

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

IVAN BERNAL, THOMAS BERNAL, and
RAMIRO CRUZ, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

NATIVE WHOLESALE, INC.,

Defendant.

Case No.: 2020 CH 04118

Judge Caroline Kate Moreland

PRELIMINARY APPROVAL ORDER

This matter having come before the Court on Plaintiffs' Unopposed Motion and Memorandum in Support of Preliminary Approval of Class Action Settlement, the Court having reviewed in detail and considered the Motion and Memorandum, the Class Action Settlement Agreement ("Settlement Agreement") between Plaintiffs Ivan Bernal, Thomas Bernal, and Ramiro Cruz (collectively "Plaintiffs") and Defendant Native Wholesale, Inc. ("Defendant") (collectively, 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 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 worked or are currently working for Native in the State of Illinois and who used a finger-scanning or handscanning timeclock to clock-in and out of work at Native Wholesale, Inc. from May 8, 2015 to July 1, 2021 before signing a consent form.

5. For settlement purposes only, the Plaintiffs Ivan Bernal, Thomas Bernal, and Ramiro Cruz are appointed as Class Representatives.

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

David Fish
Mara Baltabols
Fish Potter Bolaños, P.C.
Fifth Avenue Station
200 E. 5th Avenue, Suite 123
Naperville IL 60563
admin@fishlawfirm.com

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 the 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 Class Notice and Claim Form, attached to the Settlement Agreement as Exhibits A-C, and find that they meet 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' identities are contained in Defendant's records and may be readily ascertained, satisfying 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 Consulting, LLC is hereby appointed as 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 and Claim Form as set forth in the Settlement Agreement.

12. Settlement Class Members who wish to receive benefits under the Settlement Agreement must complete and submit a valid Claim Form in accordance with the instructions

provided in the Class Notice on or before **January 30, 2023**. The Court hereby approves as to form and content the Claim Form attached to the Settlement Agreement as Exhibit A.

13. All Claim Forms must be mailed via U.S. Mail postmarked (if mailed) or submitted (if submitted electronically) on or before **January 30, 2023**, to the address, email, or website specified in the Claim Form. Settlement Class Members who do not timely submit a Claim Form deemed to be valid in accordance with the Settlement Agreement shall not be entitled to receive any portion of the Settlement Fund.

14. Settlement Class Members shall be bound by all determinations and orders pertaining to the Settlement, including with respect to Released Claims as 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 other litigation or proceedings against Defendant or the Released Parties relating to the claims released under the terms of the Settlement Agreement.

15. Any Person within the Settlement Class may request exclusion from the Settlement Class by expressly stating their request in a written exclusion request. Such exclusion requests must be received by the Settlement Administrator as specified in the Class Notice in written form, via the Settlement Website, or by first class mail, postage prepaid, and postmarked, no later than the Objection/Exclusion Deadline: **December 19, 2022**.

16. 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, telephone number, and email address; the case name and number of this Litigation, a statement that he/she wishes to be excluded from the Settlement Class; and his/her signature. A request to be excluded that is sent to an address other than that designated in the

Class Notice, or that is not electronically submitted or postmarked within the time specified, shall be invalid and the person serving such a request shall be considered a member of the Settlement Class and shall be bound as Settlement Class Members by the Agreement, if approved.

17. Any member of the Settlement Class who elects to be excluded shall not: (i) be bound by the Settlement or any order or judgment of the Litigation; (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 Agreement. Any member of the Settlement Class who attempts to both object to and exclude themselves from this Settlement Agreement will be deemed to have excluded themselves and will forfeit the right to object to the Settlement or any of its terms.

18. Class Counsel may file any motion seeking an award of attorneys' fees, costs and expenses, as well as the Incentive Awards for the Class Representatives, in accordance with the terms of the Settlement Agreement, no later than **March 28, 2023**.

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 intends to seek and the payment of the Incentive Awards to the Class Representatives, may do so, either personally or through an attorney, by filing a written objection, together with the supporting documentation set forth below in Paragraph 20 of this Order, with the Clerk of the Court, and served upon Class Counsel, Defendant's Counsel, and the Settlement Administrator no later than **December 19, 2022**. Addresses for Class Counsel, Defendant's Counsel, the Settlement Administrator, and the Clerk of Court are as follows:

<p>Class Counsel:</p> <p>David Fish Fish Potter Bolaños, P.C. 111 East Wacker Drive Suite 2300 Chicago, IL 60601 admin@fishlawfirm.com</p>	<p>Defendant's Counsel:</p> <p>J. Hayes Ryan Gordon Rees Scully Mansukhani, LLP 1 N. Franklin Street Suite 800 Chicago, IL 60601</p>
<p>Settlement Administrator:</p> <p>Bernal, et al. v. Native Wholesale, Inc. c/o Analytics Consulting, LLC P.O. Box 2002 Chanhassen, MN 55317-2002</p>	<p>Clerk of Court:</p> <p>Office of the Circuit Court Clerk Richard J. Daley Center 50 West Washington St., Rm 802 Chicago, IL 60602</p>

20. Any Settlement Class Member who intends to object to this Settlement must include in any such objection: (i) his/her full name, address, email address, and current telephone number; (ii) the case name and number of the Litigation; (iii) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (iv) 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 (v) 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.

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 on their own behalf 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 the Incentive Awards to the Class Representatives are required to indicate in their written objection their intention to appear at the Final Approval Hearing on their own behalf or through counsel. For any Settlement Class Member who files a timely written objection and who indicates their intention to appear at the Final Approval Hearing on their own behalf or through counsel, such Settlement Class Member must also include in the written objection the identity of any witnesses they may call to testify, and all exhibits they intend to introduce into evidence at the Final Approval Hearing, which shall be attached.

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 their objection to the Settlement in the manner provided herein, or who does not also timely provide copies to Counsel 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 Settlement shall be filed no later than seven (7) days before the Final Approval Hearing.

24. Pending the final determination of the fairness, reasonableness, and adequacy of the proposed Settlement, no Settlement Class Member may prosecute, institute, commence, or continue any lawsuit (individual action or class action) with respect to the Released Claims against any of the Released Parties.

25. A hearing (the "Final Approval Hearing") shall be held before the Court on **April 4, 2023 at 11:00 a.m.** via Zoom ID: 952 6244 1199 PW: 541722, 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 Released Claims as set forth 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.

26. 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.

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

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

29. For clarity, the deadlines set forth above and in the Settlement Agreement are as follows:

Class list due: 11/10/2022 [7 days after preliminary approval order]

Notice date: 11/28/2022 [21 days after preliminary approval order]

Objection/Exclusion Deadline: 12/19/2022 [45 days from preliminary approval order]

Claim Form Deadline: 1/30/2023 [63 days after Notice Date]

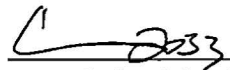
Final Approval Submission: 3/28/2023 [7 days prior to final approval]

Final Approval Hearing: 4/4/2023 at 11:00 a.m.

IT IS SO ORDERED:

ENTERED:

Date



Judge Moreland
Circuit Court of Cook County, Illinois

Judge Caroline Kate Moreland
NOV 03 2022
Circuit Court - 2033