

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement” or “Settlement Agreement”) is entered into by and between Plaintiffs Ivan Bernal, Tomas Bernal, and Ramiro Cruz (“Plaintiffs”), and all others similarly situated, and Defendant Native Wholesale, Inc. (“Defendant” or “Native”) in the case of *Bernal, et al. v. Native Wholesale, Inc.*, Case No. 2020 CH 04118, currently pending in the Circuit Court of Cook County (the “Action”). Plaintiffs and Defendant are each referred to as a “Party” and are collectively referred to herein as the “Parties.”

I. FACTUAL BACKGROUND AND RECITALS

1. On May 8, 2020, Plaintiffs filed a class action lawsuit against Defendant alleging violations of the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.* in the Circuit Court of Cook County, Illinois, Chancery Division.

2. Following arms-length negotiations, the Parties have negotiated a settlement in which the Parties agree to resolve all matters between them arising under BIPA relating to the Biometric Timekeeping System(s) at issue here including the allegations contained in the Action and as set forth herein. The Defendant has represented that no more than 691 of its employees in Illinois utilized the Biometric Timekeeping System at issue in the Action between May 8, 2015 and July 1, 2021 before signing a consent form, and the Defendant recognizes that this representation is a material term of this Settlement Agreement.

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

4. Defendant denied and continues to deny all charges of wrongdoing or liability. Despite Defendant’s beliefs that it is not liable for and has good defenses to the claims alleged in the Action, Defendant desires to settle the Action and thus avoid the expense, risk, exposure, inconvenience, and distraction of continued litigation of any action or proceeding relating to the matters being fully settled and finally resolved in this Settlement Agreement. Neither this Settlement Agreement, nor any settlement 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.

5. Following arms-length negotiations, the Parties now seek to enter into this Settlement Agreement. Plaintiffs and Class Counsel have conducted an investigation into the facts and the law regarding the Action 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 Plaintiffs and the Settlement Class, recognizing (a) the existence of complex and contested issues of law and fact; (b) the risks inherent in litigation; (c) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement; (d) 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; (e) Defendant’s financial condition and ability to

fund this settlement; and (f) the Plaintiffs' and Class Counsel's determination that the Settlement is fair, reasonable, adequate, and will substantially benefit the Settlement Class Members.

6. 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 best respective interests.

7. 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 Action be settled and compromised, and that the Releasers release the Releasees of the Released Claims, without costs as to Defendant, Releasees, Plaintiffs, 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:

8. "Action" shall mean the action pending in the Circuit Court of Cook County, Illinois, Chancery Division, captioned *Ivan Bernal, et al. v. Native Wholesale, Inc.*, Case No. 2020 CH 04118.

9. "Administrative Expenses" shall mean expenses associated with the Settlement Administrator, including but not limited to costs in providing notice, communicating with the Settlement Class Members, and disbursing payments to the proposed Settlement Class Members. In no event will Administrative Expenses exceed \$15,000.

10. "Approved Claims" shall mean complete, valid, and timely claims submitted by Settlement Class Members that have been approved for payment by the Settlement Administrator.

11. "Biometric Timekeeping System" shall mean the biometric timekeeping technology used by any employee of Defendant between May 8, 2015 and July 1, 2021, which utilized a scan of Plaintiffs' and the other Settlement Class Members' biometric identifier or biometric information for timekeeping purposes.

12. "Claimant" shall mean a Class Member who makes a valid claim and is entitled to a share of the Settlement Fund as set forth herein.

13. "Claim Form" shall mean the form that Settlement Class Members may submit to the Settlement Administrator to make a claim for compensation under this Settlement. The Claim Form shall be substantially in the form attached hereto as Exhibit A.

14. "Claims Deadline" shall mean the date by which all Claim Forms must be postmarked (if mailed) or submitted (if submitted electronically) to be considered timely and shall be set as a date no later than sixty-three (63) days following the Notice Date, subject to Court

approval. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Notice and the Claim Form.

15. “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, Plaintiffs.

16. “Class Counsel” shall mean Fish Potter Bolaños, PC.

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

18. “Court” shall mean the Circuit Court of Cook County, Illinois, Chancery Division and the Honorable Caroline Kate Moreland or any judge sitting in her stead.

19. “Defendant” shall mean Native Wholesale, Inc., and/or any or all of their past or present, direct or indirect, parents, subsidiaries, divisions, predecessors, successors, assigns, insurers, reinsurers, directors, officers, partners, shareholders, principals, owners, members, trustees, administrators, executors, managers, representatives, attorneys, accountants, financial and other advisors, investment bankers, underwriters, legal representatives, and successors in interest.

20. “Defendant’s Counsel” shall mean Gordon Rees Scully Mansukhani, LLP.

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

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

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

24. “Final” means the Final Approval Order has been entered on the docket, and if a timely objection has been submitted (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 the 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).

25. “Final Approval Hearing” means the hearing before the Court where the Plaintiffs will request a judgment to be entered by the Court approving the Settlement Agreement, approving the Fee Award, and approving the Service Awards to the Class Representatives.

26. “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 and Class Members’ 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 the Releasees; and
 - e. 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.

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

28. “Notice” means 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.

29. “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 forty-five (45) days after the entry of the Preliminary Approval Order, or such other date as ordered by the Court.

30. “Parties” shall mean Plaintiffs and the Defendant, collectively.

31. “Plaintiffs” or “Class Representatives” shall mean the named class representatives, Ivan Bernal, Tomas Bernal, and Ramiro Cruz.

32. “Preliminary Approval Order” shall mean the Court’s Order 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 Notices set forth in this Agreement.

33. “Released Claims” shall mean any and all claims, suits, actions, controversies, demands, and/or causes of action arising under BIPA or any other law relating to the Biometric Timekeeping System used by Defendant’s employees that were or could have been asserted in the action against the Releasees.

34. “Releasees” shall refer, jointly and severally, and individually and collectively, to Native Wholesale, Inc., and/or any or all of their past or present, direct or indirect, parents, subsidiaries, affiliates, including without limitation, Native Bouquet, LLC and Native Floral, LLC, divisions, predecessors, successors, assigns, board members, agents, insurers, reinsurers, directors, officers, partners, shareholders, principals, owners, including without limitation, Paul Peterson, managers, representatives, attorneys, accountants, underwriters, legal representatives and successors in interest. “Releasees” specifically excludes manufacturers, suppliers, vendors, and contractors of the Biometric Timekeeping System, devices and related software. Settlement Class members will not release any non-party to litigation for potential claims pursuant to the Biometric Information Privacy Act.

35. “Releasers” shall refer, jointly and severally, and individually and collectively, to Plaintiffs, 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.

36. “Settlement Administrator” means, subject to Court approval, Analytics Consulting LLC, the entity selected and supervised by Class Counsel to administer the Settlement.

37. “Settlement Fund” means a cash settlement fund to be established by Defendant or its insurers in the amount of Six Hundred Ninety One Thousand Dollars (\$691,000.00).

III. SETTLEMENT CLASS CERTIFICATION

38. For the purposes of the Settlement only, the Parties stipulate and agree that (a) the Class shall be certified in accordance with the definition contained in Paragraph 40, below; (b) Plaintiffs shall represent the Class for settlement purposes and shall be the Class Representatives; and (c) Plaintiffs’ Counsel shall be appointed as Class Counsel.

39. 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 Agreement, or if for any other reason Final Approval of the Settlement Agreement 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.

40. Subject to Court approval, the following Settlement Class shall be certified for settlement purposes:

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.

41. Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this action and members of their families, (2) the Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, and employees, (3) persons who properly execute and file a timely request for exclusion from the class, (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released, (5) the legal representatives, successors or assigns of any such excluded persons, and (6) persons who signed consent forms prior to enrollment in and usage of the subject biometric timekeeping system.

42. If for any reason the Settlement Agreement is not approved, the Court does not enter a Preliminary Approval Order and/or Final Approval Order, or a Final settlement and resolution of this Action as provided for in this Agreement is not reached, Defendant's agreement to certification of the Settlement Class shall not be used for any purpose, including but not limited to in any request for class certification in the Action or any other proceeding.

IV. SETTLEMENT OF THE ACTION AND CLAIMS AGAINST RELEASEES

43. Final Approval of this Settlement Agreement will settle and resolve with finality on behalf of the Plaintiffs and the Settlement Class, the Action and the Released Claims against the Releasees by the Releasers in the Action.

V. SETTLEMENT FUND

44. Establishment of Settlement Fund.

- a. The sum of \$691,000 shall be considered the amount of the Settlement Fund. Within fourteen (14) days of the entry of the Preliminary Approval Order and receipt of Settlement Administrator instructions and a Form W-9 for the Settlement Administrator, Defendant or its insurer(s) shall pay to the Settlement Administrator (1) the Administrative Expenses, not to exceed \$15,000, (2) the Class Counsel's attorneys' fees of 35% of the \$691,000 Settlement Fund, plus costs, in the amount of \$242,250.89, and (3) the Class Representatives' Service Awards of \$5,000 each, or \$15,000 total. The Settlement Administrator shall compile all valid Claim Forms and report the final amount of claims to Counsel for the Parties before Final Approval. Provided that Final Approval of this Agreement is granted by the Court without material change, material amendment, or material modification, Defendant or its insurer(s) shall pay to the Settlement Administrator the amount to satisfy all claims for Settlement Class Members as defined in Paragraph 45 herein. The amounts paid by Defendant are made in exchange for a comprehensive 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 Action with prejudice.

Any amounts remaining in the Settlement Fund after payments to Class Members who submit valid claims and payment of administrative costs, Service Awards, and attorney fees and costs shall revert to the Defendants.

- b. The funds provided by or on behalf of 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 and its insurer(s), less any Administrative Expenses paid to date. Plaintiffs 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 represents the total extent of the Defendant's monetary obligations under the Settlement Agreement. Defendant's contributions to the Settlement Fund shall be fixed under this Section and final. Defendant and the other 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.
- e. The Court may require changes to the method of allocation to Settlement Class Members without invalidating this Settlement Agreement, provided that the other material terms of the Settlement Agreement are not altered, including but not limited to the scope of the Release, the scope of the Settlement Class, and the amount of the Settlement Fund.

45. Each Settlement Class Member that timely submits a Valid Claim Form ("Claimant") shall be entitled to a payment of an equal share of the Settlement Fund after Administrative Expenses paid to the Settlement Administrator, a Fee Award to Class Counsel, and the Service Awards to the Class Representatives are deducted, not to exceed \$1,000 per Claimant. Thus, each Settlement Class Member who timely submits a valid Claim Form and has an Approved Claim shall receive the same amount of the Settlement Fund as each other Claimant. Any amount leftover after distribution of an equal share of the Settlement Fund remaining after deductions, not to exceed \$1,000 to each Claimant, will be distributed back to the Defendant.

46. Procedure for Approving Settlement.

- a. Plaintiffs will file the Parties' joint motion for an order conditionally certifying the Class, giving Preliminary Approval to the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice and Claim Form (the "Unopposed Motion for Preliminary Approval").
- b. At the hearing on the Joint 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

Agreement; appointing the Class Representatives and Class Counsel; approving the forms of Notice to the Class of the Settlement; and setting the Final Approval Hearing.

- c. 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 and on the terms contained above, that Plaintiffs shall be conditionally appointed Class Representatives, and that Plaintiffs' Counsel shall be conditionally appointed as Class Counsel. Should the Court decline to preliminarily approve any aspect of the Settlement Agreement, the Parties will attempt to renegotiate those aspects of the Settlement Agreement in good faith, with the mutual goal of attempting to reach an agreement as close to this Settlement Agreement as possible, and will then submit the renegotiated settlement agreement to the Court for preliminary approval. If and only if the Parties are unable to obtain preliminary approval of a settlement agreement after submitting at least two renegotiated settlements to the Court, the Settlement Agreement 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.

VI. SUBMISSION AND EVALUATION OF CLAIMS

47. All claims must be submitted on a Claim Form. The Claim Form will require each Settlement Class Member to provide his or her full name, mailing address, phone number, and email address; an affirmation that he/she scanned his or her finger or hand using the Biometric Timekeeping System within the state of Illinois during the relevant time period; and a signature.

48. The Claim Form must be submitted (either electronically submitted or else postmarked) on or before the Claims Deadline. The Claim Form shall be substantially in the form attached hereto as Exhibit A.

49. Completed Claim Forms shall be submitted directly to the Settlement Administrator either electronically via the Settlement Website or via U.S. Mail, for processing, assessment, and payment.

50. Any Claim Form that lacks the requisite information will be deemed to be incomplete and ineligible for payment. For any partially-completed Claim Forms, the Settlement Administrator shall attempt to contact the Settlement Class Member who submitted the Claim Form at least one time by regular U.S. mail (i) to inform the Settlement Class Member of any error(s) and/or omission(s) in the Claim Form, and (ii) to give the Settlement Class Member one opportunity to cure any errors and/or omissions in the Claim Form. The Settlement Class Member shall have until the Claims Deadline, or fourteen (14) days after the Settlement Administrator sends the regular mail notice to the Settlement Class Member regarding the deficiencies in the Claim Form, whichever is later, to cure the error(s) and/or omission(s) in the Claim Form.

51. A Settlement Class Member is not entitled to any compensation if he or she submits a Claim Form after the Claims Deadline, and/or if the Claim Form is incomplete after an opportunity to cure any error(s) and/or omission(s), as provided in the preceding Paragraph, or contains false information.

52. Within fourteen (14) days after the Claims Deadline, the Settlement Administrator shall process all Claim Forms submitted by Settlement Class Members and shall determine which claims are valid and initially approved and which claims are initially rejected. The Settlement Administrator may accept or reject any Claim Form submitted, and may, upon its discretion, request additional information prior to initially rejecting or accepting any Claim Form submitted. The Settlement Administrator shall employ reasonable procedures to screen Claim Forms for abuse and/or fraud, and shall deny Claim Forms which are incomplete (subject to Paragraph 50, above) and/or where there is evidence of abuse and/or fraud.

53. Within fourteen (14) days of the Claims Deadline, the Settlement Administrator will submit to Counsel for the Parties a report listing all initially approved Claims (“Initially Approved Claims List”), and, upon request, shall include an electronic PDF copy of all such initially approved Claim Forms. Within fourteen (14) days after the Claims Deadline, the Settlement Administrator will also submit to the Parties a report listing all initially rejected Claims (“Initially Rejected Claims List”), and, upon request, shall include an electronic PDF copy of all such initially rejected Claim Forms.

54. Counsel for the Parties shall have seven (7) days after the date they receive the Initially Approved Claims List and related Claim Forms to audit and challenge any initially approved claims. Within seven (7) days after Counsel for the Parties receive the Initially Approved Claims List and related Claim Forms, they shall serve opposing counsel via email with a Notice of Claim Challenges identifying by claim number any initially approved claim they wish to challenge and the reasons for the challenge.

55. Similarly, Counsel for the Parties may challenge any claim initially rejected by the Settlement Administrator. Counsel for the Parties shall have seven (7) days after the date they receive the Initially Rejected Claims List and related Claim Forms to audit and challenge any initially rejected claims. Within seven (7) days after Counsel for the Parties receive the Initially Rejected Claims List and related Claim Forms, they shall serve opposing counsel via email with a Notice of Claim Challenges identifying by claim number any initially rejected claim they wish to challenge and the reasons for the challenge.

56. Counsel for the Parties shall meet and confer in an effort to resolve any disputes over any challenged claims. If the challenges are not withdrawn or resolved, the decision of the Settlement Administrator will be upheld. The date all claims are finalized without any further dispute shall be referred to as the “Claims Finalization Date.” If neither Class Counsel nor Defendant’s Counsel have any challenges to the initial claims determination reached by the Settlement Administrator, then the Claims Finalization Date shall be the date both Class Counsel and Defendant’s Counsel inform each other by email that the Parties do not have any objection to the claims determination made by the Settlement Administrator or the time for informing each other of such challenges has lapsed.

57. Within seven (7) days of the Claims Finalization Date, the Settlement Administrator shall provide Counsel for the Parties with a spreadsheet setting forth the claim number, claimant name, and claimant address, and totaling the amount to be paid for each claimant, which shall be an equal amount for each approved claim (the “Final Claims List”).

58. In the event that checks sent to Settlement Class Members are not cashed within One Hundred (120) days after their 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 revert back to Defendant.

59. Procedure for Administering Settlement.

a. Class List.

i. Defendant shall create a Class List, based on readily available information already within its possession (“Class List”). The Class List shall include, at least the following: last known name, address, and email address (if known) for each Settlement Class member. The Settlement Administrator will update the Class List using the U.S. Postal Service’s database of verifiable mailing addresses and the National Change-of-Address database.

b. Type of Notice Required.

i. The Notice, which shall be substantially in the form of Exhibits B and C attached hereto, shall be used for the purpose of informing proposed Settlement Class Members, prior to the Final Approval Hearing, that there is a pending settlement, and to further inform Settlement Class Members how they may: (a) obtain a copy of the Claim Form; (b) protect their rights regarding the Settlement; (c) request exclusion from the Settlement Class and the proposed Settlement, if desired; (d) object to any aspect of the proposed Settlement, if desired; and (e) participate in the Final Approval 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.

ii. 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 Exhibits B and C hereto.

iii. Individual notice (substantially in the form of Exhibit B) shall be sent via U.S. Mail where Defendant has a last-known mailing

address or the address information can be determined by the Settlement Administrator. Individual notice may also be sent via last known email, if available.

iv. Notice of the settlement (substantially in the form of Exhibit C) shall be posted to the Settlement Website within twenty-one (21) days of the entry of the Preliminary Approval Order.

c. Notice Deadline

i. Within twenty-one (21) days of entry of the Preliminary Approval Order, the Settlement Administrator shall disseminate, by U.S. Mail, to the Settlement Class Members identified on the Class List for whom an address is known or readily determinable, or by electronic mail where an address is not known or readily determinable, a copy of the Notice in the form of Exhibit D.

60. Allocation and Payment.

a. On or before fourteen (14) days after the Effective Date, the Settlement Administrator shall pay to Class Counsel the amount awarded by the Court in the Fee Award. The Fee Award shall be paid solely via electronic wire transfer to an account designated by Class Counsel.

b. The Service Awards shall be paid by check made payable to Plaintiffs, written by the Settlement Administrator on or before fourteen (14) days after the Effective Date and mailed to the address identified on the W9 tax form provided by Plaintiffs to the Settlement Administrator in advance thereto.

c. Upon the later of ten (10) business days after the Claims Finalization Date or thirty (30) days after the Effective Date, the Settlement Administrator shall send a check by First Class U.S. Mail to each Settlement Class Member on the Final Claims List. The Settlement Administrator shall notify the Parties that all Approved Claims have been paid within five (5) business days of the last of such payment and shall notify the Parties of the date of issuance of the checks

d. The Settlement Administrator shall notify the Parties that all payments have been made within five (5) business days of the last such payment. The Settlement Administrator will provide Counsel for the Parties with weekly reports regarding the status of administration of this Settlement.

e. Checks to the Settlement Class Members who submit a valid Claim shall remain valid and negotiable for one hundred twenty (120) days from the date of their issuance and may thereafter automatically be cancelled if not

cash within that time period. Within seventy-five (75) days of issuance of settlement checks, the Settlement Administrator shall provide a list of any settlement checks that are not cashed/negotiated within sixty (60) days of issuance to Counsel for the Parties. Within ten (10) days thereafter, the Settlement Administrator shall attempt to obtain valid mailing addresses and send a reminder post-card to affected class members. Additionally, at the conclusion of the 120-day period, the Settlement Administrator shall provide a list of any settlement checks that are not then cashed/negotiated to counsel for the Parties. Within ten (10) days of the expiration of the 120-day period, the Settlement Administrator shall transfer such uncashed funds to the Defendant or its insurer.

- f. The Settlement Administrator will include language on all settlement checks stating that such checks are void one hundred twenty (120) days following the date such check was originally issued. The Settlement Administrator will provide Counsel for the Parties with weekly reports regarding the status of administration of this Settlement Agreement, including, without limitation, the portion of the Settlement Fund that has not been cashed within one hundred twenty (120) days following the date such check was originally issued.

VI. RELEASE

61. 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.

62. As of the Effective Date, and with the approval of the Court, all Releasers hereby fully, finally, and forever release, waive, discharge, surrender, forego, give up, abandon, and cancel any and all Released Claims against Releasees. As of the Effective Date, all Releasers will be forever barred and enjoined from prosecuting any action against the Releasees asserting any and/or all Released Claims.

VII. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER

63. This Settlement Agreement shall be subject to approval of the Court. Defendant shall have the right to withdraw from the Settlement Agreement if the Court does not approve the material aspects of the Agreement.

64. Plaintiffs, 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, which order shall seek a Final Approval Hearing date and approve the Notice for dissemination in accordance with the Notice plan.

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

66. At least seven (7) days prior to the Final Approval Hearing, or by some other date if so directed by the Court, Plaintiffs, through Class Counsel, will move for: (a) Final Approval of the Settlement Agreement; (b) Final appointment of the Class Representatives and Class Counsel; and (c) Final certification of the Settlement Class, including for the entry of a Final Order and Judgment, and file a memorandum in support of the motion for Final Approval.

VIII. EXCLUSIONS

67. Exclusion Period.

- a. Settlement Class Members will have up to the Objection/Exclusion Deadline 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, as provided in the following Paragraph, by the end of the Objection/Exclusion Deadline will be bound by the Settlement and will be deemed a Releasing Party as defined herein, and the relief provided by the Settlement will be their sole and exclusive remedy for any and all Released Claims.

68. Exclusion Process.

- a. A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked, or submitted electronically via the Settlement Website, on or before the Objection/Exclusion Deadline.
- 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, 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.
- c. 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.

- 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.
- 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

IX. OBJECTIONS

69. 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.

70. 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.

71. 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.

72. Settlement Class Members cannot both object to and exclude themselves from this Settlement Agreement. Any Settlement Class Member 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 this Settlement Agreement or any of its terms. If a Settlement Class Member returns both a Claim Form and a written request for exclusion, the request for exclusion shall be deemed void and of no force and effect, and the Claim Form shall be processed under the terms of this Settlement Agreement.

X. FINAL APPROVAL HEARING

73. The Parties will jointly request that the Court hold a Final Approval Hearing approximately ninety (90) days after entry of the Preliminary Approval Order. 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 § 2-801 for settlement and, if so, (a) consider any properly-filed objections; (b) determine whether the Settlement Agreement is fair, reasonable and adequate, was entered into in good faith and without collusion, and should be approved, and shall provide findings in connection therewith; and (c) enter the Final Approval Order, including final approval of the Settlement Class and the Settlement Agreement, and a Fee Award.

XI. FINAL APPROVAL ORDER

74. 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 waiver of any rights of appeal.

75. The Parties shall jointly submit to the Court a proposed order 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 § 2-801 and directing its consummation according to its terms; and

- b. Dismisses, with prejudice, all claims of the Settlement Class against the Defendant in the Action, without costs and fees except as explicitly provided for in this Agreement.

XII. TERMINATION OF THE SETTLEMENT

76. 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, any Party may elect to terminate and cancel this Settlement Agreement 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 even after the renegotiation process described in Paragraph 46(c) 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 Action in any material respect.

77. 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 Action.

XIII. ATTORNEYS' FEES, COSTS, AND EXPENSES AND SERVICE AWARD

78. At least twenty-one (21) days prior to the Objection/Exclusion Deadline, Class Counsel will file a Fee and Expense Application that seeks a Fee Award in the amount not to exceed thirty-five percent (35%) of the Settlement Fund plus costs, or \$242,250.89 (Two Hundred Forty-Two Thousand Two Hundred Fifty Dollars and Eighty-Nine Cents) total.

79. The amount of the Fee Award shall be determined by the Court based on a motion filed by Class Counsel. Class Counsel has agreed, without consideration from Defendant, to limit its fee request to no more than thirty-five percent (35%) of the Settlement Fund plus costs, or \$242,250.89 (Two Hundred Forty-Two Thousand Two Hundred Fifty Dollars and Eighty-Nine Cents) total.

80. 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.

81. Prior to or at the same time as Plaintiffs seek final approval of the Settlement Agreement, Class Counsel shall move the Court for Service Awards for the Class Representatives in an amount not to exceed \$5,000.00 (Five Thousand Dollars) per Class Representative, or \$15,000.00 (Fifteen Thousand Dollars) total, and Defendant agrees that it will not oppose such a request.

82. Class Counsel shall provide the Settlement Administrator with its completed W-9 form before the payment of the Fee Award is due.

83. In no event will Defendant's liability for attorneys' fees, expenses, and costs, Administration Expenses, and/or Service Awards exceed its funding obligations set out in 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 the Fee Award, Administrative Expenses, the Service Awards, or any other costs, fees, and/or expenses among Class Counsel, Plaintiffs, and/or Class Members except for payment of the Settlement Fund.

XIV. MISCELLANEOUS REPRESENTATIONS

84. 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.

85. The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement, and (b) agree, subject to their fiduciary and other legal obligations, to cooperate in good faith 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 Agreement.

86. 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 Plaintiffs and the Settlement Class, and each or any of them, on the one hand, against the Releasees, on the other hand.

Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiffs or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.

87. 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 Exhibit, 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.

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

89. 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.

90. 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 Exhibit other than the representations, warranties, and covenants contained and memorialized in such documents.

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

92. The Parties agree that the Exhibits to this Settlement Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

93. 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.

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

95. Plaintiffs represent and warrant that they have not assigned any claim or right or interest therein as against the Releasees to any other person or party.

96. 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.

97. 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 Rule of Evidence 408, and any other equivalent or similar rule of evidence, and shall not, except otherwise provided in this Agreement, (a) 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 (b) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue.

98. 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.

99. Except as otherwise provided in this Agreement, 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.

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

101. This Agreement may be executed in one or more counterparts exchanged by hand, messenger, or PDF as an electronic mail attachment, and any such signature exchanged shall be deemed an original signature for purposes of this Settlement Agreement. 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.

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

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

104. 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.

105. 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:

If to Class Counsel:

David Fish
FISH POTTER BOLAÑOS, PC
111 East Wacker Drive
Suite 2300
Chicago, Illinois 60601
312-818-2407
dfish@fishlawfirm.com

If to the Defendant's Counsel:

J. Hayes Ryan
GORDON REES SCULLY MANSUKHANI, LLP
One North Franklin, Suite 800
Chicago, IL 60606
T: 312-565-1400
hayesryan@grsm.com

106. This Agreement shall be deemed executed as of the date that the last party signatory signs the Agreement.

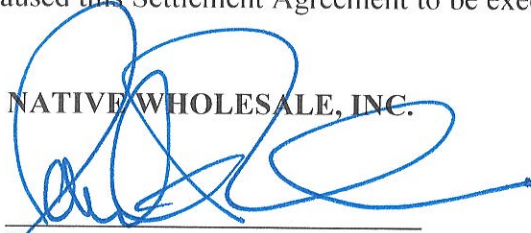
In witness hereof, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below.

IVAN BERNAL

Ivan Bernal, Plaintiff

Date: _____

NATIVE WHOLESAL, INC.



Signature

PAUL PETERSON
Name

PRECIDENT
Position

Date: **10/10/22**

TOMAS BERNAL

Tomas Bernal, Plaintiff

Date: _____

DEFENDANT'S COUNSEL



Date: **10/13/2022**

RAMIRO CRUZ

Ramiro Cruz, Plaintiff

Date: _____

J. Hayes Ryan
GORDON REES SCULLY MANSUKHANI, LLP
One North Franklin, Suite 800
Chicago, IL 60606
T: 312-565-1400
hayesryan@grsm.com

CLASS COUNSEL

Date: _____

David Fish
Mara Baltabols
FISH POTTER BOLAÑOS, PC
111 East Wacker Drive
Suite 2300

In witness hereof, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below.

IVAN BERNAL

Ivan Bernal

Ivan Bernal, Plaintiff

Date: 10/13/2022 14:17 UTC

TOMAS BERNAL

Tomas Bernal

Tomas Bernal, Plaintiff

Date: 10/15/2022 17:47 UTC

RAMIRO CRUZ

Ramiro Cruz

Ramiro Cruz, Plaintiff

Date: 10/22/2022 15:42 UTC

CLASS COUNSEL

Mara Baltabols

Date: 10/24/2022 13:15 UTC

David Fish
Mara Baltabols
FISH POTTER BOLAÑOS, PC
111 East Wacker Drive
Suite 2300

NATIVE WHOLESALE, INC.

Signature

Name

Position

Date: _____

DEFENDANT'S COUNSEL

Date: _____

J. Hayes Ryan
GORDON REES SCULLY MANSUKHANI, LLP
One North Franklin, Suite 800
Chicago, IL 60606
T: 312-565-1400
hayesryan@grsm.com

Chicago, Illinois 60601
312-818-2407
dfish@fishlawfirm.com
mara@fishlawfirm.com

STEP 3 – CERTIFICATION

I hereby certify that:

While working for Native Wholesale in Illinois, I scanned my face, finger, or another biometric identifier in order to clock in to work using a biometric timekeeping system on at least one occasion between May 8, 2015 and July 1, 2021 without first signing a written authorization form.

I certify that the above statement is true and correct, and that this is the only Claim Form that I have submitted or will submit. I also understand, acknowledge and agree that I am eligible to submit only one Claim Form as part of this settlement. I understand that this Claim Form will be reviewed for authenticity and completeness and that, if my claim is validated, I may be contacted by the Settlement Administrator to provide additional information as necessary to process the payment due to me under the Settlement.

Signature

Date

STEP 4 – METHODS OF SUBMISSION

Please complete the Claim Form above and return it by one of the following methods:

1. Online by visiting www.XXXXXBIPASettlement.com and submitting an online Claim Form no later than midnight, U.S. Eastern Standard Time, on [Date]; OR
2. By emailing the completed Claim Form to info@XXXXBIPASettlement.com no later than midnight, U.S. Eastern Time, on [Date]; OR
3. By mailing via U.S. mail a completed and signed Claim Form to the Settlement Administrator, postmarked no later than [Date], and addressed to:

Native Wholesale, Inc. BIPA Settlement
c/o [Settlement Administrator]
[Address]

YOU MAY BE ENTITLED TO A CASH PAYMENT FROM A CLASS ACTION SETTLEMENT IF YOU SCANNED YOUR FINGER, HAND, OR ANOTHER BIOMETRIC IDENTIFIER FOR TIMEKEEPING PURPOSES WHILE WORKING FOR NATIVE WHOLESALE BETWEEN MAY 8, 2015 AND JULY 1, 2021 BEFORE SIGNING AN AUTHORIZATION FORM.

A proposed settlement has been reached in a class action lawsuit against Native Wholesale, Inc. regarding a Biometric Timekeeping System it used between May 8, 2015 and July 1, 2021 that allegedly required employees to scan their face, finger, or another biometric identifier for timekeeping purposes, purportedly in violation of the law. The case is *Bernal, et al. v. Native Wholesale, Inc.*, No. 2020-CH-04118, currently pending in the Circuit Court of Cook County, Illinois, Chancery Division. The proposed Settlement is not an admission of wrongdoing by Native Wholesale, Inc., and it denies that it violated the law. The Court has not decided who is right or wrong. Rather, to save the time, expense, and uncertainty of litigation, the Parties have agreed to settle the lawsuit.

Why Am I Being Contacted? Our records indicate that you were employed by Native Wholesale and may have used Native Wholesale's Biometric Timekeeping System within the state of Illinois. Any individual who scanned his or her face, finger, or other biometrics into Native Wholesale's timekeeping system in Illinois between May 8, 2015 and July 1, 2021, before signing an authorization form, may be eligible to receive cash benefits from this Settlement.

What Does The Settlement Provide? Native Wholesale, Inc. has agreed to pay up to \$691,000 in Settlement Funds to pay valid claims, settlement administration expenses, attorneys' fees, costs and expenses, and Class Representative service awards. Each Class Member who submits a timely, valid Claim Form may receive an equal cash payment from the Settlement Fund. The exact amount of each Class Member's payment is unknown at this time and depends on unknown factors to be determined, including the total number of valid Claim Forms submitted. To receive an equal cash payment from the fund, you must submit a Claim Form by **XXX XX, 2022**. Class Members can submit a Claim Form online at www.XXXXBIPASettlement.com, or visit that website and download a Claim Form and submit it by email or by mail. Visit the website below or call for more information on filing your claim. *Submitting a valid and timely Claim Form is the only way to receive a payment from this Settlement, and is the only thing you need to do to receive a payment.*

Your Rights May Be Affected. If you do not want to be legally bound by the Settlement, you must exclude yourself by **XXX, XX, 2022**. If you do not exclude yourself, you may object to it by **XXX, XX, 2022**. The detailed notice, available at the settlement website listed below or through the Settlement Administrator, explains how to exclude yourself or object. The Court will hold a hearing on **XXX, XX, 2022**, via Zoom, (Meeting ID: 952 6244 1199, Password: 541722), to consider whether to approve the Settlement, Class Counsel's request for attorneys' fees of up to 35 percent of the Settlement Fund, plus their costs and expenses, and service awards for the Class Representatives of \$15,000.00. You can appear at the hearing, but you do not have to. If you want, you can hire your own attorney, at your own expense, to appear or speak for you at the hearing. Visit the settlement website, www.XXXXBIPASettlement.com, or contact the Settlement Administrator at _____, for details about options and deadlines.

For more information and for a Claim Form, visit www.XXXXBIPASettlement.com or call 1-999-999-9999.

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Bernal, et al. v. Native Wholesale, Inc., No. 2020-CH-04118 (Cir. Ct. Cook Cnty.)

For more information, visit www.XXXXBIPASettlement.com.

PLEASE READ THIS NOTICE CAREFULLY. YOU MAY BE ENTITLED TO A CASH PAYMENT FROM A CLASS ACTION SETTLEMENT IF YOU SCANNED YOUR FACE, FINGER, OR OTHER BIOMETRIC IDENTIFIER FOR TIMEKEEPING PURPOSES WHILE WORKING FOR NATIVE WHOLESALE BETWEEN MAY 8, 2015 AND JULY 1, 2021.

This is a court-authorized 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 court authorized notice of a proposed settlement in a class action lawsuit, *Bernal, et al. v. Native Wholesale, Inc.*, No. 2020-CH-04118 (Cir. Ct. Cook Cnty.), pending in the Circuit Court of Cook County, Illinois before the Honorable Judge Caroline Kate Moreland. The Settlement would resolve a lawsuit brought on behalf of persons who allege that Native Wholesale, Inc. (“Defendant”) required its workers to provide a scan of their biometric identifiers (such as hand or facial geometry, fingers, or eyes) 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 subject to Native Wholesale’s biometric timekeeping practices in Illinois between May 8, 2015 and July 1, 2021 without first signing a written release authorizing the collection of your biometric data. 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 companies from capturing, obtaining, storing, transferring, and/or using the biometric identifiers and/or information, such as fingerprints, hand geometry, facial geometry, or retina scans of another individual for any purpose, including timekeeping, without first providing such individual with certain written disclosures and obtaining written consent. This lawsuit alleges that Defendant violated BIPA by requiring its workers at its facility within the state of Illinois to provide a scan of their face, finger, or other biometric identifiers for timekeeping purposes without first providing the required disclosures or obtaining the required 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?

By order of: Hon. Caroline Kate Moreland, Circuit Court of Cook County, Illinois
Page 1 of 5

QUESTIONS? VISIT www.XXXXBIPASettlement.com OR CALL TOLL FREE 1-999-999-9999

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 Service Awards to the Class Representatives, if approved by the Court. The Settlement is not an admission of wrongdoing by Defendant 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 final approval to the Settlement before it can be 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, to voice their support or opposition to final approval of the Settlement, and to submit a Claim Form to receive the relief offered by the Settlement. If the Court does not give Final Approval of the Settlement, or if it 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 May 8, 2015 and July 1, 2021, you scanned your fingerprint for timekeeping and/or identity verification purposes while working for Native Wholesale, Inc. without first signing a written release authorizing the collection of your biometric data. If you are a member of the Settlement Class, then you may visit the settlement website, www.XXXXBIPASettlement.com, to submit a claim for payment.

WHAT ARE MY OPTIONS?

(1) Accept the Settlement.

To accept the Settlement, you must submit a Claim Form by **XX, XX, 2022**. You may submit a claim at www.XXXXBIPASettlement.com, or you may obtain a copy of the Claim Form at www.XXXXBIPASettlement.com and submit it by email to the Settlement Administrator at info@XXXXBIPASettlement.com or by U.S. Mail to the Settlement Administrator at _____. If the Settlement is approved and your claim is deemed valid, a check will be mailed to you. ***Submitting a valid and timely Claim Form is the only way to receive a payment from this Settlement, and is the only thing you need to do to receive a payment.***

(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 the Released Parties (as that term is defined in the Settlement Agreement) and are free to pursue whatever legal rights you may have by pursuing your own lawsuit against the Released Parties at your own risk and expense. To exclude yourself from the Settlement, you must mail a signed letter to the Settlement Administrator at _____, postmarked by **XX, XX, 2022**. You may also exclude yourself online at www.XXXXBIPASettlement.com by **XX, XX, 2022**. The exclusion letter must state that you exclude yourself from this settlement and must include the name and case

number of this Litigation, as well as your full name, address, telephone number, and email address, and a statement that you wish to be excluded from the Settlement Agreement.

(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 Court of the Circuit Court of Cook County, Illinois, Richard J. Daley Center, 50 West Washington Street, Room 802, Chicago, Illinois 60602. The objection must be postmarked no later than **XX, XX, 2022**. You must also send a copy of your objection to the attorneys for all Parties to the lawsuit, including Class Counsel (David Fish of Fish Potter Bolaños, PC, 111 East Wacker Drive, Suite 2300 Chicago, Illinois 60601), as well as Defendant Native Wholesale’s counsel (J. Hayes Ryan of Gordon Rees Scully Mansukhani LLP, 1 N. Franklin Street, Suite 800, Chicago, IL 60606) postmarked no later than **XX, XX, 2022**. Any objection to the proposed Settlement must include your (i) full name, address, telephone number, and email address; (ii) the case name and number of this 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 you have filed, or have had filed on your behalf, in any other class action cases in the last four years; and (v) 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 **XX, XX, 2022**. 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 will be held via Zoom (Meeting ID: 952 6244 1199, Password: 541722) on _____, **2022 at _____ a.m.**, in Courtroom 2302 of the Circuit Court of Cook County, Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602, personally or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Participating in the hearing is not necessary; however, persons wishing to be heard orally in opposition to the Final Approval of the Settlement, the request for attorneys’ fees and expenses, and/or the request for Service Awards to the Class Representatives 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. The hearing date and time, and whether the hearing will be conducted remotely, is subject to change by the Court, so please check the Settlement Website, www.XXXXBIPASettlement.com, for updates.

(4) Do Nothing.

If you do nothing, you will receive no money from the Settlement Fund, but you will still be bound by all orders and judgments of the Court. Unless you exclude yourself from the Settlement, you will not be able to file or continue a lawsuit against Defendant or other Released Parties regarding any of the Released Claims. *Submitting a valid and timely Claim Form is the only way to receive a payment from this Settlement.*

To submit a Claim Form, or for information on how to request exclusion from the class or file an objection, please visit the Settlement Website, www.XXXXBIPASettlement.com, or call (XXX) XXX-XXXX.

WHAT DOES THE SETTLEMENT PROVIDE?

Cash Payments. Defendant has agreed to create a \$691,000.00 Settlement Fund for the Class Members, which will be used to pay valid claims, settlement administration expenses, attorneys' fees, costs and expenses, and Class Representatives service awards. All Settlement Class Members are entitled to submit a Claim Form in order to receive a cash payment out of the Settlement Fund of up to \$1,000, but the final amount could be less depending upon the number of Claims. If the Settlement is approved, each Settlement Class Member who submits a timely Claim Form that is deemed valid will be entitled to an equal payment paid out of the Settlement Fund. The exact amount of each Class Member's payment is unknown at this time and depends on unknown factors to be determined, including the total number of valid Claim Forms submitted. The Settlement Administrator will issue a check to each Class Member who submits a valid Claim Form following Final Approval of the Settlement. All checks issued to Settlement Class Members will expire and become void 120 days after they are issued. Additionally, the attorneys who brought this lawsuit (listed below) will ask the Court to award them attorneys' fees in an amount up to 35% of the Settlement Fund, plus their reasonable costs and expenses, for the substantial time, expense and effort spent investigating the facts, litigating the case and negotiating the Settlement. The Class Representatives also will apply to the Court for a payment of up to \$15,000.00 for their time, effort, and service in this matter. Any amounts remaining in the Settlement Fund after payments to Class Members who submit valid claims and payment of administrative costs, Service Awards, and attorney fees and costs shall revert to the Defendants.

WHAT RIGHTS AM I GIVING UP IN THIS SETTLEMENT?

Unless you exclude yourself from this Settlement, you will be considered a member of the Settlement Class, which means you give up your right to file or continue a lawsuit against Defendant and the Released Parties relating to the use of employees' biometric identifiers for timekeeping purposes. Giving up your legal claims is called a release. The precise terms of the release are contained in the Settlement Agreement, which is available on the Settlement Website. Unless you formally exclude yourself from this Settlement, you will release your claims whether or not you submit a Claim Form and receive payment. 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 I BE PAID?

The Parties cannot predict exactly when (or whether) the Court will give Final Approval of the Settlement, so please be patient. However, if the Court finally approves the Settlement, Class Members who submit valid claims 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. Updated information about the case is available at www.XXXXBIPASettlement.com, or you can call the Settlement Administrator at XXX-XXX-XXXX, or contact Class Counsel at the address provided below.

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 Class Representative Service Awards that may be sought by Class Counsel. The Court will hold the Final Approval Hearing on **XX, XX, 2022** at XX am/pm

By order of: Hon. Caroline Kate Moreland, Circuit Court of Cook County, Illinois
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QUESTIONS? VISIT www.XXXXBIPASettlement.com OR CALL TOLL FREE 1-999-999-9999

via Zoom (Meeting ID: 952 6244 1199, Password: 541722). The hearing date and time, and whether the hearing will be conducted remotely, is subject to change by the Court, so please check the Settlement Website, www.XXXXBIPASettlement.com, for updates.

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 Fund. Plaintiff, Defendant, and all of the Class Members will be in the same position as they were prior to the execution of the Settlement, and the Settlement will have no legal effect, no class will remain certified (conditionally or otherwise), and 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.

WHO REPRESENTS THE CLASS?

The Court has approved the following attorneys to represent the Settlement Class. They are called "Class Counsel." You will not be charged for these lawyers. If you want to be represented by your own lawyer instead, you may hire one at your own expense.

David Fish Fish Potter Bolaños, PC 111 East Wacker Drive Suite 2300 Chicago, Illinois 60601 312-818-2407 dfish@fishlawfirm.com
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WHERE CAN I GET ADDITIONAL INFORMATION?

This Notice is only a summary of the proposed Settlement of this lawsuit. More details are contained in the Settlement Agreement which, along with other documents, can be obtained at www.XXXXBIPASettlement.com. If you have any questions, you can also call the Settlement Administrator at XXXXXXXX or contact Class Counsel at the numbers or email addresses set forth above. In addition to the documents available on the case website, 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.