

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS**

| | | |
|---|---|-----------------------------|
| HEATHER MCCLAINE, on behalf of |) | |
| herself and all other persons similarly |) | |
| situated, known and unknown, |) | |
| |) | |
| Plaintiff, |) | Case No.: 3:23-cv-01168-DWD |
| |) | |
| v. |) | Judge David W. Dugan |
| |) | |
| DX ENTERPRISES, INC. f/k/a DX |) | Jury Trial Demanded |
| ENTERPRISES, LLC d/b/a DXE, d/b/a |) | |
| GCQA, LLC, |) | |
| |) | |
| Defendant. |) | |

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Settlement” or “Settlement Agreement”) is made by Plaintiff Heather McClaine (“Plaintiff” or “Settlement Class Representative”), individually and on behalf of the Settlement Class Members she seeks to represent (“Settlement Class” or “Settlement Class Members,” as defined below), and DX Enterprises Inc. (“Defendant”) (Plaintiff and Defendant are collectively referred to as the “Parties”), in the above-captioned action (“Action”).

I. LAWSUIT ALLEGATIONS AND PROCEDURAL HISTORY

On February 27, 2023, Plaintiff filed suit against Defendant, alleging violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”) through use of its biometric timeclock. The alleged BIPA violations include failure to provide the requisite written notice required by BIPA in violation of 740 ILCS 14/15(b), failure to create and follow a written policy made publicly available that established a written retention schedule and destruction guidelines for possession of the Settlement Class Members’ biometric identifiers in violation of 740 ILCS 14/15(a), and failure to obtain Settlement Class Members’ written consent before disclosing or disseminating their biometric identifiers to Defendants’ timekeeping vendor in violation of 740 ILCS 14/15(d), and failure to store,

transmit, and protect from disclosure the Settlement Class Members' biometric identifiers using the reasonable standard of care, in violation of 740 ILCS 14/15(e). On April 6, 2023, Defendant filed its Notice of Removal, and removed the case from the Circuit Court of Lawrence County, Illinois, to the Southern District of Illinois.

On May 4, 2023, Defendant filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff sought leave to amend and filed the First Amended Complaint on May 24, 2023. On June 7, 2023, Defendant again moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). That Motion was granted without prejudice as to Count IV (14/15(e)), but otherwise denied in its entirety.

II. DEFENDANT DENIES LIABILITY

Defendants deny liability for the claims asserted in this Action. Neither the Settlement documents nor any other item pertaining to the Settlement contemplated herein shall be offered in any other case or proceeding for any purpose, including as evidence of any admission by Defendants of any liability with respect to any claim for damages or other relief, or of any admission by Plaintiff that he would not have prevailed on liability on any of his claims. Any stipulation or admission by Defendants or Plaintiff contained in any document pertaining to the Settlement is made for settlement purposes only. In the event this Settlement is not finally approved, nothing contained herein shall be construed as a waiver by Defendants of their contention that class certification is not appropriate or is contrary to law in this Action or any other case or proceeding, or by Plaintiff of his contention that class certification is appropriate in this case or any other case or proceeding.

III. CERTIFICATION OF THE SETTLEMENT CLASS

The Garfinkel Group, LLC ("Settlement Class Counsel") shall request that the Court enter a certification order and certify for settlement purposes only the following settlement class, defined as:

All persons who had their biometrics collected and/or biometric information and/or data collected, captured, received converted, stored, obtained, shared, taken, used, disclosed or disseminated by Defendant in Illinois between February 27, 2018 to the date of preliminary approval without first executing a written release. 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; (3) persons who properly execute and file a timely request for exclusion from the Settlement Class; and (4) the legal representatives, successors or assigns of any such excluded person.

Defendants estimate there are 586 Settlement Class Members.

The Settlement Subclass will be defined to consist of only those members of the Settlement Class who were hired by DX Enterprises, Inc. more than one time during the period of February 27, 2018 to the date of preliminary approval and who had their biometrics collected and/or biometric information and/or data collected, captured, received, converted, stored, obtained, shared, taken, used, disclosed, or disseminated by Defendant in Illinois without first executing a written release.

The Defendant represents that from February 27, 2018 to April 11, 2023, (a) 72 employees were rehired once, (b) 11 employees were rehired twice; and (c) 3 employees were rehired three times.

IV. SETTLEMENT TERMS

1. Final Approval; Waiver of Appeal; Settlement Date

The term "Final Approval" means the date on which the Court enters an order granting final approval of the Settlement.

If the Court grants Settlement Class Counsel's requested fees and costs and there are no objections from any Settlement Class Members, the "Effective Date" is the date of Final Approval. If any Settlement Class Member objects to the Settlement or if the Court awards less than Class Counsel's requested fees and costs, the "Effective Date" means the first date on which the Final Approval Order is no longer appealable, or if an appeal is filed, the date on which such appeal is resolved in favor of Settlement approval and no further action is required by the Court.

2. Gross Fund; Net Fund; and Allocation to Settlement Class Participant

The term “Gross Fund” means the **One Million Five Hundred Nineteen Thousand Seven Hundred Ninety-Six Dollars and Eighty-Four Cents (\$1,519,796.84)** that Defendants will pay to settle the claims of Settlement Class Members in the Action. The Gross Fund is the maximum amount that Defendants shall be obligated to pay under this Settlement.

The **Class Fund** consists of **\$1,432,617.64** representing **\$2,444.74 per Settlement Class Member** based on an estimate of 586 members. The **Subclass Fund** consists of **\$87,179.20** and will be distributed pro rata among Eligible Settlement Subclass Members.

Deductions from the Gross Fund include:

- Settlement Class Counsel’s attorney fees of up to **35%** of the Gross Fund, estimated at **\$532,929.89**.
- Reasonable litigation expenses.
- The **Class Representative’s Service Award** of up to **\$15,000**.
- The **Settlement Administrator’s costs**, capped at **\$15,000**.

The remainder after these deductions will constitute the **Net Fund**, to be distributed pro rata to eligible Settlement Class Members. Defendants shall in no circumstances pay more than the **\$1,519,796.84 gross fund**.

3. Release of Claims

a. Definitions

The term “Released Parties” means DX Enterprises, Inc., and/or any or all of its current, former and future direct and indirect owners, affiliates (including, without limitation, all entities owned by the direct or indirect owners of DX Enterprises, Inc.), parents, holding companies, subsidiaries, divisions, officers, directors, shareholders, principals, owners, members, trustees, administrators, executors, directors, officers, managers, board members, partners, agents, employees, attorneys, insurers, reinsurers, vendors, accountants, financial and other advisors, investment bankers, benefit

plans (and the trustees, administrators, fiduciaries, agents, representatives, vendors, insurers and reinsurers of such plans), underwriters, lenders, predecessors, assigns, successors, and all other persons and/or entities acting through, under, and/or in concert with any of the foregoing.

a. **Release for Settlement Class Members**

Subject to final approval by the Court of the Settlement, Settlement Class Members who do not timely and validly exclude themselves and all their respective heirs, assigns, executors, administrators, and agents, past or present, from the Settlement, will release the Released Parties from any and all liability, including claims for violations of BIPA or similar state or federal data privacy statutes.

4. Settlement Administration

The Parties have selected **JND Legal Administration** (“Settlement Administrator”) to issue notice and administer this Settlement. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the Settlement.

5. Timeline of Settlement Events

The Parties contemplate the following timeline for settlement events, subject to Court approval:

- a. **Within fourteen (14) days** after the Court grants preliminary approval of the Settlement, Defendants will provide the Settlement Administrator with a **“Class List”** in Microsoft Excel format, which shall include Settlement Class Members’ contact information, including names, last known addresses, dates of employment.. Defendants will also provide a declaration from an employee of. confirming the accuracy and completeness of the class list, to the best of their knowledge.

- b. **Within twenty-one (21) days** after the Court grants preliminary approval of the Settlement, or within **twenty-one (21) days** after Defendants receive the information from the Settlement Administrator needed to transfer funds to the Qualified Settlement Fund (whichever is later), Defendants shall fund **\$10,000** for notice and settlement administration to the Qualified Settlement Fund established by the Settlement Administrator.
- c. **Within fourteen (14) days** after receiving the Class List, the Settlement Administrator will mail a **Notice** to everyone on the Class List in accordance with Section IV.10(b)(1) of this Settlement Agreement.
- d. **All requests for exclusion** from the Settlement must be postmarked or returned to the Settlement Administrator **within thirty (30) days** from the date the Settlement Administrator mails the Notice to Settlement Class Members.
- e. **All objections** to the Settlement must be postmarked or returned to the Settlement Administrator **within thirty (30) days** from the date the Settlement Administrator mails the Notice specified in Section IV.5.c to Settlement Class Members. Within three (3) days of receiving an objection, the Settlement Administrator shall provide the objection, and any supporting materials, to counsel for the Parties. Within one (1) business day of receiving an objection from the Settlement Administrator, Settlement Class Counsel shall file the objection with the Court.
- f. **No later than fourteen (14) days** after the Effective Date, Defendants will transfer the remainder of the Gross Fund, less the amount already transferred for Settlement Administration, to the Qualified Settlement Fund account established by the Settlement Administrator.

- g. **Within twenty-one (21) days** of the Effective Date, the Settlement Administrator will mail the following payments:
- (1) Settlement award payments to Settlement Class Participants;
 - (2) the Settlement Class Representative's Service Award;
 - (3) Settlement Class Counsel's award of attorneys' fees and litigation costs (by wire transfer).
- h. The deadline for Settlement Class Participants to cash checks will be **ninety (90) days** from the date the checks are issued by the Settlement Administrator. If the checks are not cashed within 90 days, they will revert back to the Defendants and be paid to Defendants or their carriers via check within 10 days of the final distribution of funds to the class members.
- i. **Within ten (10) days** after the deadline for Settlement Class Participants to cash checks, the Settlement Administrator shall distribute funds from uncashed checks in accordance with Section IV.9 of this Agreement.

6. Tax Treatment of Settlement Awards

For federal income tax purposes, settlement awards will be treated as non-wage income and reported on an IRS Form 1099. The **Class Representative's Service Award** will also be treated as non-wage income.

7. Settlement Class Counsel's Attorney Fees and Costs

- a. Settlement Class Counsel may request that the Court award them up to thirty-five percent (35%) of the Gross Fund as attorneys' fees plus their litigation expenses.
- b. The award of attorneys' fees and litigation expenses approved by the Court shall be paid to Settlement Class Counsel from the Gross Fund.

c. In the event that the Court does not approve the award of attorneys' fees and litigation expenses requested by Settlement Class Counsel, or the Court awards attorneys' fees and litigation expenses in an amount less than that requested by Settlement Class Counsel, such decision shall not affect the validity and enforceability of the Settlement and shall not be a basis for rendering the entire Settlement null, void, or unenforceable.

d. Settlement Class Counsel may appeal the award of attorneys' fees and litigation expenses should the sum awarded by the Court fall below the amount requested by Settlement Class Counsel, provided that the request Settlement Class Counsel makes is consistent with the Settlement Agreement. If Settlement Class Counsel elects not to appeal or if the appeals court affirms the decision, only the reduced amounts will be deemed to be Settlement Class Counsel's attorneys' fees and litigation expenses for purposes of this Settlement Agreement. Any amounts for Settlement Class Counsel's attorneys' fees and litigation expenses not awarded shall be added to the Net Fund available for distribution to Settlement Class Participants as settlement awards.

e. The payment of the award of attorneys' fees and litigation expenses to Settlement Class Counsel shall constitute full satisfaction of the obligation to pay any amounts to any person, attorney or law firm for attorneys' fees or litigation expenses in the Action incurred by any attorney on behalf of the Settlement Class Representative and the Settlement Class Members, and shall relieve Defendants, the Released Parties, the Settlement Administrator, and Defendants' Counsel of any other claims or liability to any other attorney or law firm for any attorneys' fees, expenses and/or costs to which any of them may claim to be entitled on behalf of the Settlement Class Representative and the Settlement Class Members. In exchange for such payment, Settlement Class Counsel will release and forever discharge any attorneys' lien on the Gross Fund.

Settlement Class Members will receive a pro rata share from the **Net Class Fund** and **Net Subclass Fund**.

The **Settlement Class Fund** will be allocated based on **\$2,444.74 per Settlement Class Member** (after deduction of fees and costs). If the number of valid claims exceeds 586 members, each Settlement Class Member will still receive **\$2,444.74**, and the excess will revert to Defendants.

Settlement Subclass Members will receive an incremental payment based on their rehire status:

- The **Subclass Fund** will be allocated based on the number of rehires, with a maximum of **\$846.40 per instance of rehire**.

8. Service Award

Settlement Class Counsel will apply for a “Service Award” of up to \$15,000 for the Settlement Class Representative, to be paid for his time and effort spent conferring with Settlement Class Counsel, pursuing the Action in his own name, answering written discovery, and recovering compensation on behalf of all Settlement Class Members. Defendant agrees not to oppose such application, so long as it is consistent with the provisions of this Settlement Agreement. Subject to Court approval, the Service Award shall be paid from the Gross Fund, in addition to the Settlement Class Representative’s settlement awards. Any amount of the Service Award not awarded shall be added to the Net Fund available for distribution to Settlement Class Participants.

9. Uncashed Checks

Any checks that remain uncashed after ninety (90) days from the date they are issued by the Settlement Administrator shall be deemed void. The Parties agree that the Settlement Administrator will distribute funds from these uncashed checks to the Defendants via check within 10 days.

10. Approval of Settlement; Notice; Settlement Implementation

As part of this Settlement, the Parties agree to the following procedures for obtaining preliminary Court approval of the Settlement, notifying Settlement Class Members, obtaining final Court approval of the Settlement, and processing the settlement awards:

- a. Preliminary Approval Hearing. The Settlement Class Representative shall file a motion for preliminary approval of the Settlement as soon as is reasonably possible. With the motion

for preliminary approval, the Settlement Class Representative will submit this Agreement and accompanying attachment(s).

b. Notice to Settlement Class Members. Notice of the Settlement shall be provided to Settlement Class Members, and Settlement Class Members shall submit any objections to the Settlement, and/or requests for exclusion from the Class, using the following procedures:

c. Class notice will be provided by JND Legal Administration with a U.S. mail, plan. The opt-out, objection, exclusion, and claim deadlines shall be 30 days from the date the notice is distributed.

(1) Mailed Notice to Settlement Class Members. On the timetable specified in Section IV.5 of this Settlement Agreement, the Settlement Administrator shall send a copy of the Notice of Class Action Settlement, attached hereto as Attachment A, to Settlement Class Members via First Class regular U.S. mail. The notice will be sent in English. The Notice will be mailed using the most current mailing address information for Settlement Class Members, which the Settlement Administrator shall obtain by running each Settlement Class Member's name and address through the National Change of Address (NCOA) database or comparable databases. The front of the envelopes containing the Notice will be marked with words identifying the contents as important documents authorized by the Court and time sensitive. For Settlement Class Members whose notices are returned as undeliverable without a forwarding address, the Settlement Administrator shall promptly run a search in Experian or similar database search to locate an updated address and shall promptly mail the Notice to the updated address. If after this second mailing, the Notice is again returned as undelivered, the notice mailing process shall end for that Settlement Class Member (except as provided in Section 10.b.(2), below).

(2) Updated Contact Information

Settlement Class Members should contact the Settlement Administrator to update their mailing addresses. Settlement Class Counsel will forward any updated contact information they receive from Settlement Class Members to the Settlement Administrator. The Settlement Administrator will reissue the Notice to any Settlement Class Members who provide updated contact information prior to the “Exclusion Deadline Date,” as defined in Section IV.11.

11. Procedure for Objecting, or Requesting Exclusion from Class Action Settlement

a. Procedure for Objecting. The Notice shall provide that Settlement Class Members who wish to submit written objections to the Settlement must mail or email them to the Settlement Administrator on or before thirty (30) days from the date the Settlement Administrator mails the Notice specified in Section IV.5.c . To state a valid objection to the Settlement, an objecting Settlement Class Member must sign the objection and provide: (i) full name, current address, current telephone number, and the last four digits of his or her Social Security Number; (ii) a statement of the position or objection the objector wishes to assert, including the grounds for the position and objection; and (iii) copies of any other documents that the objector wishes to submit in support of his/her/its position. No later than three (3) days after receiving an objection, the Settlement Administrator shall furnish Settlement Class Counsel and Defendant’s Counsel a copy of the objection. No later than one (1) business day after receiving an objection from the Settlement Administrator, Settlement Class Counsel shall file the objection with the Court. Subject to approval of the Court, any objecting Settlement Class Member may appear in person or by counsel at the final approval hearing held by the Court to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate, or to object to any petitions for attorneys’ fees, reimbursement of reasonable litigation costs and expenses, and service award.

b. Procedure for Requesting Exclusion. The Notice shall provide that Settlement

Class Members who wish to exclude themselves from the Class must submit a written statement requesting exclusion from the Class by mail or email to the Settlement Administrator no later than thirty (30) days after the Notice distribution (“Exclusion Deadline Date”). Such written request for exclusion must contain the Class Member’s full name, address, telephone number, and the last four digits of his or her social security number, a statement that the Settlement Class Member wishes to be excluded from the Settlement and must be signed by the Settlement Class Member. The date of the postmark on the return mailing envelope or the timestamp on the electronic submission shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Any Settlement Class Member who excludes himself or herself from the Settlement will not be entitled to any recovery under the Settlement and will not be bound by the Settlement. No later than three (3) days after receiving a request for exclusion, the Settlement Administrator shall furnish to Settlement Class Counsel and Defendants’ Counsel a copy of that request for exclusion. Settlement Class Counsel shall file the requests for exclusion with the motion for final approval of the settlement.

If ten percent (10%) or more of the Settlement Class Members submit valid requests for exclusion from the Settlement, Defendants may elect to withdraw from and not be bound by the terms of this Agreement.

12. Qualified Settlement Fund

As required under this Agreement, Defendants shall transfer the required portions of the Gross Fund to a Qualified Settlement Fund (“QSF”), to be held as a separate trust as described in Treasury Regulation §1.468B-1, 26 C.F.R. §1.468B-1. Settlement Class Counsel and Defendants jointly shall take such steps as shall be necessary to qualify the QSF under §468B of the Internal Revenue Code, 26 U.S.C. §468B, and the regulations promulgated pursuant thereto, with Settlement Class Counsel taking the lead in identifying any necessary steps. Defendants shall be considered the “transferor” within the meaning of Treasury Regulation §1.468B-1(d)(1). The Settlement

Administrator shall be the “administrator” within the meaning of Treasury Regulation §1.468B-2(k)(3). The Parties shall cooperate in securing an order of the Court to establish the QSF in accordance with the terms hereof in conjunction with its preliminary approval of the Settlement and Notice as described in the Agreement. The Court shall retain jurisdiction over the administration of the QSF. Defendants shall supply to the Settlement Administrator and to the Internal Revenue Service the statement described in Treasury Regulation §1.468B-3(e)(2) no later than February 15th of the year following each calendar year in which Defendants make a transfer to the QSF. It is intended that the transfers to the QSF will satisfy the “all events test” and the “economic performance” requirement of §461(h)(1) of the Internal Revenue Code, and Treasury Regulation §1.461-1(a)(2). Accordingly, Defendants shall not include the income of the QSF in its income. Rather, the QSF shall be taxed on its modified gross income, excluding the sums transferred to it, and shall make payment of resulting taxes from its own funds. In computing the QSF’s modified gross income, deductions shall be allowed for its administrative costs and other deductible expenses incurred in connection with the operation of the QSF, including, without limitation, state and local taxes and legal, accounting, and other fees relating to the operation of the QSF.

Upon establishment of the QSF, the Settlement Administrator shall apply for an employer identification number for the QSF utilizing Internal Revenue Service Form SS-4 and in accordance with Treasury Regulation §1.468B-2(k)(4).

If requested by either Defendants or the Settlement Administrator, the Settlement Administrator and Defendants shall fully cooperate in filing a relation-back election under Treasury Regulation §1.468B-1(j)(2) to treat the QSF as coming into existence as a settlement fund as of the earliest possible date.

Following its deposits as described in this Agreement, Defendants shall have no responsibility, financial obligation, or liability whatsoever with respect to the notifications to the Settlement Class

required hereunder, the processing of exclusion requests, payments to Settlement Class Counsel, investment of QSF funds, payment of federal, state, and local income, employment, unemployment, excise, and other taxes imposed on the QSF or its disbursements, or payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the QSF, since it is agreed that such deposits shall fully discharge Defendants' obligations to Settlement Class Participants and Settlement Class Counsel and for expenses of administration in respect to the disposition of the Settlement funds hereunder. Rather, the Settlement Administrator shall have sole authority and responsibility for the administration of such funds and income thereon, disbursement to Settlement Class Participants and Settlement Class Counsel, and payment of taxes and administrative costs in accordance with the provisions hereof, subject only to the rights of Defendants or Settlement Class Counsel to seek redress for any breach of the terms hereof.

The Settlement Administrator shall cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns and tax withholdings statements in accordance with the provisions of Treasury Regulation §1.468B-2(k)(1) and Treasury Regulation §1.468B-2(l)(2)(ii). The Settlement Administrator may, at the expense of the QSF, retain legal counsel and an independent, certified public accountant to consult with and advise the Settlement Administrator with respect to the preparation and filing of such materials and the federal, state and local tax compliance of the QSF.

Based on the Settlement Administrator's recommendation and approval by the Parties, the QSF may be invested in United States Treasury bills, money market funds primarily invested in the same, or certificates of deposit (CDs), provided that such portions of the QSF as may reasonably be required to pay current QSF administrative expenses, taxes or disbursements to Settlement Class Participants or Settlement Class Counsel may be deposited in bank accounts which are federally insured to the greatest extent practicable. All federal, state, and local taxes imposed with respect to

income earned by, or property of, the QSF, shall be paid from the QSF. The Settlement Administrator may amend, either in whole or in part, any administrative provision of this Section or the trust instrument through which the QSF is established to maintain the qualification of the QSF pursuant to the above-described authorities provided that the rights and liabilities of the Parties hereto and the Settlement Class are not altered thereby in any material respect.

The settlement administrator will timely issue all notices required under the Class Action Fairness Act (CAFA), notifying relevant state officials about a proposed class action settlement.

13. No Solicitation of Settlement Objections or Exclusions

The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall either Party or their counsel seek to solicit or otherwise encourage Settlement Class Members to submit written objections to the Settlement or requests for exclusion from the Class, or appeal from the Court's Final Judgment.

14. Final Settlement Approval Hearing

In its preliminary approval order or a related order, the Court shall schedule a final approval hearing to determine whether to grant final approval of the Settlement Agreement along with the amount payable for (i) an award to Settlement Class Counsel for attorneys' fees and litigation expenses; (ii) the Settlement Administrator's expenses; and (iii) the Settlement Class Representative's Service Award. Plaintiffs shall present a Final Approval order to the Court for its approval. The Final Approval order Plaintiffs present to the Court shall provide that the matter will be dismissed with prejudice seven (7) days after Plaintiffs file a declaration with the Court from the Settlement Administrator confirming that Defendants have fully funded the Gross Fund.

15. Defendant's Representations Regarding Biometric Systems

Without admitting any liability or that it was required by law to do so, Defendants acknowledge that they have discontinued use of the biometric time clock in Illinois. Notwithstanding the foregoing,

Defendants reserve the right to reinstitute the use of biometric time clocks in Illinois in a manner compliant with BIPA.

16. Venue of Approval

The Parties will seek approval of this Settlement in the Southern District of Illinois.

17. Defendants' Legal Fees

All of Defendants' own legal fees, costs and expenses incurred in this Action shall be borne by Defendants.

18. Certification of Distribution of Settlement Checks

The Settlement Administrator shall provide Settlement Class Counsel with an accounting of the proceeds disbursed, upon request by Settlement Class Counsel. Should Settlement Class Counsel request such an accounting, Settlement Class Counsel will provide a copy of the accounting to Defendants' counsel.

19. Attachment(s) and Headings

The terms of this Settlement Agreement include the terms set forth in the attached Attachment(s), which are incorporated by this reference as though fully set forth herein. Any Attachment(s) to this Settlement Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Settlement Agreement.

20. Amendment or Modification

This Settlement Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors in interest. Notwithstanding the foregoing, the Parties agree that any dates contained in this Settlement Agreement may be modified by agreement of the Parties without Court approval if the Parties agree and cause exists for such modification. However, the Parties cannot modify deadlines set by the Court without Court approval.

21. Entire Agreement

Upon execution, this Settlement Agreement and any Attachment(s) constitute the entire agreement among these Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Attachment(s) other than the representations, warranties and covenants contained and memorialized in such documents.

22. Good Faith Negotiation if the Court Does Not Grant Approval

If the Court does not grant preliminary or final approval of the Settlement, the Parties will work together in good faith to address the concerns raised in denying preliminary or final approval.

23. Authorization to Enter into Settlement Agreement

Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement.

24. Binding on Successors and Assigns

This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

25. Illinois Law Governs; Change in Law Will Not Invalidate Settlement

All terms of this Settlement Agreement and the Attachment(s) hereto shall be governed by and interpreted according to the laws of the State of Illinois. An intervening change in law or court decision shall not invalidate this Settlement Agreement.

26. Counterparts

This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Electronic signatures compliant with the ESIGN Act and signatures transmitted by fax or .pdf shall have the same effect as an original ink signature.

27. This Settlement is Fair, Adequate and Reasonable

The Parties warrant and represent they have conducted a thorough investigation of the facts and allegations in the Action. The Parties further represent and warrant that they believe this Settlement Agreement represents a fair, adequate and reasonable Settlement of this action and that they have arrived at this Settlement Agreement through extensive arms-length negotiations, taking into account all relevant factors, present and potential.

28. Jurisdiction of the Court

The Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement embodied in this Settlement Agreement and all orders and judgments entered in connection therewith.

29. Cooperation and Drafting

Each of the Parties has cooperated in the drafting and preparation of this Settlement Agreement. Hence, in any construction made to this Settlement Agreement, the same shall not be construed against any of the Parties.

30. Invalidity of Any Provision

Before declaring any provision of this Settlement Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable

precedents so as to define all provisions of this Settlement Agreement valid and enforceable. If the Court declares any provision of this Settlement Agreement invalid that shall not render the entire Settlement Agreement invalid, though Defendants may elect to void the Settlement Agreement.

31. Circular 230 Disclaimer

Each Party to this Settlement Agreement acknowledges and agrees that (1) no provision of this Settlement Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers regarding this Settlement Agreement, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) each Party (A) has relied exclusively upon his, her or its own, independent legal and tax advisers for advice (including tax advice) in connection with this Settlement Agreement, (B) has not entered into this Settlement Agreement based upon the recommendation of any Party or any attorney or advisor to any other Party, and (C) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other Party to avoid any tax penalty that may be imposed on that Party; and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement Agreement.

DATED: 12 / 13 / 2024

Plaintiff and Settlement Class



By Heather McClaine (Plaintiff/Settlement Class Representative)

and

12 / 13 / 2024



By Settlement Class Counsel (The Garfinkel Group, LLC)

DATED: _____

Defendant DX Enterprises, Inc.

By: _____

Its: _____

DATED: _____

Plaintiff and Settlement Class

By Heather McClaine (Plaintiff/Settlement Class Representative)

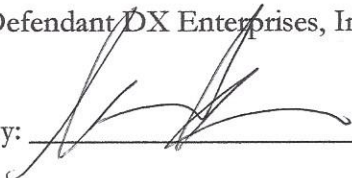
and

By Settlement Class Counsel (The Garfinkel Group, LLC)

DATED: 12/16/24

Defendant DX Enterprises, Inc.

By: _____

 WILLIAM BOSS

Its: _____

CHIEF FINANCIAL OFFICER

Attachment A

NOTICE OF CLASS ACTION SETTLEMENT

Heather McClaine, on behalf of herself and all other persons similarly situated, known and unknown v. DX Enterprises, Inc., 3:23-CV-01168-DWD (U.S. District Court for the Southern District of Illinois)

1. Introduction

The U.S. District Court for the Southern District of Illinois preliminarily approved a class action settlement in the lawsuit *Heather McClaine, on behalf of herself and all other persons similarly situated, known and unknown v. DX Enterprises, Inc.*, 3:23-CV-01168-DWD (U.S. District Court for the Southern District of Illinois) (“*The Lawsuit*”).

The Court has approved this Notice to inform you of your rights in the settlement. As described in more detail below, you may:

- (1) do nothing, receive a settlement payment and give up certain legal claims you have;
- (2) exclude yourself from the settlement, not receive a settlement payment and not give up any legal claims; or
- (3) object to the settlement.

Before any money is paid, the Court will decide whether to grant final approval of the settlement.

2. What Is this Lawsuit About?

This Lawsuit is about whether or not DX Enterprises, Inc., (“Defendant”) violated the Illinois Biometric Information Privacy Act (“BIPA”). BIPA prohibits private companies from capturing, obtaining, storing, transferring, and/or using an individual’s biometric identifiers and/or biometric information, including a fingerprint or identifying information based on a fingerprint, without first providing an individual with certain written disclosures and obtaining written consent. The Lawsuit alleges that Defendant violated BIPA by collecting palmprint or handprint data from their employees in Illinois through their biometric timekeeping system without first providing written notice or obtaining written consent. The Lawsuit also alleges that Defendant did not timely destroy fingerprint data for employees after they stopped working for Defendant. Finally, the Lawsuit alleges that Defendant disclosed fingerprint data to their timekeeping vendor without consent.

Defendant denies liability in the Lawsuit.

Both sides agreed to the settlement to resolve the Lawsuit. The Court did not decide whether Defendant violated the law.

You can learn more about the Lawsuit by contacting the settlement administrator, JND Legal Administration, at 1-xxx-xxx-xxxx, or Settlement Class Counsel, the Garfinkel Group, LLC 312-736-7991 ext. 2.

3. Who Is Included in the Settlement?

The settlement includes all workers who used alleged Defendants' palmprint or handprint scan timekeeping system in Illinois during the Class Period ("Settlement Class" or "Settlement Class Members").

There are an estimated 586 Settlement Class Members, and 87 Subclass Members.

4. What does the Settlement Provide?

The class action settlement provides for a total payment of **\$1,519,796.84** that Defendant has agreed to pay to settle the claims of **Settlement Class Members** and **Settlement Subclass Members**. Subject to Court approval, the **Gross Settlement Fund** shall be reduced by the following:

1. An award of up to **thirty-five percent (35%)** of the total settlement for **Settlement Class Counsel's** attorney fees (estimated to be **\$531,928.89**) and litigation costs (not to exceed **\$TBD**).
2. A **Service Award** of **\$15,000** to the **Settlement Class Representative**.
3. The **Settlement Administrator's costs**, capped at **\$TBD**.

Following these reductions, the remaining amount shall constitute the **Net Settlement Fund**, which will be distributed among the **Settlement Class Members** and **Settlement Subclass Members** as set forth below.

Unless you exclude yourself from the settlement as explained below, you will give up any and all claims against Defendants, their employees, and their related entities, including claims under the Biometric Information Privacy Act and any and all other related federal, state, and local law claims, including under the common law, as well as related claims for liquidated damages, penalties, attorneys' fees and costs, expenses, and interest. The full release of claims is set forth in the Settlement Agreement, which you can request from Settlement Class Counsel or the Settlement Administrator as identified below.

5. What Are Your Options?

(1) **Receive a settlement payment.** If you want to receive a settlement payment, you do not need to do anything. If you do nothing and the court grants final approval of the settlement, you will be mailed your settlement payment and be bound by the Settlement Agreement, including the release of claims. If required by law, you may also be sent a 1099 tax reporting form.

(2) **Exclude yourself from the settlement and receive no money.** If you do not want to be legally bound by the settlement, you must exclude yourself from the settlement by **Insert date 30 days from** the date the Settlement Administrator mailed this **Notice**. If you do this, you will NOT get a settlement payment. To do so, you must mail or email your written request for exclusion to the Settlement Administrator (contact information below). Your written request for exclusion must include your full name, address, telephone number, the last four digits of your Social Security Number, a statement that you wish to be excluded from the settlement, and it must be signed by you. If you exclude yourself, you will not receive money from this settlement, but you will keep your legal rights regarding any claims that you may have against Defendants and the other Released Parties (as defined in the Settlement Agreement).

(3) **Object to the Settlement.** You may object to the settlement by **Insert date 30 days from** the date the Settlement Administrator mailed this **Notice**. If you want to object to the settlement, you must mail or email a written objection to the Settlement Administrator (contact information below),

which includes your full name, address, telephone number, the last four digits of your Social Security Number, the grounds for the objection, and copies of any other documents that you wish to submit in support your objection. Any objection must also be personally signed by you. If you exclude yourself from the settlement, you cannot file an objection.

6. How do I update my Contact Information?

You must notify the Settlement Administrator of any changes in your mailing address so that your settlement award will be sent to the correct address. To update your address, contact the Settlement Administrator, listed below.

7. Who Are the Attorneys Representing the Settlement Class and How Will They Be Paid?

The Court has appointed Settlement Class Counsel, identified below, to represent Settlement Class Members in this settlement. Settlement Class Counsel will request up to thirty-five percent of the total settlement amount as attorney fees plus reimbursement of their costs. You will not have to pay Settlement Class Counsel from your settlement award or otherwise. You also have the right to hire your own attorney at your own expense.

The Garfinkel Group, LLC

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Chicago, Illinois 60642
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8. When is the Final Approval Hearing?

The Court will hold a hearing in this case on **Insert date and time from preliminary approval order**, to consider, among other things, (1) whether to finally approve the settlement; (2) a request by the lawyers representing Settlement Class Members for an award of up to thirty-five percent (35%) of the settlement as attorneys' fees plus litigation costs; and (3) a request for a Service Award of \$15,000 for Settlement Class Representative Heather McClaine; and (4) a request for up to \$[TBD] to the Settlement Administrator. You may appear at the hearing, but you are not required to do so.

If you have any questions or for more information, contact the Settlement Administrator or Settlement Class Counsel at:

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| <u>Settlement Administrator</u> JND Legal Administration Address Line 1 Address Line 2 Telephone Number | <u>Settlement Class Counsel</u> The Garfinkel Group, LLC Max P. Barack max@garfinkelgroup.com Haskell Garfinkel |
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| Email address | haskell@garfinkelgroup.com 701 N. Milwaukee Avenue The CIVITAS Chicago, Illinois 60642 Telephone: (312) 736-7991 |
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PLEASE DO NOT CONTACT THE COURT OR DEFENDANTS ABOUT THIS SETTLEMENT.