

**IN THE CIRCUIT COURT FOR THE 18th JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS**

CASE NO: 2023LA001304

ALONSO GUTIERREZ, on behalf of
himself and all similarly situated
individuals,

Plaintiff(s),

vs.

NASAW/DOUGLAS & ASSOCIATES,
LTD. d/b/a MCFARLANE DOUGLASS
AND COMPANIES,

Defendant.

_____ /

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement (“Settlement” or “Settlement Agreement”) is made by Plaintiff Alonso Gutierrez (“Plaintiff” or “Settlement Class Representative”), individually and on behalf of the Settlement Class Members he seeks to represent (“Settlement Class” or “Settlement Class Members,” as defined below), and Nasaw/Douglas & Associates, Ltd. d/b/a McFarlane Douglass and Companies (“NDA” or “Defendant”). Plaintiff and Defendant are collectively referred to as the “Parties”, in the above-captioned action (“Action”).

I. DENIAL OF LIABILITY AND RESTRICTIONS ON USE OF SETTLEMENT

Defendant denies 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 as evidence of any admission by Defendant 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 Defendant 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 Defendant that class certification is not appropriate or is contrary to law in this Action or any other case or proceeding, or by Plaintiff that class certification is appropriate in this case or any other case or proceeding.

II. CERTIFICATION OF THE SETTLEMENT CLASS

The “Class Period” is defined as:

December 4, 2018, through February 6, 2024.

Settlement Class Counsel shall request that the Court certify for settlement purposes the following settlement class:

All individuals employed by Defendant who scanned a hand on a biometric device within the State of Illinois during the Class Period between without first providing a written consent (“Class Members”).

Defendant represents that there are no more than 50 Settlement Class Members.

III. SETTLEMENT TERMS

1. Final Approval

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

2. Maximum Gross Fund; Net Fund; and Allocation of Net Fund

The term “Maximum Gross Fund” is Sixty-Two Thousand Five Hundred Dollars (\$62,500.00) that Defendant will pay to settle the claims of Settlement Class Members in the Action. The Maximum Gross Fund is the maximum amount that Defendant shall be obligated to pay under this Settlement, unless the number of Settlement Class Members exceeds 50, in which case the Maximum Gross Fund shall ratably increase to account for the additional Settlement Class Members by \$1,250.00 per Settlement Class Member above 50.

The term “Net Fund” is the Maximum Gross Fund minus the following deductions, which are subject to Court approval: Settlement Class Counsel’s attorney fees and costs; the Settlement Administrator’s costs; and the Settlement Class Representative’s Service Award.

The Net Fund shall be distributed to Settlement Class Members who do not timely return valid requests for exclusion (“Settlement Class Participants”). Settlement Class Participants will receive a Settlement Payment in the amount of the Net Fund divided by the total number of Settlement Class Members. Any Settlement Class Member who does not timely return a valid request for exclusion shall be entitled to a payment.

3. Release of Claims

a. Definition of “Released Parties”

The term “Released Parties” means Defendant and its current and former owners, affiliates, parents, subsidiaries, divisions, officers, directors, shareholders, agents, employees, attorneys, insurers, benefit plans, predecessors, and successors. Excluded from the release are any of Defendant’s vendors.

b. Release for Settlement Class Members

Subject to Final Approval, Settlement Class Members who do not exclude themselves from the Settlement will release all claims, suits, actions, controversies, demands, and/or causes of action, premised upon statute, contract, common law or otherwise, whether seeking liquidated or actual damages, penalties, specific performance, injunctive relief, attorneys’ fees, costs, interest or any other relief, against the Released Parties that arise out of, relate to or are connected with the alleged violation of or non-compliance with BIPA, alleged biometric identifiers (including, but not limited to retina or iris scan, fingerprint, voiceprint, scan of hand, scan of face geometry, or measurement of any biological feature), alleged biometric information of any kind (including, but not limited to, any information, regardless of how it is captured, converted, stored, or shared, based

on an individual's biometric identifier used to identify an individual), or other alleged biometric data, whether pursuant to BIPA or any other federal, state or local law, including common law, regardless of whether such causes of action or claims are known or unknown, filed or unfiled, asserted or unasserted, and/or existing or contingent. The Settlement Class Member will be bound by the Release unless the Settlement Class Member timely opts-out of the Settlement.

4. Settlement Administration

The Parties have selected Apex Class Action Administrator (“Settlement Administrator”) to issue notice and administer this Settlement. The Settlement Administrator’s costs shall be paid from the Maximum Gross Fund. 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. The Settlement Administrator shall be responsible for such things as establishment of a Qualified Settlement escrow account for the deposit of the Maximum Gross Fund, providing notice to Settlement Class Members via mail and e-mail, verifying addresses, skip tracing addresses as necessary, communicating with Settlement Class Members, disbursing Settlement Payments to Settlement Class Members who do not exclude themselves from the settlement, tax reporting, and engaging in and completing other administrative activities contemplated in this Agreement.

5. Timeline of Settlement Events

The Parties contemplate the following timeline for settlement events:

- a. Plaintiff will file an Unopposed Motion for Preliminary Approval as soon as is reasonably possible or before such other date set by the Court.
- b. Within 14 days after the Court grants preliminary approval of the Settlement, Defendant will provide the Settlement Administrator with an Excel spreadsheet

with the last known contact information for Settlement Class Members, including names, addresses, cell phone numbers (if available), and personal e-mail addresses (if available) (this information is collectively referred to as the “Class List”).

- c. Within 30 days of receiving the Class List data from Settlement Class Counsel, the Settlement Administrator will mail, email, and text message a Notice to Settlement Class Members.
- d. Within 30 days after the date of the initial distribution of the Notice to Settlement Class Members, Settlement Class Counsel shall file a motion for attorney fees, litigation costs, settlement administration costs, and the Settlement Class Representative’s Service Award. Settlement Class Counsel shall provide this motion to the Settlement Administrator to be posted on the Settlement website so that Settlement Class Members may obtain a copy during the objection/exclusion period as described in the notice.
- e. The Action Period will end 60 days after the Notice is initially distributed to Settlement Class Members.
- f. Within 14 days after the end of the Action Period, the Settlement Administrator shall provide counsel for the Parties with a report that contains the information described in Section III.11.(e) of this Agreement.
- g. Settlement Class Counsel will file a motion for final approval of this Settlement within seven (7) days before the Final Approval Hearing or such other date as set by the Court, and the Settlement Administrator shall post it on the Settlement website.

- h. No later than three (3) days before the hearing on final approval of the Settlement, Defendant shall deposit the Maximum Gross Fund into the QSF.
- i. Thirty-five (35) days after the entry of Final Approval of the Settlement, or, if there is an appeal, thirty-five (35) days after the entry of a non-appealable order affirming the Final Approval order approving the Settlement, the Settlement Administrator will mail or deliver the following payments: (1) Settlement award payments to Settlement Class Participants; (2) the Settlement Class Representative's Service Award (if any); and (3) Settlement Class Counsel's award of attorney fees and litigation costs (by wire transfer).
- j. The deadline for Settlement Class Participants to cash checks will be 180 days from the date the checks are issued by the Settlement Administrator.
- k. Within 60 days after Final Approval, Defendant will delete all hand-scan data on the timekeeping system for its active and former employees.
- l. Within 45 days after the deadline for Settlement Class Participants to cash checks, the Settlement Administrator shall distribute funds from uncashed checks in accordance with Section III.9 of this Agreement and the Court's order(s).

6. Tax Treatment of Settlement Awards

For income tax purposes, the Parties agree that, if required by law, Settlement Class Participant settlement awards shall be allocated as non-wage income and shall not be subject to required withholdings and deductions. The Settlement Class Representative's Service Award shall be allocated as non-wage income and shall not be subject to required withholdings and deductions and shall be reported as non-wage income as required by law. If required by IRS regulations, the Settlement Administrator shall issue to each Settlement Class Participant an IRS Form 1099. A Settlement Class Member's failure to include their Social Security number will not

invalidate their participation in the Settlement. If the Settlement Administrator does not have a Social Security number for a Settlement Class Member, the Settlement Administrator will either make automatic deductions from a Class Member's settlement payment as permitted by law or will follow up with the Settlement Class Member to obtain their Social Security number. If the Settlement Administrator is not permitted by law to take automatic tax deductions from the Settlement Class Member's Settlement Payment, and does not have the Settlement Class Member's Social Security number before the close of the Check Cashing Period, the check shall be treated as an uncashed check. Other than the reporting requirements herein, Settlement Class Members shall be solely responsible for the reporting and payment of their share of any federal, state and/or local income or other taxes on payments received pursuant to this Settlement Agreement.

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 Maximum Gross Fund as attorney fees plus their litigation expenses.

b. The award of attorney fees and litigation expenses approved by the Court shall be paid to Settlement Class Counsel from the Maximum Gross Fund.

c. In the event that the Court does not approve the award of attorney fees and litigation expenses requested by Settlement Class Counsel, or the Court awards attorney 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 attorney 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 elect not to appeal or if the appeals court affirms the decision, only the reduced amounts will be deemed to be Settlement Class Counsel's attorney fees and litigation expenses for purposes of this Settlement Agreement. Any amounts for Settlement Class Counsel's attorney 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 attorney 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 attorney 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 Defendant, the Released Parties, the Settlement Administrator, and Defendant's Counsel of any other claims or liability to any other attorney or law firm for any attorney 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 Maximum Gross Fund.

8. Service Award

Settlement Class Counsel will apply for "Service Award" of \$5,000 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, and recovering compensation on behalf of all Settlement Class Members. Subject to Court approval, the Service Award shall be paid from the Maximum Gross Fund, in addition to the Settlement Class Representative's Settlement Payment. Any amount of the Service Award not awarded shall be added to the Net Fund available for

distribution to Settlement Class Participants. Defendant does not agree to the proposed Service Award and reserves the right to oppose it at the appropriate time.

9. Uncashed Checks

Any checks that remain uncashed after 180 days from the date they are issued by the Settlement Administrator shall be deemed void. The Settlement Administrator will distribute funds from each of these uncashed checks to National Institute for Worker's Rights as a *cypres* recipient.

10. Responsibilities of the Parties

The Parties shall perform all duties as stated in this Settlement Agreement.

11. 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. The Settlement Class Representative shall file a motion for preliminary approval of the Settlement as soon as reasonably possible, consistent with Court order(s). With the motion for preliminary approval, the Settlement Class Representative will submit this Settlement Agreement and accompanying attachment.

b. Compilation of Class List. Contact information for Settlement Class Members will be compiled using the following procedures:

(1) Defendant's Records. To the extent available from Defendant's records, within fourteen (14) days after the Court enters a preliminary approval order, Defendant will provide an Excel spreadsheet to the Settlement Administrator with the last known contact information for Settlement Class Members, including names, last known address, cell phone numbers (if available), and personal email addresses (if available) (this information is collectively referred to as the "Class List"). The Settlement Administrator shall treat the Class List as

confidential and shall not share the information with anyone. The Class List, and the information contained therein, shall be used solely for the purpose of disseminating notice and distributing payments in fulfillment of the terms of the Settlement Agreement. Defendant will provide a declaration to Settlement Class Counsel attesting to the number of Settlement Class Members and preparation of the Class List.

c. 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 within sixty (60) days after the initial issuance of the Notice (“Action Period”). Notice of the Settlement shall be provided as follows:

(1) Mailed Notice to Settlement Class Members. On the timetable specified in Section III.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 for whom it has mailing addresses via First Class regular U.S. mail. 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. The mailing shall include a pre-paid envelope for Settlement Class Members to return the request for exclusion. For Settlement Class Members whose notices are returned as undeliverable without a forwarding address, the Settlement Administrator shall promptly run a search in Accurint 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 11.c.(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 it receives 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 end of the Action Period.

(3) Email Notice. On the timetable specified in Section III.5 of this Settlement Agreement, and for Settlement Class Members for whom the Settlement Administrator is provided or obtains an email address, the Settlement Administrator shall email the notice as described in this Section. The subject of this email shall state: “Legal Notice: Settlement in Biometric Privacy Lawsuit.”

(4) Text Message Notice. On the timetable specified in Section III.5 of this Settlement Agreement, and for Settlement Class Members for whom the Settlement Administrator is provided or obtains a phone number, the Settlement Administrator shall text the notice as described in this Section. The subject of this text shall state: “Legal Notice: Settlement in Biometric Privacy Lawsuit.”

(5) Settlement Website. Before the deadline to distribute Notice, the Settlement Administrator shall establish a Settlement website. The website address will be www.NasawDouglasBIPASettlement.com, or another website address agreed to by the Parties. The Settlement website shall include a brief description of the claims asserted in the Action, the Court-approved Notice of Class Action Settlement (“Notice”), the Settlement Agreement, the Preliminary Approval Order, the Motion for Attorney Fees, Costs, and Settlement Class

Representative's Service Award (once available), the Motion for Final Approval (once available), and the Final Approval Order (once available). The Settlement website shall identify the contact information for Settlement Class Counsel and describe how Settlement Class Members may obtain more information about the Settlement and will include a mechanism to complete and submit an electronic request for exclusion.

(6) Contact with Settlement Class Members. Except for the Named Plaintiff, for whom Settlement Class Counsel can initiate contact, only the Settlement Administrator shall be allowed to initiate contact with Settlement Class Members during the Action Period.

d. 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 60 days from Notice distribution. 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. 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 attorney fees, reimbursement of reasonable litigation costs and expenses, and service award. Settlement Class Counsel shall file the objections with the motion for final approval of the settlement.

e. 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 on or before 60 days from Notice distribution. 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 Defendant's Counsel a copy of that request for exclusion. Settlement Class Counsel shall file or otherwise identify the requests for exclusion with the motion for final approval of the settlement.

12. Qualified Settlement Fund

The Settlement Administrator shall be responsible for opening and maintaining a Qualified Settlement Fund (QSF) under Section 1.468B-1, *et seq.*, of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended. Defendant shall transfer the required portions of the Maximum Gross Fund to the QSF.

13. Funding of the QSF

Defendant shall deposit into the QSF Maximum Gross Fund at least three (3) days before the hearing on the final approval of the Settlement.

The Settlement Fund will remain held in the Qualified Settlement Fund until thirty-five (35) days after the entry of final approval of the Settlement or, if there is an appeal, until thirty-five (35) days after the entry of a non-appealable order affirming the final approval order approving the Settlement.

14. 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 any 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 Settlement Class, or appeal from the Court's Final Judgment.

15. 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 attorney fees and litigation expenses; (ii) the Settlement Administrator's expenses; and (iii) the Settlement Class Representative's Service Award. Plaintiff shall present a Final Approval order to the Court for its approval.

16. Defendant's Representations Regarding Released Parties

Defendant represents that it has or will delete, within 60 days of Final Settlement Approval, all hand-scan data on the timekeeping system for its active and former employees.

17. Venue of Approval

The Parties will seek approval of this Settlement in DuPage County, Illinois. Defendant consents to venue in DuPage County, Illinois. Defendant consents to personal jurisdiction in this

Action and agrees to waive any lack of personal jurisdiction defense it may have in the Action. The applicable statute of limitations for Plaintiff's individual and class action claims shall relate back to December 4, 2023, which is the date Plaintiff first filed BIPA claims against Defendant on behalf of himself and on behalf of class members in the DuPage County Circuit Court. Defendant agrees not to put forward or make any argument that Plaintiff's or Settlement Class Members' biometric claims that arose on or after December 4, 2018, are untimely. Plaintiff and Defendant agree Plaintiff's and Settlement Class Members' claims are tolled between December 4, 2022, and February 6, 2024.

18. Defendant's Legal Fees

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

19. 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 Defendant's Counsel.

20. 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 Settlement Agreement are inserted for convenience of reference only and do not constitute a part of this Settlement Agreement.

21. 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.

22. 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.

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

If the Court does not grant approval of the Settlement, the parties will work together within reason in good faith to address and resolve the concerns raised by the Court in denying approval of the Settlement. If the Parties are unable to reach agreement on an alternative settlement or the Court is unwilling to grant final approval of an alternative settlement, then the Settlement shall terminate and the Parties shall return to their positions prior to entering into this Agreement.

24. Right to Terminate

If five or more individuals opt out of the Settlement Class, Defendant shall have the right, but not the obligation, to terminate the Settlement Agreement.

25. 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.

26. 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.

27. 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.

28. 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.

29. This Settlement is Fair, Adequate, and Reasonable

The Parties warrant and represent that 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 arm's-length negotiations, taking into account all relevant factors, present and potential.

30. Dismissal of the Action

As part of final approval of the Settlement, the Parties agree to cooperate and take all steps necessary and appropriate to dismiss the Action with prejudice. The Action will not be dismissed

with prejudice until after Defendant has fully funded the Qualified Settlement Fund with the Settlement Fund.

31. 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.

32. 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.

33. 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.

34. 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 advisor to any other Party to avoid any tax penalty that may be imposed on that Party; and (3) no attorney or advisor to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or advisor'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: May 29, 2024

Alonso Gutierrez



[Alonso Gutierrez \(May 29, 2024 18:38 MDT\)](#)

Settlement Class Representative

DATED: _____

Nasaw/Douglas & Associates, Ltd. d/b/a McFarlane Douglass
and Companies

By: _____

Its: _____

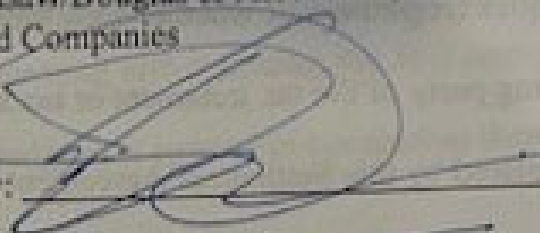
DATED: May 29, 2024

Alonso Gutierrez

AG
Alonso Gutierrez (May 29, 2024 18:30 MDT)
Settlement Class Representative

DATED: May 31, 2024

Nasaw/Douglas & Associates, Ltd. d/b/a McFarlane Douglass
and Companies

By: 
Its: President

Attachment A

NOTICE OF CLASS ACTION SETTLEMENT

Gutierrez v. Nasaw/Douglas & Associates, Ltd. d/b/a McFarlane Douglass and Co., Case No. 2023LA001304

1. Introduction

An Illinois circuit court in DuPage County preliminarily approved a class action settlement in the lawsuit *Gutierrez v. Nasaw/Douglas & Associates, Ltd. d/b/a McFarlane Douglass and Co.*, Case No. 2023LA001304 (the “Lawsuit”).

You received this notice because you are a Settlement Class Member. The Court has approved this Notice to inform you of your rights. As further explained in this Notice, you have the following four options:

Summary of Your Options	
1.	Receive a Settlement Payment. To get a Settlement Payment, you need not do anything and you will remain part of the Settlement Class, but you will also be giving up certain legal claims you have.
2.	Exclude Yourself from the Settlement. If you do not want to receive a Settlement Payment and do not want to give up any legal claims, you can exclude yourself from the Settlement by following the instructions below.
3.	Object to the Settlement. You can object to the Settlement by the following the instructions below.

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 Nasaw/Douglas & Associates, Ltd. d/b/a McFarlane Douglass and Co. (“NDA”) violated the Illinois Biometric Information Privacy Act (“BIPA”). Among other things, BIPA prohibits private companies from capturing, collecting, or otherwise obtaining an individual’s biometric identifier or biometric information, including a handprint or identifying information based on a handprint, without first providing an individual with certain written disclosures and obtaining written consent. The Lawsuit alleges that NDA violated BIPA by using a biometric device to collect handprint data from employees in Illinois without first providing written notice and obtaining written consent.

NDA denies any violation of the law. The parties agreed to a settlement to resolve the Lawsuit. The Court did not decide whether NDA violated the law.

You can learn more about the Lawsuit by contacting the settlement administrator, Apex Class Action Administrator, at 1-xxx-xxx-xxxx, or Settlement Class Counsel, identified in Section 7 of this Notice. You may also review the Settlement Agreement and related case documents at the settlement website: [XX](#).

3. Who Is Included in the Settlement?

The settlement includes all individuals who scanned their hand on a biometric device within the State of Illinois between December 4, 2018, and February 6, 2024, without first providing written consent (“Settlement Class” or “Settlement Class Members”). Excluded from the Class are persons who timely elect to exclude themselves (as described below).

4. What does the Settlement Provide?

The class action settlement provides for a total payment of \$62,500.00 that NDA has agreed to pay, or cause to be paid, to settle the claims of Settlement Class 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 and litigation costs (estimated to be \$24,412.50 in fees and \$777.55 in costs for a total of \$25,190.05) (2) a Service Award to Class Representative Alonso Gutierrez in an amount to be determined by the Court, not to exceed \$5,000; and (3) the Settlement Administrator’s costs, estimated to be no more than \$5,000.00. Following these reductions, the remaining amount shall be the net settlement fund, which shall be distributed equally to Settlement Class Members who do not timely exclude themselves (“Settlement Class Participants”).

The amount of money each Settlement Class Participant will receive will depend on the number of Settlement Class Members who do not timely return valid requests for exclusion. Settlement Class Counsel estimate that Settlement Class Participants will receive approximately **\$518.48** each.

Unless Settlement Class Members exclude themselves from the settlement as explained below, they will give up all claims against the Released Parties arising out of or relating to the collection, storage, possession, disclosure or use of data derived from handprints or hand scanning in Illinois, between December 4, 2018, and February 6, 2024, including but not limited to claims under the Illinois Biometric Information Privacy Act including statutory and common law claims, as well as All claims, suits, actions, controversies, demands, and/or causes of action, premised upon statute, contract, common law or otherwise, whether seeking liquidated or actual damages, penalties, specific performance, injunctive relief, attorneys’ fees, costs, interest or any other relief, against the Released Parties that arise out of, relate to or are connected with the alleged violation of or non-compliance with BIPA, alleged biometric identifiers (including, but not limited to retina or iris scan, fingerprint, voiceprint, scan of hand, scan of face geometry, or measurement of any biological feature), alleged biometric information of any kind (including, but not limited to, any information, regardless of how it is captured, converted, stored, or shared, based on an individual's biometric identifier used to identify an individual), or other alleged biometric data, whether pursuant to BIPA or any other federal, state or local law, including common law, regardless of whether such causes of action or claims are known or unknown, filed or unfiled, asserted or unasserted, and/or existing or contingent.

The “Released Parties” include NDA and its owners, affiliates, parents, subsidiaries, divisions, officers, directors, shareholders, agents, employees, attorneys, insurers, benefit plans,

predecessors, and successors. Excluded from the release are any of NDA's vendors. The full release of claims is set forth in the Settlement Agreement.

5. What Are a Settlement Class Member's Options?

(1) **Receive a settlement payment.** *If you are a Settlement Class Member and want to receive a settlement payment, you are not required to do anything*, and you will be bound by all orders and judgments of the Court. Additionally, you will not be able to file or continue a lawsuit against the Released Parties regarding any legal claims released in this settlement. If the Court grants final approval of the settlement, you will receive a check in the amount of your settlement. 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 are a Settlement Class Member and do not want to be legally bound by the settlement, you must exclude yourself from the settlement by **Insert date 60 days from Notice distribution**. If you exclude yourself from the settlement, you will NOT get a settlement payment. To exclude yourself, 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 (an electronic signature qualifies). 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 NDA and the other Released Parties.

(3) **Object to the Settlement.** If you are a Settlement Class Member, you may object to the settlement by **Insert date 60 days from Notice distribution**. 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, whether the objection applies to you only, a subset of the class, or the entire class, and copies of any other documents that you wish to submit in support of your objection. Any objection must also be personally signed by you (an electronic signature qualifies). 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, should you be eligible to receive one, will be sent to the correct address. To update your address, contact the Settlement Administrator, listed below.

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

The Court has appointed Settlement Class Counsel, identified below, to represent Settlement Class Members in this settlement.

Jordan Richards
USA Employment Lawyers - Jordan Richards PLLC
1800 SE 10th Ave. Suite 205
Fort Lauderdale, FL 33316
jordan@jordanrichardspllc.com

Settlement Class Counsel will request up to thirty-five percent (35%) of the total settlement amount as attorney fees plus reimbursement of their costs. You may review Settlement Class Counsel's request for attorney fees and costs at the settlement website, www.XX.com, after **Insert date available**. 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.

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 no more than thirty-five percent (35%) of the settlement as attorney fees plus litigation costs; and (3) a request for a Service Award for the Settlement Class Representative Alonso Gutierrez; and (4) a request for the Settlement Administrator's costs.

You may appear at the final approval hearing, but you are not required to do so.

9. What If You Have Questions or Want More Information?

If you have any questions or for more information, contact the Settlement Class Counsel (identified in Section 7 of this Notice) or the Settlement Administrator at:

<p><u>Settlement Administrator</u> INSERT INFO Address Line 1 Address Line 2 Telephone Number Email address</p>
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PLEASE DO NOT CONTACT THE COURT OR NASAW/DOUGLAS & ASSOCIATES, LTD. ABOUT THIS SETTLEMENT.


Gutierrez v. NasawDouglas Associates Ltd. BIPA Settlement Agreement (Final)

Final Audit Report


2024-05-30

Created:	2024-05-29
By:	USA Employment Lawyers (jordan@jordanrichardspllc.com)
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"Gutierrez v. NasawDouglas Associates Ltd. BIPA Settlement Agreement (Final)" History

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 Signer alonsogutierrez1@outlook.com entered name at signing as Alonso Gutierrez

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 Document e-signed by Alonso Gutierrez (alonsogutierrez1@outlook.com)

Signature Date: 2024-05-30 - 0:38:03 AM GMT - Time Source: server- IP address: 172.58.142.183

 Agreement completed.

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