

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS**

BRITTNEY FREDERICK, ALEXANDER  
PRUEFER, JINGER SANDERS, CRISTEN  
LEE, MARCIA CURCIO, and ALEXANDRA  
NEUMAYER, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

EXAMSOFT WORLDWIDE, INC.,

Defendant.

Civil Action No. 2021L001116

**CLASS ACTION SETTLEMENT AGREEMENT**

This Agreement (“Agreement” or “Settlement Agreement”) is entered into by and among (i) Plaintiffs, Brittney Frederick, Alexander Pruefer, Jinger Sanders, Cristen Lee, Marcia Curcio, and Alexandra Neumayer (“Plaintiffs”); (ii) the Settlement Class (as defined herein); and (iii) Defendant, ExamSoft Worldwide, LLC f/k/a ExamSoft Worldwide, Inc. (“Defendant” or “ExamSoft”). The Plaintiffs and the Defendant are collectively referred to herein as the “Parties.” This Agreement is intended by the Parties to fully, finally and forever resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions of this Agreement, and subject to the final approval of the Court.

**RECITALS**

A. On March 17, 2021, Plaintiffs Brittney Frederick, Alexander Pruefer, and Jinger Sanders filed a putative class action in the Circuit Court of Cook County, Illinois. The material allegations of the Complaint are that, between January 1, 2020 and May 5, 2021, Defendant

collected, captured, received, or otherwise obtained and/or stored the biometric identifiers and biometric information (collectively, “biometric information”) of thousands of Illinois test takers without first establishing a retention and deletion schedule for permanently destroying the biometric information, and without informing the test-takers of the specific purpose and length of term for which the biometric information is being collected, stored, and used. Plaintiffs claim that Defendant’s acts were in violation of the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*

B. On April 23, 2021, ExamSoft filed a notice of removal and removed the case to the United States District Court for the Northern District of Illinois.

C. On May 7, 2021, Plaintiffs filed a First Amended Complaint, adding Cristen Lee as a Plaintiff.

D. From the outset of the case, the Parties engaged in settlement discussions and, to that end, agreed to participate in a private mediation before ExamSoft formally answered the First Amended Complaint.

E. On August 23, 2021, the Parties participated in a full-day mediation with Jill R. Sperber, Esq. of Judicate West. At the conclusion of the mediation session, Ms. Sperber made a mediator’s proposal, which both Parties accepted the following day.

F. On October 4, 2021, after further negotiations, the Parties executed a term sheet confirming the material terms of a class action settlement.

G. On October 20, 2021, Plaintiffs voluntarily dismissed the federal action without prejudice and, on October 22, 2021, re-filed their case in Circuit Court of DuPage County,

adding Marcia Curcio and Alexandra Neumayer as Plaintiffs.<sup>1</sup>

H. At all times, ExamSoft has denied and continues to deny any wrongdoing whatsoever, denies that it committed, or threatened or attempted to commit, any wrongful act or violation of law or duty alleged in the Action, and denies that certification of a litigation class is necessary or proper. Accordingly, any references to the alleged business practices of ExamSoft in this Agreement, any settlement document, or the related Court hearings and processes will raise no inference that those business practices or any other business practices of ExamSoft were improper. Nonetheless, taking into account the uncertainty and risks inherent in any litigation and the desire to avoid the expenditure of further legal fees and costs, ExamSoft has concluded it is desirable and beneficial that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement to avoid further expense, inconvenience, and burden. This Agreement is a compromise, and the Agreement, any related documents, and any negotiations resulting in it shall not be construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing on the part of ExamSoft, or any of the Released Parties (defined below), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever or with respect to the certifiability of a litigation class.

I. Plaintiffs believe that the claims asserted in the Action against ExamSoft have merit and that they would have prevailed at summary judgment and/or trial. Nonetheless, Plaintiffs and Class Counsel recognize that ExamSoft has raised factual and legal defenses that present a risk that Plaintiffs may not prevail. Plaintiffs and Class Counsel also recognize the

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<sup>1</sup> The Parties concluded it was appropriate to proceed with their class action settlement in the Circuit Court of DuPage County due to potential Article III standing issues concerning Plaintiffs' claims under Section 15(a) of BIPA in federal court. *See Bryant v. Compass Group USA, Inc.*, 958 F.3d 617, 619 (7th Cir. 2020) (holding that there is no Article III standing for a Section 15(a) claim that alleges the failure to publicly disclose a retention and destruction policy for biometric information).

expense and delay associated with continued prosecution of the Action against ExamSoft through class certification, summary judgment, trial, and any subsequent appeals. Plaintiffs and Class Counsel also have taken into account the uncertain outcome and risks of litigation, especially in complex class actions, as well as the difficulties inherent in such litigation. Therefore, Plaintiffs believe it is desirable that the Released Claims, as further defined herein, be fully and finally compromised, settled, and resolved with prejudice. Based on its evaluation, Class Counsel has concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

J. ExamSoft maintains that it has a number of meritorious defenses to the claims asserted in this action, and that ExamSoft would prevail in this matter on summary judgment or at trial. ExamSoft denies any wrongdoing and any liability to Plaintiffs and the Settlement Class whatsoever. ExamSoft also denies that class certification is warranted or appropriate. Nevertheless, ExamSoft recognizes the risks and uncertainties inherent in litigation, the significant expense associated with defending class actions, the costs of any appeals, and the disruption to business operations arising out of class action litigation. ExamSoft also recognizes the risks that a potential trial on class-wide claims might present. Accordingly, ExamSoft believes that the Settlement set forth in the Agreement is likewise in the best interests of all parties involved.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiffs, the Settlement Class, and each of them, and ExamSoft, by and through its undersigned counsel that, subject to final approval of the Court after a hearing or hearings as provided for in

this Settlement Agreement, in consideration of the benefits flowing to the Parties from the Agreement set forth herein, that the Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

## **AGREEMENT**

### **1. DEFINITIONS.**

As used in this Settlement Agreement, the following terms have the meanings specified below:

**1.1** “**Action**” means *Frederick, et al. v. ExamSoft WorldWide, Inc.*, Civil Action No. 2021L001116, pending in the Circuit Court of DuPage County.

**1.2** “**Alternate Judgment**” means a form of final judgment that may be entered by the Court herein but in a form other than the form of Judgment provided for in this Agreement and where none of the Parties elects to terminate this Settlement by reason of such variance.

**1.3** “**Bar Exam Taker**” means a Settlement Class Member who took the Illinois Bar Exam online using ExamSoft’s software between January 1, 2020 and May 5, 2021. However, if a Settlement Class Member is both a Bar Exam Taker and a Private University Student or a Public University Student, then for purposes of calculating such Settlement Class Member’s *pro rata* distribution of the Net Settlement Fund he or she will be considered a Private University Student or Public University Student, as the case may be, and not a Bar Exam Taker.

**1.4** “**Biometric Information**” means a Settlement Class Member’s biometric identifier and biometric information, as those terms are defined in BIPA, 740 ILCS 14/10.

**1.5** “**BIPA**” shall mean the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.*

**1.6** “**Class Counsel**” means Bursor & Fisher, P.A.

**1.7** “**Class Period**” means the period of time from January 1, 2020 through and including May 5, 2021.

**1.8** “**Class Representatives**” means the named Plaintiffs in this Action, Plaintiffs, Brittney Frederick, Alexander Pruefer, Jinger Sanders, Cristen Lee, Marcia Curcio, and Alexandra Neumayer.

**1.9** “**Court**” means the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois.

**1.10** “**Defendant**” means ExamSoft Worldwide, LLC, f/k/a ExamSoft Worldwide, Inc.

**1.11** “**Defendant’s Counsel**” means Lauren R. Goldman and Archis A. Parasharami of Mayer Brown LLP.

**1.12** “**Effective Date**” means the date ten (10) days after which all of the events and conditions specified in Paragraph 9.1 have been met and have occurred.

**1.13** “**Escrow Account**” means the separate, interest-bearing escrow account to be established by the Settlement Administrator under terms acceptable to all Parties at a depository institution insured by the Federal Deposit Insurance Corporation. The Settlement Fund shall be deposited by Defendant (and/or by Defendant’s insurer on behalf of Defendant) into the Escrow Account in accordance with the terms of this Agreement and the money in the Escrow Account shall be invested in the following types of accounts and/or instruments and no other: (i) demand deposit accounts and/or (ii) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or fewer. The costs of establishing and maintaining the Escrow Account shall be paid from the Settlement Fund.

**1.14 “Fee Award”** means the amount of attorneys’ fees, costs, and reimbursement of expenses awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

**1.15 “Final”** when not used in combination with any other term defined herein, means one business day following the latest of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Judgment approving the Settlement Agreement; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or *certiorari*, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*.

**1.16 “Final Approval Hearing”** means the hearing before the Court where the Parties will request the Final Judgment to be entered by the Court approving the Settlement Agreement, the Fee Award, and the incentive award to the Class Representatives.

**1.17 “Final Judgment”** means the Final Judgment and Order to be entered by the Court approving the Agreement after the Final Approval Hearing.

**1.1 “Net Settlement Fund”** means the amount of the Settlement Fund remaining after payment of claims administration and notice costs, incentive award to the Class Representatives, and the Fee Award.

**1.18 “Notice”** means the notice of this proposed Class Action Settlement Agreement and Final Approval Hearing, which is to be sent to the Settlement Class substantially in the

manner set forth in this Agreement, is consistent with the requirements of Due Process, 735 ILCS 5/2-803, and is substantially in the form of Exhibits A, B, and C hereto.

**1.19 “Notice Date”** means the date by which the Notice set forth in Paragraph 4.1 is complete, which shall be no later than twenty-eight (28) days after Preliminary Approval.

**1.20 “Objection/Exclusion Deadline”** means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a Person within the Settlement Class must be made, which shall be designated as a date no later than forty-five (45) days after the Notice Date and no sooner than fourteen (14) days after papers supporting the Fee Award are filed with the Court and posted to the settlement website listed in Paragraph 4.1(d), or such other date as ordered by the Court.

**1.21 “Person”** shall mean, without limitation, any individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns. “Person” is not intended to include any governmental agencies or governmental actors, including, without limitation, any state Attorney General office.

**1.22 “Preliminary Approval”** means the Court’s certification of the Settlement Class for settlement purposes, preliminary approval of this Settlement Agreement, and approval of the form and manner of the Notice.

**1.23 “Preliminary Approval Order”** means the order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing notice thereof to the Settlement Class, which will be agreed upon by the Parties and submitted to the Court in conjunction with Plaintiffs’ motion for preliminary approval of the Agreement.



**1.24 “Private University Student”** means a Settlement Class Member who took an online exam administered for a private institution located in Illinois using ExamSoft’s software between January 1, 2020 and May 5, 2021.

**1.25 “Public University Student”** means a Settlement Class Member who took an online exam administered for a public institution located in Illinois using ExamSoft’s software between January 1, 2020 and May 5, 2021.

**1.26 “Released Claims”** means any and all causes of action, suits, claims, liens, demands, judgments, costs, damages, obligations, attorney fees (except as provided for in the Class Settlement), and all other legal responsibilities in any form or nature, including but not limited to, all claims relating to or arising out of state, local, or federal statute, ordinance, regulation, or claim at common law or in equity, whether past, present, or future, known or unknown, asserted or unasserted, arising out of or in any way allegedly related to the collection and possession of “biometrics” or other information related to facial authentication technology by or on behalf of ExamSoft Worldwide Inc., including all claims that were brought or could have been brought in the Action.

**1.27 “Released Parties”** means ExamSoft Worldwide, Inc., as well as all of its current, former, and future parents, predecessors, successors, affiliates, assigns, subsidiaries, divisions, or related corporate entities, and all of their respective current, future, and former employees, officers, directors, shareholders, assigns, agents, trustees, administrators, executors, insurers, attorneys, and customers.

**1.28 “Releasing Parties”** means Plaintiffs, those Settlement Class Members who do not validly opt out of the Settlement Class, and all of their respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies,

subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations.

**1.29 “Settlement Administration Expenses”** means the expenses incurred by the Settlement Administrator in providing Notice, processing claims, responding to inquiries from members of the Settlement Class, making payments to Settlement Class Members, and related services, paying taxes and tax expenses related to the Settlement Fund (including all federal, state or local taxes of any kind and interest or penalties thereon, as well as expenses incurred in connection with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants).

**1.30 “Settlement Administrator”** means JND Legal Administration, or such other reputable administration company that has been selected by Class Counsel, is reasonably acceptable to ExamSoft, and is approved by the Court to perform the duties set forth in this Agreement, including but not limited to overseeing the distribution of Notice, as well as the payments to the Settlement Class as set forth in this Agreement, and disbursing all approved payments out of the Settlement Fund, and handling the determination, payment and filing of forms related to all federal, state and/or local taxes of any kind (including any interest or penalties thereon) that may be owed on any income earned by the Settlement Fund.

**1.31 “Settlement Class”** means all Illinois residents who used ExamSoft’s software to take an online exam between January 1, 2020 through and including May 5, 2021 and who had their facial geometry or other biometric information collected, captured, received, or otherwise

obtained and/or stored by Defendant. Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this Action and members of their families; (2) the Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (3) persons who properly execute and file a valid request for exclusion from the class; and (4) the legal representatives, successors or assigns of any such excluded persons.

**1.32 “Settlement Class Member”** means a Person who falls within the definition of the Settlement Class as set forth above and who has not submitted a valid request for exclusion.

**1.33 “Settlement Fund”** means the non-reversionary cash fund that shall be established by Defendant and/or its insurer in the total amount of two million, two hundred twenty-five thousand dollars (\$2,250,000.00 USD) to be deposited into the Escrow Account, according to the schedule set forth herein, plus all interest earned thereon. From the Settlement Fund, the Settlement Administrator shall pay all Settlement Class Member payments, Settlement Administration Expenses, any incentive award to the Class Representatives, any Fee Award to Class Counsel, and any other costs, fees or expenses approved by the Court. The Settlement Fund shall be kept in the Escrow Account with permissions granted to the Settlement Administrator to access said funds until such time as the listed payments are made. The Settlement Fund includes all interest that shall accrue on the sums deposited in the Escrow Account. The Settlement Administrator shall be responsible for all tax filings with respect to any earnings on the Settlement Fund and the payment of all taxes that may be due on such earnings. The Settlement Fund represents the total extent of Defendant's (inclusive of Defendant's insurer's) monetary obligations under this Agreement. The payment of the Settlement Amount

by, or on behalf of, Defendant and/or its insurer fully discharges the Defendant and the other Released Parties' financial obligations (if any) in connection with the Settlement, meaning that no Released Party shall have any other obligation to make any payment into the Escrow Account or to any Class Member, or any other Person, under this Agreement. In no event shall the total monetary obligation with respect to this Agreement on behalf of Defendant exceed two million, two hundred twenty-five thousand dollars (\$2,250,000.00 USD).

**1.34 "Unknown Claims"** means claims that could have been raised in the Action and that any or all of the Releasing Parties do not know or suspect to exist, which, if known by him or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object or not to object to the Settlement.

## **2. SETTLEMENT RELIEF.**

### **2.1 Payments to Settlement Class Members.**

**(a)** Defendant shall pay or cause to be paid into the Escrow Account the amount of the Settlement Fund (\$2,225,000.00), specified in Section 1.33 of this Agreement, within forty-five days following the Court's final order approving the settlement agreement.

**(b)** Each Settlement Class Member will automatically receive a *pro rata* payment from the Net Settlement Fund, adjusted as set forth below, unless he or she excludes himself or herself from the settlement. The payments shall be distributed as follows:

- Private University Students shall collectively receive 52.9% of the Net Settlement Fund, distributed *pro rata* to each Private University Student.
- Public University Students shall collectively receive 42.12% of the Settlement Fund, distributed *pro rata* to each Public University Student.
- Bar Exam Takers shall collectively receive 4.98% of the Settlement Fund, distributed *pro rata* to each Bar Exam Taker.

(c) Payments to all Settlement Class Members shall be made within sixty (60) days after the Effective Date. Payments shall be made either electronically or by check at the election of each Settlement Class Member, provided however that the default payment method shall be check.

(d) All payments issued to Settlement Class Members via check will state on the face of the check that it will expire and become null and void unless cashed within one hundred and eighty (180) days after the date of issuance. If a check issued to a Settlement Class Member is not cashed within one hundred and eighty (180) days after the date of issuance, such funds shall be redistributed as *cy pres* to the Chicago Bar Foundation; a non-sectarian, not-for-profit *pro bono* legal organization; or another non-sectarian, not-for-profit organization(s) recommended by the Parties and approved by the Court.

## **2.2 Prospective Relief**

(a) On or about May 6, 2021, ExamSoft updated its notices and consents and agrees to continue to provide BIPA-compliant notices and obtain BIPA-compliant consents from all test takers in Illinois unless and until BIPA is amended, repealed, invalidated, or otherwise declared unconstitutional.

## **3. RELEASE.**

**3.1** The obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action and any and all Released Claims, as against all Released Parties.

**3.2** Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and each of them.

## **4. NOTICE TO THE CLASS.**

**4.1** The Notice Plan shall consist of the following:

**(a)**     *Settlement Class List.* No later than thirty-five (35) days from the execution of this Settlement Agreement, ExamSoft shall produce an electronic list from its records that includes the names and last known email and U.S. Mail addresses, to the extent available, belonging to Persons within the Settlement Class. The electronic list shall also differentiate between those Persons within the Settlement Class who are Private University Students, Public University Students, or Bar Exam Takers. This electronic document shall be called the “Class List,” and shall be provided to the Settlement Administrator for the purpose of giving notice to the Settlement Class Members and shall not be used for any other purpose. The Settlement Administrator will execute a confidentiality agreement agreeing not to disclose the Class List or any of its contents to any other person.

**(b)**     *Direct Notice via Email.* No later than twenty-one (21) days from entry of the Preliminary Approval Order, the Settlement Administrator shall send Notice via email substantially in the form attached as Exhibit A to all Settlement Class Members for whom a valid email address is in the Class List. In the event transmission of email notice results in any “bounce-backs,” the Settlement Administrator shall, if possible, correct any issues that may have caused the “bounce-back” to occur and make a second attempt to re-send the email notice.

**(c)**     *Direct Notice via U.S. Mail.* No later than the twenty-eight (28) days from entry of the Preliminary Approval Order, the Settlement Administrator shall send notice substantially in the form attached as Exhibit B via First Class U.S. Mail to all Settlement Class Members who did not receive an email pursuant to Paragraph 4.1(b), above.

**(d)**     *Settlement Website.* Within ten (10) days from entry of the Preliminary Approval Order, Notice shall be provided on a website at an available settlement URL (such as, for example, [www.Examsoftsettlement.com](http://www.Examsoftsettlement.com)), which shall be obtained, administered and

maintained by the Settlement Administrator. The Notice provided on the Settlement Website shall be substantially in the form of Exhibit C hereto.

**4.2** The Notice shall advise Settlement Class Members of their rights, including the rights to be excluded from or object to the Settlement Agreement or any of its terms. The Notice shall specify that any objection to the Settlement Agreement, and any papers submitted in support of said objection, shall be considered by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice, the Person making the objection files notice of an intention to do so and at the same time (a) files copies of such papers he or she proposes to be submitted at the Final Approval Hearing with the Clerk of the Court, or alternatively, if the objection is from a Settlement Class Member represented by counsel, files any objection through the Court's electronic filing system, and (b) sends copies of such papers by mail, hand, or overnight delivery service to Class Counsel and Defendant's Counsel.

**4.3** Any Settlement Class Member who intends to object to this Agreement must present on a timely basis pursuant to the Court's anticipated Order preliminarily approving the settlement the objection in writing, which must be personally signed by the objector, and must include: (1) the objector's name and address; (2) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (3) all grounds for the objection, including all citations to legal authority and evidence supporting the objection; (4) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the "Objecting Attorneys"); and (5) a statement indicating whether the

objector intends to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Local Rules).

**4.4** If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption and amount of payment received.

**4.5** A Settlement Class Member may request to be excluded from the Settlement Class by sending a written request postmarked on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice. To exercise the right to be excluded, a Person in the Settlement Class must timely send a signed written request for exclusion to the Settlement Administrator providing his/her name and address, his/her signature, the name and number of the case, and a clear statement that he or she wishes to be excluded from the Settlement Class for purposes of this Settlement. A request to be excluded that does not include all of this information, does not clearly state an intention to be excluded, or that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and the Person(s) serving such a request shall be a member(s) of the Settlement Class and shall be bound as a Settlement Class Member by this Agreement, if approved. Any member of the Settlement Class who validly elects to be excluded from this Agreement shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. The request for exclusion must be personally signed by each Person



requesting exclusion. So-called “mass” or “class” opt-outs shall not be allowed. To be valid, a request for exclusion must be postmarked or received by the date specified in the Notice.

**4.6** The Final Approval Hearing shall be no earlier than ninety (90) days after the Notice described in Paragraph 4.1(b) is provided.

## **5. SETTLEMENT ADMINISTRATION.**

**5.1** The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by processing payments in a rational, responsive, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel and Defendant’s Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and Defendant’s Counsel with regular reports at weekly intervals containing information concerning Notice, administration, and implementation of the Settlement Agreement. Should the Court request, the Parties shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a report of all amounts from the Settlement Fund paid to Settlement Class Members. Without limiting the foregoing, the Settlement Administrator shall:

**(a)** Forward to Defendant’s Counsel, with copies to Class Counsel, all original documents and other materials received in connection with the administration of the Settlement, and all copies thereof, within thirty (30) days after the date on which all payments have been finally approved or disallowed in accordance with the terms of this Agreement;

**(b)** Provide Class Counsel and Defendant's Counsel with drafts of all administration related documents, including but not limited to Notices, follow-up class notices or communications with Settlement Class Members, telephone scripts in a form approved by Class Counsel and Defendant's Counsel, website postings or language or other communications in a form approved by Class Counsel and Defendant's Counsel with the Settlement Class, at least five (5) days before the Settlement Administrator is required to or intends to publish or use such communications, unless Class Counsel and Defendant's Counsel agree to waive this requirement in writing on a case by case basis;

**(c)** Receive requests to be excluded from the Settlement Class and other requests and promptly provide to Class Counsel and Defendant's Counsel copies thereof, along with a weekly report of the number of such requests received. If the Settlement Administrator receives any exclusion forms or other requests after the deadline for the submission of such forms and requests, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel and await guidance from Counsel as to treatment thereof;

**5.2** In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Settlement Class Member.

**5.3** Defendant, the Released Parties, and Defendant's Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to: (i) any act, omission, or determination by Class Counsel, the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the allocation of Settlement Funds to Settlement Class Members or the implementation, administration, or interpretation

thereof; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in value of, the Settlement Fund; or (vi) the payment or withholding of any taxes, tax expenses, or costs incurred in connection with the taxation of the Settlement Fund or the filing of any federal, state, or local returns.

**5.4** All taxes and tax expenses shall be paid out of the Settlement Fund, and shall be timely paid by the Settlement Administrator pursuant to this Agreement and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with this Agreement and in all events shall reflect that all taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Released Parties shall have no responsibility or liability for the acts or omissions of the Settlement Administrator or its agents with respect to the payment of taxes or tax expenses.

## **6. TERMINATION OF SETTLEMENT.**

**6.1** Subject to Paragraphs 9.1-9.3 below, Defendant, or the Class Representatives on behalf of the Settlement Class, shall have the right to terminate this Agreement by providing written notice of the election to do so ("Termination Notice") to all other Parties hereto within twenty-one (21) days of any of the following events: (i) the Court's refusal to grant Preliminary Approval of this Agreement in any material respect; (ii) the Court's refusal to grant final approval of this Agreement in any material respect; (iii) the Court's refusal to enter the Final Judgment in this Action in any material respect; (iv) the date upon which the Final Judgment is modified or reversed in any material respect by an Appellate Court or the Supreme Court; or (v) the date upon which an Alternate Judgment, as defined in Paragraph 9.1(d) of this Agreement

is modified or reversed in any material respect by an Appellate Court or the Supreme Court.

Should a Termination Notice be sent, the Parties shall revert to the status quo as of the date of execution of the Class Action Settlement Term Sheet.

**7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER.**

**7.1** Promptly after the execution of this Settlement Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement; certification of the Settlement Class for settlement purposes only; appointment of Class Counsel and the Class Representatives; and entry of a Preliminary Approval Order, which order shall set a Final Approval Hearing date and approve the Notice for dissemination substantially in the form of Exhibits A, B, and C hereto. The Preliminary Approval Order shall also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) so long as they are consistent in all material respects with the terms of the Settlement Agreement and do not limit or impair the rights of the Settlement Class or materially expand the obligations of Defendant.

**7.2** At the time of the submission of this Agreement to the Court as described above, Class Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing and approve the settlement of the Action as set forth herein.

**7.3** After Notice is given, the Parties shall request and seek to obtain from the Court a Final Judgment, which will among other things:

(a) find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Agreement, including all Exhibits thereto;

(b) approve the Settlement Agreement and the proposed settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and Releasing Parties;

(c) find that the Notice implemented pursuant to the Agreement (1) constitutes the best practicable notice under the circumstances; (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object to or exclude themselves from the proposed Agreement, and to appear at the Final Approval Hearing; (3) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) meets all applicable requirements of the Illinois Code of Civil Procedure, the Due Process Clause of the United States and Illinois Constitutions, and the rules of the Court;

(d) conditionally find that the prerequisites for a class action under 735 ILCS 5/2-801 have been satisfied for settlement purposes only for the Settlement Class in that: (1) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (2) there are questions of law and fact common to the Settlement Class Members; (3) the claims of the Class Representatives are typical of the claims of the Settlement Class they seek to represent; (4) the Class Representatives have and will continue to fairly and adequately

represent the interests of the Settlement Class for purposes of entering into the Settlement Agreement; (5) the questions of law and fact common to Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; (6) the Settlement Class is ascertainable; and (7) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

(e) dismiss the Action (including all individual claims and Settlement Class claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

(f) incorporate the Release set forth above, make the Release effective as of the date of the Effective Date, and forever discharge the Released Parties as set forth herein;

(g) permanently bar and enjoin all Settlement Class Members from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or other action in any jurisdiction based on the Released Claims;

(h) without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose;

(i) close the case; and

(j) incorporate any other provisions, as the Court deems necessary and just, provided that such other provisions do not materially abridge, enlarge, or modify any rights or responsibilities of the Released Parties or Settlement Class Members under this Agreement.

7.4 The Parties shall also request that the Final Judgment include a finding by the Court that the prospective relief described in Paragraph 2.2 above constitutes Defendant's compliance with BIPA going forward.

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

8.1 Defendant agrees that Class Counsel may receive from the Settlement Fund, subject to Court approval, attorneys' fees not to exceed thirty-seven and one-half percent (37.5%) of the Settlement Fund (or eight hundred forty-three thousand, seven hundred fifty dollars (\$843,750.00 USD)), inclusive of costs and expenses associated with the Action. Class Counsel will petition the Court for an award of such attorneys' fees, costs, and expenses, and Defendant agrees to not object to or otherwise challenge, directly or indirectly, Class Counsel's petition. Payment of the Fee Award shall be made from the Settlement Fund, and should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this Paragraph shall remain in the Settlement Fund.

8.2 The Fee Award shall be payable by the Settlement Administrator within forty-five (45) days after entry of the Court's Final Judgment, subject to Class Counsel executing the Undertaking Regarding Attorneys' Fees and Costs (the "Undertaking") attached hereto as Exhibit D, and providing all payment routing information and tax I.D. numbers for Class Counsel. Payment of the Fee Award shall be made from the Settlement Fund by wire transfer to Bursor & Fisher, P.A., in accordance with wire instructions to be provided by Bursor & Fisher, P.A., and completion of necessary forms, including but not limited to W-9 forms. Notwithstanding the foregoing, if for any reason the Final Judgment is reversed or rendered void as a result of an appeal(s) then Class Counsel shall return such funds to the Defendant. In

addition, should any parties to the Undertaking dissolve, merge, declare bankruptcy, become insolvent, or cease to exist prior to the final payment to Class Members, those parties shall execute a new undertaking guaranteeing repayment of funds within 14 days of such an occurrence.

**8.3** Defendant agrees that, subject to Court approval, the Settlement Administrator will pay an incentive award to the Class Representatives from the Settlement Fund, in addition to any settlement payment pursuant to this Agreement, in recognition of their efforts on behalf of the Settlement Class, in the amount of no more than five thousand dollars (\$5,000.00) each. Defendant shall not object to or otherwise challenge, directly or indirectly, Class Counsel's application for the incentive award to the Class Representatives if limited to this amount. Class Counsel, in turn, agrees to seek no more than this amount from the Court as the incentive award for the Class Representatives. Should the Court award less than this amount, the difference in the amount sought and the amount ultimately awarded pursuant to this Paragraph shall remain in the Settlement Fund. Such award shall be paid from the Settlement Fund (in the form of a check to the Class Representatives that is sent care of Class Counsel), within five (5) business days after entry of the Final Judgment if there have been no objections to the Settlement Agreement, and, if there have been such objections, within five (5) business days after the Effective Date.

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

**9.1** The Effective Date of this Settlement Agreement shall not occur unless and until each of the following events occurs, and shall be the date upon which the last (in time) of the following events occurs:

- (a)** The Parties and their counsel have executed this Agreement;
- (b)** The Court has entered the Preliminary Approval Order;



(c) The Court has entered an order finally approving the Agreement, following Notice to the Settlement Class and a Final Approval Hearing, as provided in the Illinois Code of Civil Procedure, and has entered the Final Judgment, or a judgment consistent with this Agreement in all material respects; and

(d) The Final Judgment has become Final, as defined above in Paragraph 1.15, or, in the event that the Court enters an Alternate Judgment, such Alternate Judgment becomes Final.

**9.2** If some or all of the conditions specified in Paragraph 9.1 are not met, or in the event that this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Settlement Agreement shall be canceled and terminated subject to Paragraph 6.1 or 6.2 unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to all of the Parties. Notwithstanding anything herein, the Parties agree that the Court's failure to approve, in whole or in part, the attorneys' fees payment to Class Counsel and/or the incentive award set forth in Paragraph 8 above shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination.

**9.3** If this Agreement is terminated or fails to become effective for the reasons set forth in Paragraphs 6.1, 6.2, and 9.1-9.2 above, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement, unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with the Agreement. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this

Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Agreement had never been entered into. Within five (5) business days after written notification of termination as provided in this Agreement is sent to the other Parties, the Settlement Fund (including accrued interest thereon), less any Settlement Administration costs actually incurred, paid or payable and less any taxes and tax expenses paid, due or owing, shall be refunded by the Settlement Administrator to Defendant or Defendant's insurer, if applicable, based upon written instructions provided by Defendant's Counsel. In the event that the Final Settlement Order and Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, Class Counsel shall, within thirty (30) days repay to Defendant or Defendant's insurer, if applicable, based upon written instructions provided by Defendant's Counsel, the full amount of the attorneys' fees and costs paid to Class Counsel from the Settlement Fund, including any accrued interest. In the event the attorney fees and costs awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of an appeal, Class Counsel shall within thirty (30) days repay to Defendant or Defendant's insurer, if applicable, based upon written instructions provided by Defendant's Counsel, the attorneys' fees and costs paid to Class Counsel and/or Class Representatives from the Settlement Fund, in the amount vacated or modified, including any accrued interest.

## **10. MISCELLANEOUS PROVISIONS.**

**10.1** The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement, to exercise their reasonable best efforts to accomplish the foregoing terms and

conditions of this Agreement, to secure final approval, and to defend the Final Judgment through any and all appeals. Class Counsel and Defendant's Counsel agree to cooperate with one another in seeking Court approval of the Settlement Agreement, entry of the Preliminary Approval Order, and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

**10.2** The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff, the Settlement Class and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiffs or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis. Nothing herein, however, shall be construed to prevent any employee of Defendant or any Released Party, or any independent contractor working in a reporting or newsgathering capacity for Defendant or any Released Party, from reporting on the Action or this Settlement.

**10.3** The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully the above and foregoing agreement and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

**10.4** Whether or not the Effective Date occurs or the Settlement Agreement is terminated, neither this Agreement nor the settlement contained herein or any term, provision or definition therein, nor any act or communication performed or document executed in the course

of negotiating, implementing or seeking approval pursuant to or in furtherance of this Agreement or the settlement:

(a) is, may be deemed, or shall be used, offered or received in any civil, criminal or administrative proceeding in any court, administrative agency, arbitral proceeding or other tribunal against the Released Parties, or each or any of them, as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by the Plaintiffs, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the definition or scope of any term or provision, the reasonableness of the settlement amount or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

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

(c) is, may be deemed, or shall be used, offered, or received against the Released Parties, or each or any of them, as an admission or concession with respect to any liability, negligence, fault or wrongdoing or statutory meaning as against any Released Parties, or supporting the certification of a litigation class, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. However, the settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. Further, if this Settlement Agreement is approved by the Court, any Party or any of the Released Parties may file this Agreement and/or the Final

Judgment in any action that may be brought against such Party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

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

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

**10.5** The Parties acknowledge that (a) any certification of the Settlement Class as set forth in this Agreement, including certification of the Settlement Class for settlement purposes in the context of Preliminary Approval, shall not be deemed a concession that certification of a litigation class is appropriate, or that the Settlement Class definition would be appropriate for a litigation class, nor would Defendant be precluded from challenging class certification in further proceedings in the Action or in any other action if the Settlement Agreement is not finalized or finally approved; (b) if the Settlement Agreement is not finally approved by the Court for any reason whatsoever, then any certification of the Settlement Class will be void, the Parties and the Action shall be restored to the status quo ante, and no doctrine of waiver, estoppel or preclusion

will be asserted in any litigated certification proceedings in the Action or in any other action; and

(c) no agreements made by or entered into by Defendant in connection with the Settlement may be used by Plaintiffs, any person in the Settlement Class, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in the Action or any other judicial proceeding.

**10.6** No person or entity shall have any claim against the Class Representatives, Class Counsel, the Settlement Administrator, or any other agent designated by Class Counsel, or the Released Parties and/or their counsel, arising from distributions made substantially in accordance with this Agreement. The Parties and their respective counsel, and all other Released Parties shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the determination, administration, calculation, or payment of any claim or nonperformance of the Settlement Administrator, the payment or withholding of taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

**10.7** All proceedings with respect to the administration, processing and determination of claims and the determination of all controversies relating thereto shall be subject to the jurisdiction of the Court.

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

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

**10.10** All of the Exhibits to this Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

**10.11** This Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

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

**10.13** Plaintiffs represent and warrant that they have not assigned any claim or right or interest therein as against the Released Parties to any other Person or Party and that they are fully entitled to release the same.

**10.14** Each counsel or other Person executing this Agreement, any of its Exhibits, or any related settlement documents on behalf of any Party hereto, hereby warrants and represents that such Person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

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

**10.16** This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

**10.17** The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of

the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

**10.18** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

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

**10.20** Where this Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: Philip L. Fraietta, Bursor & Fisher, P.A., 888 Seventh Avenue, New York, NY 10019; Lauren R. Goldman, Mayer Brown LLP, 1221 Avenue of the Americas, New York, NY 10020.

**IT IS SO AGREED TO BY THE PARTIES:**

Dated: November 12, 2021

**BRITTNEY FREDERICK**

By: *Brittney Frederick*  
Brittney Frederick (Nov 12, 2021 10:44 CST)  
Brittney Frederick, individually and as  
representative of the Settlement Class

Dated: November \_\_, 2021

**ALEXANDER PRUEFER**

By: \_\_\_\_\_  
Alexander Pruefer, individually and as  
representative of the Settlement Class

Dated: November \_\_, 2021

**JINGER SANDERS**

By: \_\_\_\_\_  
Jinger Sanders, individually and as  
representative of the Settlement Class



the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

**10.18** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

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

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**IT IS SO AGREED TO BY THE PARTIES:**

Dated: November \_\_, 2021

**BRITTNEY FREDERICK**

By: \_\_\_\_\_  
Brittney Frederick, individually and as  
representative of the Settlement Class

Dated: November 12, 2021

**ALEXANDER PRUEFER**

By: Alexander James Pruefer  
Alexander James Pruefer (Nov 12, 2021 10:26 CST)  
Alexander Pruefer, individually and as  
representative of the Settlement Class

Dated: November \_\_, 2021

**JINGER SANDERS**

By: \_\_\_\_\_  
Jinger Sanders, individually and as  
representative of the Settlement Class

the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

**10.18** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

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

**10.20** Where this Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: Philip L. Fraietta, Bursor & Fisher, P.A., 888 Seventh Avenue, New York, NY 10019; Lauren R. Goldman, Mayer Brown LLP, 1221 Avenue of the Americas, New York, NY 10020.

**IT IS SO AGREED TO BY THE PARTIES:**

Dated: November \_\_, 2021

**BRITTNEY FREDERICK**

By: \_\_\_\_\_  
Brittney Frederick, individually and as  
representative of the Settlement Class


Dated: November \_\_, 2021

**ALEXANDER PRUEFER**

By: \_\_\_\_\_  
Alexander Pruefer, individually and as  
representative of the Settlement Class

Dated: November 15, 2021

**JINGER SANDERS**

By:  \_\_\_\_\_  
Jinger Sanders (Nov 15, 2021 08:46 CST)  
Jinger Sanders, individually and as  
representative of the Settlement Class

Dated: November 12, 2021

**CRISTEN LEE**

By: *Cristen Lee*  
Cristen Lee (Nov 12, 2021 12:56 CST)  
Cristen Lee, individually and as  
representative of the Settlement Class

Dated: November \_\_, 2021

**MARCIA CURCIO**

By: \_\_\_\_\_  
Marcia Curcio, individually and as  
representative of the Settlement Class

Dated: November \_\_, 2021

**ALEXANDRA NEUMAYER**

By: \_\_\_\_\_  
Alexandra Neumayer, individually and as  
representative of the Settlement Class

Dated: November \_\_, 2021

**EXAMSOFT WORLDWIDE, INC.**

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

Its:  
ExamSoft Worldwide, Inc.

**IT IS SO STIPULATED BY COUNSEL:**

Dated: November \_\_, 2021

**BURSOR & FISHER, P.A.**

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

Philip L. Fraietta  
pfraietta@bursor.com  
Alec M. Leslie  
aleslie@bursor.com  
BURSOR & FISHER, P.A.  
888 Seventh Avenue


Dated: November \_\_\_, 2021

**CRISTEN LEE**

By: \_\_\_\_\_  
Cristen Lee, individually and as  
representative of the Settlement Class

Dated: November 12, 2021

**MARCIA CURCIO**

By:  \_\_\_\_\_  
Marcia Curcio (Nov 12, 2021 16:52 CST)  
Marcia Curcio, individually and as  
representative of the Settlement Class

Dated: November \_\_\_, 2021

**ALEXANDRA NEUMAYER**

By: \_\_\_\_\_  
Alexandra Neumayer, individually and as  
representative of the Settlement Class

Dated: November \_\_\_, 2021

**EXAMSOFT WORLDWIDE, INC.**

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

Its:  
ExamSoft Worldwide, Inc.

**IT IS SO STIPULATED BY COUNSEL:**

Dated: November \_\_\_, 2021

**BURSOR & FISHER, P.A.**

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

Philip L. Fraietta  
pfraietta@bursor.com  
Alec M. Leslie  
aleslie@bursor.com  
BURSOR & FISHER, P.A.  
888 Seventh Avenue

Dated: November \_\_\_, 2021

**CRISTEN LEE**

By: \_\_\_\_\_  
Cristen Lee, individually and as  
representative of the Settlement Class


Dated: November \_\_\_, 2021

**MARCIA CURCIO**

By: \_\_\_\_\_  
Marcia Curcio, individually and as  
representative of the Settlement Class

Dated: November 17, 2021

**ALEXANDRA NEUMAYER**

By:  \_\_\_\_\_  
Alexandra Neumayer (Nov 17, 2021 10:18 CST)  
Alexandra Neumayer, individually and as  
representative of the Settlement Class

Dated: November \_\_\_, 2021

**EXAMSOFT WORLDWIDE, INC.**

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

Its:  
ExamSoft Worldwide, Inc.

**IT IS SO STIPULATED BY COUNSEL:**

Dated: November 17, 2021

**BURSOR & FISHER, P.A.**

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

Philip L. Fraietta  
pfraietta@bursor.com  
Alec M. Leslie  
aleslie@bursor.com  
BURSOR & FISHER, P.A.  
888 Seventh Avenue

Dated: November \_\_, 2021

**CRISTEN LEE**

By: \_\_\_\_\_  
Cristen Lee, individually and as  
representative of the Settlement Class


Dated: November \_\_, 2021

**MARCIA CURCIO**

By: \_\_\_\_\_  
Marcia Curcio, individually and as  
representative of the Settlement Class

Dated: November 17, 2021

**ALEXANDRA NEUMAYER**

By:  \_\_\_\_\_  
Alexandra Neumayer (Nov 17, 2021 10:18 CST)  
Alexandra Neumayer, individually and as  
representative of the Settlement Class

Dated: ~~November~~ \_\_, 2021

*December 1*

**EXAMSOFT WORLDWIDE, INC. (now ExamSoft Worldwide LLC)**

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

Its: *Sebastian J. Vos*

**CEO, ExamSoft WorldWide LLC f/k/a  
ExamSoft Worldwide, Inc.**

**IT IS SO STIPULATED BY COUNSEL:**

Dated: November 17, 2021

**BURSOR & FISHER, P.A.**

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

Philip L. Fraietta  
pfraietta@bursor.com  
Alec M. Leslie  
aleslie@bursor.com  
BURSOR & FISHER, P.A.  
888 Seventh Avenue

New York, New York 10019  
Tel: (646) 837-7150  
Fax: (212) 989-9163

*Attorneys for Class Representatives  
and the Settlement Class*

*December 2*  
Dated: November \_\_, 2021

**MAYER BROWN LLP**

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

Lauren R. Goldman  
lrgoldman@mayerbrown.com  
MAYER BROWN LLP  
1221 Avenue of the Americas  
New York, NY 10020  
Tel: (212) 506-2500

Archis A. Parasharami  
aparasharami@mayerbrown.com  
MAYER BROWN LLP  
1999 K Street, NW  
Washington, D.C. 20006  
Tel: (202) 263-3000

*Attorneys for Defendant ExamSoft  
Worldwide, Inc.*





From: XXXX  
To: JonQClassMember@domain.com  
Re: Legal Notice of Class Action Settlement

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**  
*Frederick, et al. v. ExamSoft Worldwide, Inc.*, Civil Action No. 2021L001116  
**(CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS)**

This notice is to inform you of the settlement of a class action lawsuit with remote proctoring company ExamSoft Worldwide, LLC f/k/a ExamSoft Worldwide, Inc. (“ExamSoft”), the Defendant in this case. Plaintiffs Brittney Frederick, Alexander Pruefer, Jinger Sanders, Cristen Lee, Marcia Curcio, and Alexandra Neumayer allege that Defendant collected, captured, received, or otherwise obtained and/or stored the biometric identifiers and biometric information (collectively, “biometric information”) of thousands of Illinois test takers without first establishing a retention and deletion schedule for permanently destroying the biometric information, and without informing the test-takers of the specific purpose and length of term for which the biometric information is being collected, stored, and used. Plaintiffs allege Defendant’s acts are in violation of the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*

**Am I a Class Member?** Our records indicate you may be a Class Member. Class Members are Illinois residents who used ExamSoft’s software to take an online exam between January 1, 2020 and May 5, 2021 and who had their facial geometry or other biometric information collected, captured, received, or otherwise obtained and/or stored by ExamSoft.

**What Can I Get?** If approved by the Court, a Settlement Fund of \$2,250,000.00 will be established to pay all Settlement Class Members, together with notice and administration expenses, approved attorneys’ fees and costs, and incentive awards. If you are entitled to relief, you will automatically receive a designated *pro rata* share of the Net Settlement Fund—which will be the remainder of the Settlement Fund after the deduction of attorneys’ fees, expenses, incentive awards, notice and settlement administration costs, and any other costs agreed to by the Parties and approved by the Court. Your *pro rata* share will be determined by whether you are a Private University Student, Public University Student, or Bar Exam Taker. In addition, on or about May 6, 2021, ExamSoft updated its notices and consents and agrees to continue to provide BIPA-compliant notices and obtain BIPA-compliant consents from all test takers in Illinois unless and until BIPA is amended, repealed, invalidated, or otherwise declared unconstitutional.

**How Do I Get a Payment?** So long as you do not request to be excluded from the Settlement Class, you will automatically receive payment from ExamSoft either electronically or by check, at your election. If you do not make an election, payments will default to check.

**What are My Other Options?** You may exclude yourself from the Class by sending a letter to the Settlement Administrator no later than [objection/exclusion deadline]. If you exclude yourself, you cannot get a settlement payment, but you keep any rights you may have to sue the Defendant over the legal issues in the lawsuit. You and/or your lawyer have the right to appear before the Court and/or to object to the proposed settlement. Your written objection must be filed

no later than [objection/exclusion deadline]. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at [www.Examsoftsettlement.com]. If you do nothing and the Court approves the Settlement, you will be bound by all of the Court's orders and judgments. In addition, your claims relating to the alleged collection and storage of biometric information in this case against the Defendant will be released.

**Who Represents Me?** The Court has appointed Bursor & Fisher, P.A. to represent the Settlement Class. These attorneys are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

**When Will the Court Consider the Proposed Settlement?** The Court will hold the Final Approval Hearing at [ ] .m. on [date] at the Eighteenth Judicial Circuit Court for the County of DuPage, Illinois, 505 N. County Farm Road, Room 2015, Wheaton, IL 60187. At that hearing, the Court will: hear any objections concerning the fairness of the Settlement; determine the fairness of the Settlement; decide whether to approve Class Counsel's request for attorneys' fees and costs; and decide whether to award the Class Representatives \$5,000 each from the Settlement Fund for their services in helping to bring and settle this case. Defendant has agreed that Class Counsel may be paid reasonable attorneys' fees from the Settlement Fund in an amount to be determined by the Court. Class Counsel is entitled to seek no more than 37.5% of the Settlement Fund, but the Court may award less than this amount.

**How Do I Get More Information?** For more information, including a more detailed Notice, a copy of the Settlement Agreement and other documents, go to [www.Examsoftsettlement.com], contact the settlement administrator at 1- - - or ExamSoft Settlement Administrator, [address], or call Class Counsel at 646-837-7150.



COURT AUTHORIZED NOTICE OF CLASS  
ACTION AND PROPOSED SETTLEMENT

OUR RECORDS  
INDICATE YOU HAVE  
TAKEN AN ONLINE  
EXAM WITH  
EXAMSOFT AND MAY  
BE ENTITLED TO A  
PAYMENT FROM A  
CLASS ACTION  
SETTLEMENT.

ExamSoft Settlement  
Settlement Administrator  
P.O. Box 0000  
City, ST 00000-0000



Postal Service: Please do not mark barcode

XXX—«ClaimID» «MailRec»

«First1» «Last1»

«C/O»

«Addr1» «Addr2»

«City», «St» «Zip» «Country»

By Order of the Court Dated: [date]

A settlement has been reached in a class action lawsuit claiming that Defendant, remote proctoring company ExamSoft Worldwide, LLC f/k/a ExamSoft Worldwide, Inc., collected, captured, received, or otherwise obtained and/or stored the biometric identifiers and biometric information (collectively, "biometric information") of thousands of Illinois test takers without first establishing a retention and deletion schedule for permanently destroying the biometric information, and without informing the test-takers of the specific purpose and length of term for which the biometric information is being collected, stored, and used. It is alleged that Defendant's acts violated the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1, *et seq.* Defendant denies the allegations.

**Am I a Class Member?** Our records indicate you may be a Class Member. Class Members are Illinois residents who used ExamSoft's software to take an online exam between January 1, 2020 and May 5, 2021 and who had their facial geometry or other biometric information collected, captured, received, or otherwise obtained and/or stored by ExamSoft.

**What Can I Get?** If approved by the Court, a Settlement Fund of \$2,250,000.00 will be established to pay all Settlement Class Members, together with notice and administration expenses, approved attorneys' fees and costs, and incentive awards. If you are entitled to relief, you will automatically receive a designated *pro rata* share of the Net Settlement Fund—which will be the remainder of the Settlement Fund after the deduction of attorneys' fees, expenses, incentive awards, notice and settlement administration costs, and any other costs agreed to by the Parties and approved by the Court. Your *pro rata* share will be determined by whether you are a Private University Student, Public University Student, or Bar Exam Taker.

**How Do I Get a Payment?** So long as you do not request to be excluded from the Settlement Class, you will automatically receive payment from ExamSoft either electronically or by check, at your election. If you do not make an election, payments will default to check.

**What are My Other Options?** You may exclude yourself from the Class by sending a letter to the Settlement Administrator no later than [objection/exclusion deadline]. If you exclude yourself, you cannot get a settlement payment, but you keep any rights you may have to sue the Defendant over the legal issues in the lawsuit. You and/or your lawyer have the right to appear before the Court and/or to object to the proposed settlement. Your written objection must be filed no later than [objection/exclusion deadline]. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at [www.Examsoftsettlement.com]. If you do nothing and the Court approves the Settlement, you will be bound by all of the Court's orders and judgments. In addition, your claims relating to the alleged collection and storage of biometric information in this case against the Defendant will be released.

**Who Represents Me?** The Court has appointed Bursor & Fisher, P.A. to represent the class. These attorneys are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

**When Will the Court Consider the Proposed Settlement?** The Court will hold the Final Approval Hearing at [redacted].m. on [date] at the Eighteenth Judicial Circuit Court for the County of DuPage, Illinois, 505 N. County Farm Road, Room 2015, Wheaton, IL 60187. At that hearing, the Court will: hear any objections concerning the fairness of the Settlement; determine the fairness of the Settlement; decide whether to approve Class Counsel's request for attorneys' fees and costs; and decide whether to award the Class Representatives \$5,000 each from the Settlement Fund for their services in helping to bring and settle this case. Defendant has agreed that Class Counsel may be paid reasonable attorneys' fees from the Settlement Fund in an amount to be determined by the Court. Class Counsel is entitled to seek no more than 37.5% of the Settlement Fund, but the Court may award less than this amount.

**How Do I Get More Information?** For more information, including a more detailed Notice, a copy of the Settlement Agreement and other documents, go to [www.Examsoftsettlement.com], contact the settlement administrator at 1- [redacted] or ExamSoft Settlement Administrator, [address], or call Class Counsel at 646-837-7150.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ExamSoft Settlement Administrator  
c/o [Settlement Administrator]  
PO Box 0000  
City, ST 00000-0000

XXX



**CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS**

*Frederick, et al. v. ExamSoft Worldwide, Inc.*, Civil Action No. 2021L001116

IF YOU ARE AN ILLINOIS RESIDENT WHO TOOK AN ONLINE EXAM USING EXAMSOFT'S SOFTWARE BETWEEN JANUARY 1, 2020 AND MAY 5, 2021 AND HAD YOUR BIOMETRIC IDENTIFIERS AND/OR BIOMETRIC INFORMATION COLLECTED, CAPTURED, RECEIVED, OR OTHERWISE OBTAINED BY EXAMSOFT YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

***A court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.***

- A Settlement has been reached in a class action lawsuit against ExamSoft Worldwide, LLC f/k/a ExamSoft Worldwide, Inc. ("ExamSoft"). In the class action lawsuit, plaintiffs allege that ExamSoft unlawfully collected, captured, received, or otherwise obtained and/or stored the Biometric Identifiers and/or Biometric Information of Illinois test-takers through its online proctoring software. ExamSoft denies the allegations.
- You are included if you are an Illinois resident and used ExamSoft's software to take an online exam between January 1, 2020 and May 5, 2021, and had your biometric identifiers and/or biometric information collected, captured, received, or otherwise obtained and/or stored by ExamSoft.
- Those included in the Settlement will be eligible to automatically receive a *pro rata* payment from the Net Settlement Fund.
- Read this notice carefully. Your legal rights are affected whether you act or don't act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<b>DO NOTHING</b>	Once the Settlement becomes Final, you will automatically receive a payment that is a <i>pro rata</i> share of the Net Settlement Fund—the remainder of the Settlement Fund after the deduction of attorneys' fees, expenses, incentive awards, notice and settlement administration costs, and any other costs agreed to by the Parties and approved by the Court. Your <i>pro rata</i> share will be determined by whether you are a Private University Student, Public University Student, or Bar Exam Taker. You will receive your share by check.
<b>EXCLUDE YOURSELF FROM THE CLASS BY [DATE]</b>	You will receive no benefits, but you will retain any rights you currently have to sue ExamSoft about the claims in this case. Excluding yourself is the only option that allows you to ever bring or maintain your own lawsuit against ExamSoft regarding the allegations in this case ever again.
<b>OBJECT BY [DATE]</b>	Write to the Court explaining why you don't like the Settlement and think it shouldn't be approved. Filing an objection does not exclude you from the Settlement.

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [SETTLEMENT WEBSITE]**

These rights and options—**and the deadlines to exercise them**—are explained in this Notice.

The Court in charge of this action has preliminarily approved the Settlement as fair, reasonable, and adequate, and must decide whether to give final approval to the Settlement. The relief provided to Class Members will be provided only if the Court gives final approval to the Settlement and, if there are any appeals, after the appeals are resolved in favor of the Settlement. ***Please be patient.***

## **BASIC INFORMATION**

### **1. Why was this Notice issued?**

A Court authorized this notice because you have a right to know about a proposed Settlement of this class action lawsuit and about all of your options, before the Court decides whether to give final approval to the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

The case is pending in the Circuit Court of Eighteenth Judicial Circuit, DuPage County, Illinois. The case is called *Frederick, et al. v. ExamSoft Worldwide, Inc.*, Civil Action No. XXXX. The persons who sued are called the Plaintiffs. The Defendant is ExamSoft Worldwide, LLC f/k/a ExamSoft Worldwide, Inc.

### **2. What is a class action?**

In a class action, one or more people called class representatives (in this case, Brittney Frederick, Alexander Pruefer, Jinger Sanders, Cristen Lee, Marcia Curcio, and Alexandra Neumayer) sue on behalf of a group or a “class” of people who have similar claims. In a class action, the court resolves the issues for all class members, except for those who exclude themselves from the Class.

### **3. What is this lawsuit about?**

This lawsuit claims that ExamSoft violated Illinois law by unlawfully collecting, capturing, receiving, or otherwise obtaining and/or storing its Illinois test-takers’ Biometric Identifiers and/or Biometric Information through its online proctoring software. ExamSoft denies the claims in the lawsuit, contends that it did not do anything wrong, and denies that class certification is warranted or appropriate. The Court did not resolve the claims and defenses raised in this action. Nor has the Court determined that ExamSoft did anything wrong or that this matter should be certified as a class action except if the Settlement is fully approved by the Court. Rather, the Parties have, without admitting liability, agreed to settle the lawsuit to avoid the uncertainties and expenses associated with ongoing litigation.



#### 4. Why is there a Settlement?

The Court has not decided whether the Plaintiffs or ExamSoft should win this case. Instead, both sides agreed to a Settlement. That way, they avoid the uncertainties and expenses associated with ongoing litigation, and Class Members will get compensation sooner rather than, if at all, after the completion of a trial.

**The issuance of this Notice is not an expression of the Court's opinion on the merit or the lack of merit of Plaintiffs' claims or the defenses in the lawsuit. Both parties recognize that to resolve the issues raised in the lawsuit would be time-consuming, uncertain, and expensive.**

#### WHO'S INCLUDED IN THE SETTLEMENT?

#### 5. How do I know if I am in the Settlement Class?

The Court decided that everyone who fits the following description is a member of the **Settlement Class**:

All Illinois residents who used ExamSoft's software to take an online exam between January 1, 2020 through and including May 5, 2021 and who had their facial geometry or other biometric information collected, captured, received, or otherwise obtained and/or stored by Defendant.

#### THE SETTLEMENT BENEFITS

#### 6. What does the Settlement provide?

***Monetary Relief:*** A Settlement Fund has been created totaling \$2,250,000.00. Settlement Class Member payments as well as the cost to administer the Settlement, the cost to inform people about the Settlement, attorneys' fees, and an award to the Class Representatives, will come out of this fund (*see* Question 12).

***Prospective Relief:*** On or about May 6, 2021, ExamSoft updated its notices and consents. It agrees to continue to provide BIPA-compliant notices and obtain BIPA-compliant consents from all test takers in Illinois unless and until BIPA is amended, repealed, invalidated, or otherwise declared unconstitutional.

A detailed description of the settlement benefits can be found in the Settlement Agreement. [\[insert hyperlink\]](#)

#### 7. How can I get a payment from the Settlement?

You will automatically receive a designated *pro rata* share of the Net Settlement Fund—which will be the remainder of the Settlement Fund after the deduction of attorneys' fees, expenses, incentive awards, notice and settlement administration costs,

QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [\[SETTLEMENT WEBSITE\]](#)

and any other costs agreed to by the Parties and approved by the Court. Your *pro rata* share will be determined by whether you are a Private University Student, Public University Student, or Bar Exam Taker. You may elect to receive your share by either electronic deposit or by check, provided however that the default payment method will be check. All checks will expire and become void 180 days after they are issued.

#### **8. When will I get my payment?**

The hearing to consider the fairness of the settlement is scheduled for [Final Approval Hearing Date]. If the Court approves the settlement, eligible Class Members whose claims were approved by the Settlement Administrator will receive their payment shortly after the Settlement has been finally approved and/or after any appeals process is complete. Please be patient; this process could take a while. Class Members will receive their payments via check or direct deposit, at your election, provided however that the default payment method will be check. All checks will expire and become void 180 days after they are issued.

### **REMAINING IN THE SETTLEMENT**

#### **9. What am I giving up if I stay in the Class?**

If the Settlement becomes final, you will give up your right to sue ExamSoft and other Released Parties for the claims being resolved by this Settlement. The specific claims you are giving up against ExamSoft are described in the Settlement Agreement. You will be “releasing” ExamSoft and certain of its affiliates, employees and representatives as described in Section 3.2 of the Settlement Agreement. Unless you exclude yourself (*see* Question 13), you are “releasing” the claims, regardless of whether you submit a claim or not. The Settlement Agreement is available through the “court documents” link on the website.

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions you can talk to the lawyers listed in Question 11 for free or you can, of course, talk to your own lawyer if you have questions about what this means.

#### **10. What happens if I do nothing at all?**

You will automatically receive a designated *pro rata* share of the Net Settlement Fund—which will be the remainder of the Settlement Fund after the deduction of attorneys’ fees, expenses, incentive awards, notice and settlement administration costs, and any other costs agreed to by the Parties and approved by the Court. Your *pro rata* share will be determined by whether you are a Private University Student, Public University Student, or Bar Exam Taker. You will receive your share by check.

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [SETTLEMENT WEBSITE]**

## THE LAWYERS REPRESENTING YOU

### 11. Do I have a lawyer in the case?

The Court has appointed Bursor & Fisher, P.A to be the attorneys representing the Settlement Class. They are called “Class Counsel.” They believe, after conducting an extensive investigation, that the Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

### 12. How will the lawyers be paid?

Any Class Counsel attorneys’ fees and costs awarded by the Court will be paid out of the Settlement Fund in an amount to be determined by the Court. The fee petition will seek no more than 37.5% of the Settlement Fund; the Court may award less than this amount. Under the Settlement Agreement, any amount awarded to Class Counsel will be paid out of the Settlement Fund.

Subject to approval by the Court, the Class Representatives may be paid up to \$5,000 each from the Settlement Fund.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### 13. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must mail or otherwise deliver a written request for exclusion stating that you want to be excluded from the *Frederick, et al. v. ExamSoft Worldwide, Inc.*, Civil Action No. 2021L001116 settlement. Your letter or request for exclusion must also include your name, your address, your signature, the name and number of this case, and a statement that you wish to be excluded. You must mail or deliver your exclusion request no later than **[objection/exclusion deadline]** to:

**ExamSoft BIPA Settlement**  
0000 Street  
City, ST 00000

### 14. If I don’t exclude myself, can I sue ExamSoft for the same thing later?

No. Unless you exclude yourself, you give up any right to sue ExamSoft for the claims being resolved by this Settlement.

### 15. If I exclude myself, can I get anything from this Settlement?

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [SETTLEMENT WEBSITE]**

No. If you exclude yourself, you will not receive a *pro rata* payment from the Net Settlement Fund.

## OBJECTING TO THE SETTLEMENT

### 16. How do I object to the Settlement?

If you are a Class Member and do not exclude yourself from the Settlement Class, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must file with the Court a letter or brief stating that you object to the Settlement in *Frederick, et al. v. ExamSoft Worldwide, Inc.*, Civil Action No. 2021L001116, identify all your reasons for your objections (including citations and supporting evidence), and attach any materials you rely on for your objections. Your letter or brief must also include your name, your address, the basis upon which you claim to be a Class Member, the name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with your objection, and your signature. If you, or an attorney assisting you with your objection, have ever objected to any class action settlement where you or the objecting attorney has asked for or received payment in exchange for dismissal of the objection (or any related appeal) without modification to the settlement, you must include a statement in your objection identifying each such case by full case caption. You must also mail or deliver a copy of your letter or brief to Class Counsel and Defendant's Counsel listed below.

Class Counsel will file with the Court and post on this website its request for attorneys' fees by [two weeks prior to objection deadline].

If you want to appear and speak at the Final Approval Hearing to object to the Settlement, with or without a lawyer (explained below in the answer to Question Number 20), you must say so in your letter or brief and file the objection with the Court and mail a copy to Class Counsel and Defendant's Counsel postmarked no later than [objection deadline].

Court	Class Counsel	Defendant's Counsel
Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois 505 N. County Farm Rd., Wheaton, IL 60187	Philip L. Fraietta Bursor & Fisher P.A. 888 Seventh Ave. New York, NY 10019	Lauren R. Goldman Mayer Brown LLP 1221 Ave. of the Americas New York, NY 10020

### 17. What's the difference between objecting and excluding myself from the Settlement?

QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [SETTLEMENT WEBSITE]

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself from the Class is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

### THE COURT'S FINAL APPROVAL HEARING

#### **18. When and where will the Court decide whether to approve the Settlement?**

The Court will hold the Final Approval Hearing at [time] on **Month 00, 2022** at the Eighteenth Judicial Circuit Court for the County of DuPage, Illinois, 505 N. County Farm Road, Wheaton, IL 60187. The purpose of the hearing will be for the Court to determine whether to approve the Settlement as fair, reasonable, adequate, and in the best interests of the Class; to consider the Class Counsel's request for attorneys' fees and expenses; and to consider the request for an incentive award to the Class Representatives. At that hearing, the Court will be available to hear any timely filed objections and arguments concerning the fairness of the Settlement.

The hearing may be postponed to a different date or time without notice, so it is a good idea to check [SETTLEMENT WEBSITE] or call **1-800-000-0000**. If, however, you timely objected to the Settlement and advised the Court that you intend to appear and speak at the Final Approval Hearing, you will receive notice of any change in the date of such Final Approval Hearing.

#### **19. Do I have to come to the hearing?**

No. Class Counsel will answer any questions the Court may have, but you are welcome to come at your own expense. If you send an objection or comment, you don't have to come to Court to talk about it. As long as you filed and mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

#### **20. May I speak at the hearing?**

Yes. So long as you timely filed an objection to the settlement, you may ask the Court for permission to speak at the Fairness Hearing, but do not have to. To do so, you must include in your letter or brief objecting to the settlement a statement saying that it is your "Notice of Intent to Appear in *Frederick, et al. v. ExamSoft Worldwide, Inc.*, Civil Action No. 2021L001116." It must include your name, address, telephone number and signature as well as the name and address of your lawyer, if one is appearing for you. Your objection and notice of intent to appear must be filed with the Court and postmarked no later than [objection deadline] and be sent to the addresses listed in Question 16.

### GETTING MORE INFORMATION

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [SETTLEMENT WEBSITE]**

## 21. Where do I get more information?

This Notice summarizes the Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at [SETTLEMENT WEBSITE]. You may also write with questions to ExamSoft BIPA Settlement, P.O. Box 0000, City, ST 00000. You can call the Settlement Administrator at 1-800-000-0000 or Class Counsel at 1-646-837-7150, if you have any questions. Before doing so, however, please read this full Notice carefully. You may also find additional information elsewhere on the case website. **Please do not telephone the Court to inquire about the settlement or the claims process.**

QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [SETTLEMENT WEBSITE]



**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS**

BRITTNEY FREDERICK,  
ALEXANDER PRUEFER, JINGER  
SANDERS, CRISTEN LEE, MARCIA  
CURSIO, and ALEXANDRA  
NEUMAYER, individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

EXAMSOFT WORLDWIDE, INC.,

Defendant.

Civil Action No. 2021L001116

**STIPULATION REGARDING UNDERTAKING RE: ATTORNEYS' FEES AND COSTS**

Plaintiffs Brittney Frederick, Cristen Lee, Alexander Pruefer, Jinger Sanders, Marcia Cursio, and Alexandra Neumayer (collectively, "Plaintiffs"), and Defendant ExamSoft Worldwide, LLC f/k/a ExamSoft Worldwide, Inc. ("Defendant" or "ExamSoft") (together the "Parties"), by and through and including their undersigned counsel, stipulate and agree as follows:

WHEREAS, Bursor & Fisher, P.A. (the "Firm") desires to give an undertaking (the "Undertaking") for repayment of its share of the award of attorney fees and costs, approved by the Court, and

WHEREAS, the Parties agree that this Undertaking is in the interests of all Parties and in service of judicial economy and efficiency.

NOW, THEREFORE, each of the undersigned counsel, on behalf of themselves as individuals and as agents for their law firm, hereby submit themselves and their respective law firms to the jurisdiction of the Court for the purpose of enforcing the provisions of this Undertaking.



Capitalized terms used herein without definition have the meanings given to them in the Settlement Agreement.

By receiving any payments pursuant to the Settlement Agreement, the Firm and its shareholders, members, and/or partners submit to the jurisdiction of the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois, for the enforcement of and any and all disputes relating to or arising out of the reimbursement obligation set forth herein and the Settlement Agreement.

In the event that the Final Settlement Order and Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, the Firm shall, within fourteen (14) days repay to Defendant or Defendant's insurers, based upon written instructions provided by Defendant's Counsel, the full amount of the attorneys' fees and costs paid to the Firm from the Settlement Fund, including any accrued interest.

In the event the attorneys' fees and costs awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of an appeal, the Firm shall within fourteen (14) days repay to Defendant or Defendant's insurers, based upon written instructions provided by Defendant's Counsel, the attorneys' fees and costs and any other amounts paid to the Firm and/or the named plaintiffs and/or class representatives from the Settlement Fund in the amount vacated or modified, including any accrued interest.

This Undertaking and all obligations set forth herein shall expire upon finality of all direct appeals of the Final Settlement Order and Judgment.

In the event the Firm fails to repay to Defendant or Defendant's insurers any of attorneys' fees and costs that are owed to it pursuant to this Undertaking, the Court shall, upon application of

ExamSoft, and notice to the Firm, summarily issue orders, including but not limited to judgments and attachment orders against each of the Firm, and may make appropriate findings for sanctions for contempt of court.

The undersigned stipulate, warrant, and represent that they have both actual and apparent authority to enter into this stipulation, agreement, and undertaking on behalf of the Firm.

This Undertaking may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures by facsimile shall be as effective as original signatures.

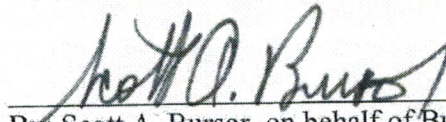
The undersigned declare under penalty of perjury under the laws of the United States that they have read and understand the foregoing and that it is true and correct.

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

[signature blocks on next page]

Dated: November 17, 2021

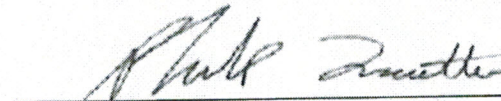
BURSOR & FISHER, P.A.



By: Scott A. Bursor, on behalf of Bursor & Fisher, P.A.  
Attorneys for Plaintiffs and Class Counsel

Dated: November 17, 2021

BURSOR & FISHER, P.A.



By: Philip L. Fraietta, on behalf of Bursor & Fisher, P.A.  
Attorneys for Plaintiffs and Class Counsel

Dated: November \_\_, 2021

MAYER BROWN LLP



By: Lauren R. Goldman  
Attorneys for Defendant ExamSoft Worldwide, LLC

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS**

BRITTNEY FREDERICK,  
ALEXANDER PRUEFER, JINGER  
SANDERS, CRISTEN LEE, MARCIA  
CURSIO, and ALEXANDRA  
NEUMAYER, individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

EXAMSOFT WORLDWIDE, INC.,

Defendant.

Civil Action No. 2021L001116

**STIPULATION REGARDING UNDERTAKING RE: ATTORNEYS' FEES AND COSTS**

Plaintiffs Brittney Frederick, Cristen Lee, Alexander Pruefer, Jinger Sanders, Marcia Cursio, and Alexandra Neumayer (collectively, "Plaintiffs"), and Defendant ExamSoft Worldwide, LLC f/k/a ExamSoft Worldwide, Inc. ("Defendant" or "ExamSoft") (together the "Parties"), by and through and including their undersigned counsel, stipulate and agree as follows:

WHEREAS, Wolf Haldenstein Adler Freeman & Herz LLC (the "Firm") desires to give an undertaking (the "Undertaking") for repayment of its share of the award of attorney fees and costs, approved by the Court, and

WHEREAS, the Parties agree that this Undertaking is in the interests of all Parties and in service of judicial economy and efficiency.

NOW, THEREFORE, each of the undersigned counsel, on behalf of themselves as individuals and as agents for their law firm, hereby submit themselves and their respective law firms to the jurisdiction of the Court for the purpose of enforcing the provisions of this Undertaking.

Capitalized terms used herein without definition have the meanings given to them in the Settlement Agreement.

By receiving any payments pursuant to the Settlement Agreement, the Firm and its shareholders, members, and/or partners submit to the jurisdiction of the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois, for the enforcement of and any and all disputes relating to or arising out of the reimbursement obligation set forth herein and the Settlement Agreement.

In the event that the Final Settlement Order and Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, the Firm shall, within fourteen (14) days repay to Defendant or Defendant's insurers, based upon written instructions provided by Defendant's Counsel, the full amount of the attorneys' fees and costs paid to the Firm from the Settlement Fund, including any accrued interest.

In the event the attorneys' fees and costs awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of an appeal, the Firm shall within fourteen (14) days repay to Defendant or Defendant's insurers, based upon written instructions provided by Defendant's Counsel, the attorneys' fees and costs and any other amounts paid to the Firm and/or the named plaintiffs and/or class representatives from the Settlement Fund in the amount vacated or modified, including any accrued interest.

This Undertaking and all obligations set forth herein shall expire upon finality of all direct appeals of the Final Settlement Order and Judgment.

In the event the Firm fails to repay to Defendant or Defendant's insurers any of attorneys' fees and costs that are owed to it pursuant to this Undertaking, the Court shall, upon application of

ExamSoft, and notice to the Firm, summarily issue orders, including but not limited to judgments and attachment orders against each of the Firm, and may make appropriate findings for sanctions for contempt of court.

The undersigned stipulate, warrant, and represent that they have both actual and apparent authority to enter into this stipulation, agreement, and undertaking on behalf of the Firm.

This Undertaking may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures by facsimile shall be as effective as original signatures.


The undersigned declare under penalty of perjury under the laws of the United States that they have read and understand the foregoing and that it is true and correct.

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

[signature blocks on next page]

Dated: November 17, 2021

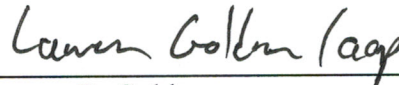
WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLC

 Malmstrom (Nov 17, 2021 12:38 EST)

By: Carl V. Malmstrom, on behalf of Wolf Haldenstein  
Adler Freeman & Herz LLC Attorneys for Plaintiffs

Dated: November \_\_, 2021

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