice implemented pursuant to the Settlement Agreement (1) constitutes the best practicable notice under the circumstances, (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and their rights to object to or exclude themselves from this Settlement Agreement and to appear at the Final Approval Hearing, (3) is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice, and (4) fulfills the requirements of Due Process;
- viii. finds that the Class Representative and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement;
- ix. dismisses the Action on the merits and with prejudice, without fees or costs to any Party except as provided in this Settlement Agreement;

- x. incorporates the Release set forth above, makes the Release effective as of the Effective Date, and forever discharges the Released Parties as set forth herein;
- xi. permanently bars and enjoins all Settlement Class Members who have not been properly excluded from the Settlement Class from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or other action in any jurisdiction based on the Released Claims;
- xii. without affecting the finality of the Final Judgment for purposes of appeal, retains jurisdiction as to all matters relating to administration, consummation, enforcement and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose; and
- xiii. incorporates any other provisions, consistent with the material terms of this Settlement Agreement, as the Court deems necessary and just.

6.3 **Cooperation.** The Parties shall, in good faith, cooperate, assist and undertake all reasonable actions and steps in order to accomplish these required events on the schedule set by the Court, subject to the terms of this Settlement Agreement.

## 7. TERMINATION OF THE SETTLEMENT AGREEMENT

7.1 **Termination.** Both the Class Representative (on behalf of the Settlement Class) and Nando's shall have the right to terminate this Agreement by providing written notice of the election to do so to Class Counsel within ten (10) days of any of the following events: (a) the Court's refusal to grant Preliminary Approval of this Agreement in any material respect; (b) the

Court's refusal to grant Final Approval of this Agreement in any material respect; (c) the Court's refusal to enter the Final Judgment in this Action in any material respect; (d) the date upon which the Final Judgment is modified or reversed in any material respect by the appellate court or the Supreme Court; (e) the date upon which an Alternative Judgment, as defined in Paragraph 9.1 of this Agreement, is modified or reversed in any material respect by the appellate court or the Supreme Court. Nando's shall additionally have the right to terminate this Agreement by providing written notice of the election to do so to Class Counsel within ten (10) days of receiving written notice from the Settlement Administrator that 10% or more of the Settlement Class has opted out of the Settlement.

**8. INCENTIVE AWARD AND CLASS COUNSEL'S ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

8.1 Nando's agrees that Class Counsel is entitled to reasonable attorneys' fees and unreimbursed expenses incurred in the Action as the Fee Award. The amount of the Fee Award shall be determined by the Court based on petition from Class Counsel. Class Counsel has agreed, with no consideration from Nando's, to limit their request for attorneys' fees to one third of the Maximum Gross Settlement Amount, plus unreimbursed costs. Nando's may challenge the amount requested. Payment of the Fee Award shall be made from the Maximum Gross Settlement Amount and should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this Section shall remain in the Net Settlement Amount and be distributed to Settlement Class Members as Settlement Awards.

8.2 The Fee Award shall be payable by the Settlement Administrator within five (5) business days after the Effective Date. Payment of the Fee Award shall be made by the Settlement Administrator from the Qualified Settlement Fund Account via wire transfer to an account designated by Class Counsel after providing necessary information for electronic transfer to the



Settlement Administrator.

8.3 Nando's agrees that the Class Representative shall be paid an incentive award up to Seven Thousand Five Hundred Dollars (\$7,500.00) from the Maximum Gross Settlement Amount, in addition to any Settlement Award pursuant to this Settlement Agreement and in recognition of her efforts on behalf of the Settlement Class, subject to Court approval. Should the Court award less than this amount, the difference in the amount sought and the amount ultimately awarded pursuant to this Section shall remain in the Settlement Fund and be distributed to Settlement Class Members as Settlement Payments. Any award shall be paid by the Settlement Administrator from the Qualified Settlement Fund (in the form of a check to the Class Representative that is sent care of Class Counsel), within five (5) business days after the Effective Date.

**9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

9.1 **Precondition to Payment by Defendant.** It shall be a precondition to Defendant's obligation to make any payment under this Settlement Agreement aside from the \$25,000 payment to fund Settlement Administration Expenses that (a), (b), and (c), set forth below have all been satisfied:

- a. Final Judgment has been entered by the Court:
  - i. Approving this Settlement Agreement and adjudicating the terms of the Settlement Agreement to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
  - ii. Certifying the Settlement Class for settlement purposes only;
  - iii. Dismissing the Action with prejudice; and

iv. Providing that Defendant's sole continuing obligations with respect to the Action shall be to duly perform the duties and obligations expressly made by it under this settlement agreement.

b. The deadline has passed without action from Counsel to Defendant to terminate the Settlement Agreement; and

c. The time to appeal from the Final Approval Order has expired and no Notice of Appeal has been filed or in the event that an appeal is filed, the appellate process is exhausted and the Final Approval Order had remained intact in all material respects.

9.2 The Effective Date shall not occur unless and until each and every one of the following events occurs, and shall be the date upon which the last (in time) of the following events occurs subject to the provisions in Section 1.10:

a. This Agreement has been signed by the Parties, Class Counsel, and Defendant's Counsel;

b. The Court has entered an order granting Preliminary Approval of the Agreement;

c. The Court has entered an order finally approving the Agreement, following Notice to the Settlement Class and a Final Approval Hearing, and has entered the Final Judgment, or a judgment substantially consistent with this Settlement Agreement that has become final and unappealable; and

d. In the event that the Court enters an order and final judgment in a form other than that provided above ("Alternative Judgment") to which the Parties have consented, that Alternative Judgment has become final and unappealable.

9.3 If some or all of the conditions specified in Section 9.2 are not met, or in the event that this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Agreement shall be canceled and terminated subject to Section 9.4, unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Settlement Agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Settlement Agreement on notice to all other Parties after providing the breaching Party fourteen (14) days to cure such breach. Notwithstanding anything herein, the Parties agree that the Court's decision as to the amount of the Fee Award to Class Counsel set forth above or the incentive awards to the Class Representatives, regardless of the amounts awarded, shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination of the Agreement.

9.4 If this Settlement Agreement is terminated or fails to become effective for the reasons set forth above, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement, including, but not limited to, class certification, shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Settlement Agreement had never been entered into. If the Court does not approve the settlement, Nando's retains the right to oppose class certification.

## **10. MISCELLANEOUS PROVISIONS**

10.1 The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent

reasonably necessary to effectuate and implement the terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Settlement Agreement. Class Counsel and Defendant's Counsel agree to cooperate with one another in seeking entry of an order granting Preliminary Approval and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement Agreement.

10.2 Each signatory to this Agreement represents and warrants that: (a) he, she, or it has all requisite power and authority to execute, deliver and perform this Settlement Agreement and to consummate the transactions contemplated herein; (b) the execution, delivery and performance of this Settlement Agreement and the consummation by it of the actions contemplated herein have been duly authorized by all necessary corporate action on the part of each signatory; and (c) this Settlement Agreement has been duly and validly executed and delivered by each signatory and constitutes its legal, valid and binding obligation.

10.3 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 other Settlement Class Members, and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiff or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.

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

10.5 Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant risks, inconveniences, expenses and contingencies. There has been no determination by the Court as to the merits of the claims or defenses asserted by the Plaintiff or Defendant or with respect to class certification, other than for settlement purposes only. Accordingly, whether the Effective Date occurs or this Settlement is terminated, neither this Settlement Agreement nor the Settlement contained herein, nor any court order, communication, act performed or document executed pursuant to or in furtherance of this Settlement Agreement or the Settlement:

a. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission, concession or evidence of, the validity of any Released Claims, the appropriateness of class certification, the truth of any fact alleged by Plaintiff, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the Settlement Fund, Settlement Payment or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

b. is, may be deemed, or shall be used, offered or received against Nando's as an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

c. is, may be deemed, or shall be used, offered or received against Plaintiff or the Settlement Class, or each or any of them as an admission, concession or evidence of, the infirmity or strength of any claims asserted in the Action, the truth or falsity of any fact

alleged by Nando's, or the availability or lack of availability of meritorious defenses to the claims raised in the Action;

d. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the Settlement, this Settlement Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Settlement Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Settlement Agreement. Moreover, if this Settlement Agreement is approved by the Court, any of the Released Parties may file this Settlement Agreement and/or the Final Judgment in any action that may be brought against such parties in order to support a defense or counterclaim;

e. is, may be deemed, or shall be construed against Plaintiff and the Settlement Class, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

f. is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiff and the Settlement Class, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiff's claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

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

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

10.8 All of the Exhibits to this Settlement Agreement are material and integral parts hereof and are fully incorporated herein by reference.

10.9 This Settlement 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 Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

10.10 Except as otherwise provided herein, each Party shall bear its own attorneys' fees and costs incurred in any way related to the Action.

10.11 Plaintiff represents and warrants that she has not assigned any claim or right or interest relating to any of the Released Claims against the Released Parties to any other person or party and that she is fully entitled to release the same.

10.12 This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Signature by digital, facsimile, or in PDF format will constitute sufficient execution of this

Settlement Agreement. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

10.13 If any deadlines related to the Settlement cannot be met, Class Counsel and Nando's Counsel shall meet and confer to reach agreement on any necessary revisions of the deadlines and timetables set forth in this Agreement. In the event that the Parties fail to reach such agreement, any of the Parties may apply to the Court via a noticed motion for modification of the dates and deadlines in this Agreement.

10.14 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement. The Parties agree that specific performance shall be an acceptable remedy for any material breach of this agreement.

10.15 This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without reference to the conflicts of laws provisions thereof.

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

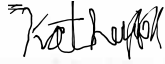
10.17 Where this Settlement Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: David Fish, The Fish Law Firm, P.C., 200 E. 5th Avenue, Suite 123, Naperville, IL 60563; Patricia J. Martin, Littler Mendelson, P.C., 600 Washington Avenue, Suite 900, St. Louis, MO 63101.

[SIGNATURES APPEAR ON FOLLOWING PAGE]




06/08/2020  
Dated: \_\_\_\_\_

**KATHERINE MARTINEZ**

By (signature):   
Name (printed): Katherine Martinez


06/08/2020  
Dated: \_\_\_\_\_

**THE FISH LAW FIRM, PC**

By (signature):   
Name (printed): David Fish  
President  
Its (title): \_\_\_\_\_


Dated: 6/4/2020

**NANDO'S RESTAURANT GROUP, INC.**

By (signature):   
Name (printed): NESTOR NOVA  
Its (title): CFO

Dated: 6.5.2020

**LITTLER MENDELSON, P.C.**

By (signature):   
Name (printed): Patricia J. Martin  
Its (title): Office Managing Shareholder

# **Exhibit A**

## **CAFA Notice**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

KATHERINE MARTINEZ, individually and  
behalf of all others similarly situated,

Plaintiff,

v.

NANDO’S RESTAURANT GROUP, INC.,

Defendant.

Case No. 1:19-cv-07012

Judge Sara Ellis

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT PURSUANT TO THE  
CLASS ACTION FAIRNESS ACT, 28 U.S.C. § 1715**

Pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715 (“CAFA”), notice is hereby given to the Office of the Attorney General of the United States, and the Offices of the Attorney General for the States of Alabama, California, Connecticut, Delaware, Florida, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Minnesota, Michigan, Nevada, New York, South Carolina, Tennessee, and Wisconsin and the District of Columbia, that on [insert date], the Plaintiff in the above-captioned civil action has filed an unopposed motion with the Court for preliminary approval of her class action settlement and for provisional certification of a settlement class pursuant to Fed. R. Civ. P. 23 (“Rule 23”). The Court has not yet entered an order preliminarily approving the Rule 23 Class Action settlement, approving the form and dissemination of class notice or setting the date for the hearing on final approval.

The following notice does not require any action on your part, and is provided for informational purposes pursuant to 28 U.S.C. § 1715. 28 U.S.C. § 1715 (f) states that, “[n]othing in this section shall be construed to expand the authority of, or impose any obligations, duties, or

responsibilities upon, Federal or State officials.” Accordingly, this notice does not require you to take any affirmative action, including, but not limited to, any written response.

Pursuant to the requirements of CAFA, this notice includes the following documents and information:

1. The original Complaint filed in state court on September 10, 2019 and removed to federal court on October 24, 2019 (Exhibit A).
2. Proposed Notice to Class Members (Exhibit B).
3. The individual settlement agreement and release between Plaintiff and Defendant related to Plaintiff’s Charge of Discrimination. (Exhibit C).
4. The parties’ Key Settlement Term Sheet (Exhibit D). This Settlement Term Sheet was replaced by the operative Joint Stipulation and Settlement Agreement (Exhibit E).
5. Unopposed Motion for Preliminary Approval of Rule 23 Class Action Settlement, and Memorandum in Support (Exhibit F)
6. In total there are 1427 members of the proposed Rule 23 settlement class. The Rule 23 settlement class consists of: all individuals who worked at a Nando’s restaurant in Illinois and who enrolled in the fingertip scanning feature of the Point of Sale device at any Nando’s location in the state of Illinois from May 20, 2015 to October 1, 2019.
7. Given the large number of putative Rule 23 class members, it is not feasible to provide each putative class member’s name. Based on the putative class members’ last known addresses, Defendant estimates that:
  - a. [x] putative Rule 23 class members reside in Alabama; they are eligible to receive approximately [x] of the net Rule 23 settlement amount agreed upon by the parties;

- b. [x] putative Rule 23 class members reside in California; they are eligible to receive approximately [x] of the net Rule 23 settlement amount agreed upon by the parties;
- c. [x] putative Rule 23 class members reside in Connecticut; they are eligible to receive approximately [x] of the net Rule 23 settlement amount agreed upon by the parties;
- d. [x] putative Rule 23 class members reside in Delaware; they are eligible to receive approximately [x] of the net Rule 23 settlement amount agreed upon by the parties;
- e. [x] putative Rule 23 class members reside in Florida; they are eligible to receive approximately [x] of the net Rule 23 settlement amount agreed upon by the parties;
- f. [x] putative Rule 23 class members reside in Illinois; they are eligible to receive approximately [x] of the net Rule 23 settlement amount agreed upon by the parties;
- g. [x] putative Rule 23 class members reside in Indiana; they are eligible to receive approximately [x] of the net Rule 23 settlement amount agreed upon by the parties;
- h. [x] putative Rule 23 class members reside in Kentucky; they are eligible to receive approximately [x] of the net Rule 23 settlement amount agreed upon by the parties;
- i. [x] putative Rule 23 class members reside in Massachusetts; they are eligible to receive approximately [x] of the net Rule 23 settlement amount agreed upon by

the parties;

- j. [x] putative Rule 23 class members reside in Maryland; they are eligible to receive approximately [x] of the net Rule 23 settlement amount agreed upon by the parties;
- k. [x] putative Rule 23 class members reside in Minnesota; they are eligible to receive approximately [x] of the net Rule 23 settlement amount agreed upon by the parties;
- l. [x] putative Rule 23 class members reside in Michigan; they are eligible to receive approximately [x] of the net Rule 23 settlement amount agreed upon by the parties;
- m. [x] putative Rule 23 class members reside in Nevada; they are eligible to receive approximately [x] of the net Rule 23 settlement amount agreed upon by the parties;
- n. [x] putative Rule 23 class members reside in New York; they are eligible to receive approximately [x] of the net Rule 23 settlement amount agreed upon by the parties;
- o. [x] putative Rule 23 class members reside in South Carolina; they are eligible to receive approximately [x] of the net Rule 23 settlement amount agreed upon by the parties;
- p. [x] putative Rule 23 class members reside in Tennessee; they are eligible to receive approximately [x] of the net Rule 23 settlement amount agreed upon by the parties;
- q. [x] putative Rule 23 class members reside in Wisconsin; they are eligible to

receive approximately [x] of the net Rule 23 settlement amount agreed upon by the parties;

r. [x] putative Rule 23 class members reside in the District of Columbia; they are eligible to receive approximately [x] of the net Rule 23 settlement amount agreed upon by the parties;

8. No final judgment or notice of dismissal has been filed or entered in this action. No written judicial opinions have been issued relating to the parties proposed settlement.
9. A final approval hearing has not yet been scheduled. When scheduled, it will occur in the United States District Court, Northern District of Illinois, Eastern Division, Courtroom of Honorable Sara L. Ellis, Dirksen United States Courthouse, 219 South Dearborn Street, Chicago IL 60604. When scheduled the date and time of the final approval hearing will be available through PACER.

Respectfully submitted,

By: \_\_\_\_\_

Patricia J. Martin  
LITTLER MENDELSON, P.C.  
600 Washington Ave. Suite 900  
St. Louis, MO 63101  
Tel: 314.659.2000  
Fax: 314.659.2099  
pmartin@littler.com

Kwabena A. Appenteng  
Orly Henry  
Melissa A. Logan  
LITTLER MENDELSON, P.C.  
321 North Clark Street, Suite 1000  
Chicago, IL 60654  
Tel: 312.372.5520  
[kappenteng@littler.com](mailto:kappenteng@littler.com)  
[ohenry@littler.com](mailto:ohenry@littler.com)  
[mlogan@littler.com](mailto:mlogan@littler.com)

Attorneys for Defendant  
Nando's Restaurant Group, Inc.



# **Exhibit B**

## **Class Notice**

## **NOTICE OF CLASS ACTION SETTLEMENT**

*Martinez, et al. v. Nando's Restaurant Group, Inc.*

Case No. 1:19-cv-07012

The United States District Court for the Northern District of Illinois preliminarily approved a class action settlement in the case *Martinez v. Nando's Restaurant Group, Inc.*, Case No. 1:19-cv-07012 (the "Lawsuit"). You are receiving this notice because records show that you worked at Nando's Restaurant Group, Inc. ("Nandos") during the time period covered by the lawsuit and are a class member. While Nando's does not admit liability or fault, Nando's has agreed to settle the Lawsuit. This notice explains your options. You may: (1) do nothing and get a settlement payment; (2) exclude yourself from the settlement and not receive a settlement payment; or (3) object to the settlement. Before any money is paid, the Court will decide whether to grant final approval of the settlement.

### **What Is this Lawsuit About?**

The Lawsuit alleges that Nando's violated the Illinois Biometric Information Privacy Act ("BIPA") by requiring employees to use a fingertip scanning feature of the Point of Sale device at any Nando's location in the state of Illinois that allegedly collected, stored, and transferred their biometric data without following the notice and consent requirements of BIPA. Nando's has denied all liability and wrongdoing. Both sides agreed to the settlement to resolve the case. The Court did not decide whether Nando's violated the law.

You can learn more about the Lawsuit or review the Settlement Agreement by contacting Class Counsel, The Fish Law Firm P.C. at (630) 355-7590 or [admin@fishlawfirm.com](mailto:admin@fishlawfirm.com).

### **Who Is Included in the Settlement?**

The settlement includes all individuals who worked at a Nando's restaurant in Illinois and who enrolled in the fingertip scanning feature of a Point of Sale device at any Nando's location in the state of Illinois from May 20, 2015 to October 1, 2019 ("Settlement Class").

### **What does the Settlement Provide?**

The parties estimate that about \$917,380.90 ("Net Settlement Amount") will be available for distribution to Settlement Class Members. The Net Settlement Amount is the Settlement Fund, estimated to be \$1,427,000, minus the following deductions, which are subject to Court approval: up to \$25,000 for the Settlement Administrator's costs; up to \$7,500 for the incentive award for the Class Representative, and up to one-third (33<sup>1/3</sup>%) of the Settlement Fund as Class Counsel's attorneys' fees, and \$1,500 in litigation costs. **Your estimated recovery in this settlement is \$642.87.** Your recovery was calculated by dividing the Net Settlement Amount equally among the Settlement Class. The Net Settlement Amount will be paid to you over two distributions made eighteen (18) months apart.

### **What Will You Give Up If You Participate in the Settlement?**

Unless you exclude yourself from the settlement as explained below, you will release Nando's and any of its predecessors and successors and, in their capacities as such, all of its present, past, and future directors, officers, employees, representatives, attorneys, insurers, reinsurers, agents,

vendors, and assigns, as well as all of these entities' affiliates, parent or controlling corporations, partners, divisions and subsidiaries ("Released Parties") from all Released Claims. "Released Claims" means any and all causes of actions or claims against the Released Parties whatsoever arising out of, relating to, or connected with the alleged capture, collection, storage, possession, transmission, disclosure, re-disclosure, dissemination, protection, conversion and/or use of data collected in connection with the finger-scan Point of Sale system at Nando's locations, including but not limited to causes of action or claims under the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.* ("BIPA") or any related or similar statutes or common law. Released Claims also include without limitation all causes of action or claims that arise from, are connected or associated with, or are related to the claims (whether common law and/or statutory) that were or could have been asserted in the Action, 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. For the avoidance of doubt, "Released Claims" includes any current or future claim that is based on the same or a series of related or repeated acts, errors or omissions, or from any continuing acts, errors or omissions, that were alleged in the Action.

### **What Are Your Options?**

(1) If you want to participate in the settlement and receive a settlement payment, do nothing. A check will be mailed to you if the Court grants final approval of the settlement.

(2) If you do not want to be legally bound by the settlement, you must exclude yourself by [**DATE 42 DAYS FROM NOTICE MAILING (Objection/Opt-Out Deadline)**]. To be valid, any request for exclusion must: (a) be in writing; (b) identify the case name and number *Martinez v. Nando's Restaurant Group, Inc.*, No. 1:19-cv-07012, (c) state your full name and current address; (d) be physically signed by you; and (e) be postmarked or received by the Settlement Administrator on or before the Objection/Opt-Out Deadline. Each request for exclusion must also contain a statement to the effect that "I hereby request to be excluded from the proposed Settlement Class in *Martinez v. Nando's Restaurant Group, Inc.*, Case No. 1:19-cv-07012." If you exclude yourself, you will not receive money from this settlement, but you will retain your legal rights regarding any claims that you may have against Nando's. Requests for exclusion must be mailed to the Settlement Administrator at the address below: [**insert address**].

(3) You may object to the settlement by [**DATE 42 DAYS FROM NOTICE MAILING**] if you have not already excluded yourself from the settlement. To do so, you must present the following information in a statement signed by you: (a) your full name and current address; (b) a statement that you believe yourself to be a member of the Settlement Class; (c) the specific grounds for the objection; (d) all documents or writings that you desire the Court to consider; (e) the name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection; and (f) a statement indicating whether you intend to appear at the Final Approval Hearing (either personally or through counsel, who must file an appearance or seek *pro hac vice* admission). All written objections must be filed with the Court and be postmarked, e-mailed or delivered to Class Counsel and Defendant's Counsel no later than the Objection/Opt-Out Deadline.

### **Who Are My Lawyers?**

The Court has appointed the following attorneys to represent the Settlement Class. You will not be charged for these lawyers because they will be paid from the Settlement Fund. If you want to be represented by your own lawyer instead, you may hire one at your own expense.

David Fish  
John Kunze  
Mara Baltabols  
The Fish Law Firm, P.C.  
200 East Fifth Ave., Suite 123  
Naperville, IL 60563  
(630) 355-7590

### **Who Is the Settlement Administrator and How do I update my Contact Information?**

The Settlement Administrator is identified below. You must notify the Settlement Administrator (contact information below) of any changes in your mailing address so that your settlement payment will be sent to the correct address.

□

### **When is the Final Approval Hearing?**

The Court will hold a hearing in this case on [FINAL APPROVAL HEARING DATE], in Courtroom \_\_\_\_ of the \_\_\_\_\_s at \_\_:\_\_ a.m./p.m., to consider, among other things: (1) whether to grant final approval of the settlement; (2) a request by the lawyers representing class members for an award of one-third of the \$1,427,000 Settlement Fund as attorneys' fees and up to \$1,500 in litigation costs; (3) a request for incentive award of \$7,500 for the Class Representative from the Settlement Fund in recognition of her work in recovering money for the Settlement Class; and (4) a request for up to \$25,000 in costs to the Settlement Administrator from the Settlement Fund for its work administering the settlement. You may appear at the hearing, but you are not required to do so.