

IN THE SEVENTH JUDICIAL CIRCUIT  
COUNTY OF MACOUPIN, STATE OF ILLINOIS

ROBERT YESKE; DAN HOPLEY; )  
RONALD STOUT; DOUGLAS DENOON; )  
JASON MOORE; and GREGORY ROACH, )  
each individually and on behalf of all others ) Case No. 2017-L-24  
similarly situated, )  
)  
Plaintiffs, )  
)  
v. )  
)  
MACOUPIN ENERGY LLC; MARYAN )  
MINING LLC; HILLSBORO ENERGY LLC; )  
PATTON MINING LLC; MACH MINING )  
LLC; and VIKING MINE LLC, )  
)  
Defendants. )

**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Class Action Settlement Agreement (“Agreement” or “Settlement Agreement”) is entered into by and among Plaintiff Robert Yeske, Dan Hopley, Ronald Stout, Douglas Denoon, Jason Moore, and Gregory Roach (collectively, "Plaintiffs"), for themselves individually and on behalf of the Settlement Class, and Defendants Macoupin Energy, LLC Maryan Mining LLC; Hillsboro Energy LLC; Patton Mining LLC; Mach Mining LLC; and Viking Mining, LLC (Collectively, “Defendants”) (Plaintiff and Defendant are referred to individually as a "Party" and collectively referred to as the "Parties") to fully and completely resolve this case, *Yeske et al., v. Macoupin Energy, LLC, et al.*, Case No. 2017 L 24 (the "Action"). This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims upon and subject to the terms and conditions hereof, and is subject to the approval of the Court.

## FACTUAL BACKGROUND AND RECITALS

1. On August 16, 2017, certain Plaintiffs filed a class action lawsuit against certain Defendants alleging violations of the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, et seq. and common law negligence in the Circuit Court of Macoupin County, Illinois.

2. On October 21, 2017 those certain Defendants filed an Answer, denying all material allegations. On November 3, 2017, certain Plaintiffs served discovery. On November 6, 2017, certain Plaintiffs filed their Reply to Defendant’s Affirmative Defenses, and on November 7, 2017, certain Plaintiffs moved for Class Certification.

3. On December 4, 2017 certain Defendants moved for sequenced (bifurcated) discovery. The Parties attended a status conference and hearing on sequencing discovery held on December 7, 2017. The Court granted Defendants’ motion to sequence discovery, limiting discovery only to class certification issues. During the spring of 2018, the Parties engaged in class discovery.

4. Certain Defendants moved for Summary Judgment on March 12, 2018 and certain Plaintiffs opposed Summary Judgment on March 19, 2018. The Parties attended a hearing held on certain Defendant’s Summary Judgment motion on March 22, 2018. The Court granted Summary Judgment on April 2, 2018.

5. Certain Plaintiffs moved the Court to reconsider and vacate the Summary Judgment order on May 1, 2018. Certain Defendants opposed motion to reconsider on May 21, 2018. Certain Plaintiffs filed a reply in support of motion to reconsider on June 1, 2018. The Parties attended a hearing held on motion to reconsider on June 2, 2018.

6. On June 14, 2018, the Court stayed this Action pending the Illinois Supreme Court's decision in *Rosenbach v. Six Flags Entertainment Corp.*, 2019 IL 123186 ("*Rosenbach*"), in which a ruling was made on January 25, 2019.

7. The stay in this Action was lifted on March 26, 2019. Stay lifted, the April 2, 2018 Summary Judgment Order was vacated, and discovery sequencing lifted. During the summer of 2019 the parties engaged in written discovery. Between the Parties, thousands of pages of documents were produced. Depositions of the Plaintiffs took place during August, 2019.

8. On September 9, 2019, Plaintiffs filed their First Amended Complaint naming additional defendants.

9. On October 16, 2019, Defendants filed a motion to dismiss Plaintiff's First Amended Complaint on the basis that the Illinois Biometric Information Privacy Act is unconstitutionally vague and constitutes special legislation.

10. In the fall of 2019, the Parties initiated mediation discussions and agreed to mediate.

11. On December 4, 2019, Plaintiffs' Counsel moved for appointment as Interim Class Counsel, the Court granted this request on December 4, 2019.

12. The Parties engaged in first full day of mediation on January 3, 2020. The Parties engaged in second full day of mediation, resulting in settlement in principle, on February 24, 2020.

13. Following two full days of mediation, with the assistance of experienced mediator Michael Russell, in which the Parties have agreed to resolve all matters between them arising under BIPA relating to the Biometric Timekeeping System(s) at issue here including

the allegations contained in the Action and as set forth herein. The Defendants have represented that no more than 2,404 of its employees in Illinois utilized the Schlage HandPunch Timekeeping System at issue in the Action between August 16, 2012 and the date of the Court entering a Preliminary Approval Order, and the Defendants recognize that this representation is a material term of this Settlement Agreement.

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

15. Defendant denied and continues to deny all charges of wrongdoing or liability. Despite the Defendant's beliefs that it is not liable for and has good defenses to the claims alleged in the Action, Defendant desires to settle the Action and thus avoid the expense, risk, exposure, inconvenience, and distraction of continued litigation of any action or proceeding relating to the matters being fully settled and finally resolved in this Settlement Agreement. Neither this Settlement Agreement, nor any settlement negotiation or discussion thereof, is or may be deemed to be or may be used as an admission of or evidence of any wrongdoing or liability.

16. Following arms-length negotiations, including two full days of mediation with an experienced mediator, the Parties now seek to enter into a Settlement Agreement. Plaintiffs and Class Counsel have conducted an investigation into the facts and the law regarding the Action and have concluded that a settlement according to the terms set forth below is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiffs and the Settlement Class, recognizing (a) the existence of complex and contested issues of law and fact; (b) the risks inherent in litigation, including multiple appeals of BIPA-related issues

currently pending; (c) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement; (d) the magnitude of the benefits derived from the contemplated settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever do to a dispositive issue being decided in Defendants' favor in this matter, in an Appellate Court or the Illinois Supreme Court, which would bind the Court here to enter judgement against Plaintiffs and in favor of Defendants; (e) Defendants' financial condition; and (f) the Plaintiffs' and Class Counsels' determination that the Settlement is fair, reasonable, adequate, and will substantially benefit the Settlement Class Members, especially given the financial condition of the Defendants.

17. Considering the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Parties are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in their best respective interests.

18. In consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Action be settled and compromised, and that the Releasors release the Releasees of the Released Claims, without costs as to Defendant, Releasees, Plaintiff, Class Counsel, or the Settlement Class, except as explicitly provided for in this Agreement, subject to the approval of the Court, on the following terms and conditions.

## **AGREEMENT**

### **1. DEFINITIONS**

As used herein, in addition to any definitions set forth elsewhere in this Settlement Agreement, the following terms shall have the meanings set forth below:

1.1 **“Actions”** shall mean the action pending in the Circuit Court of Macoupin County, Illinois, Law Division, captioned *Robert Yeske, et al. v. Macoupin Energy, LLC, et al.*, Case No. 2017-L-024.

1.2 **“Administrative Expenses”** shall mean expenses associated with the Settlement Administrator, including but not limited to costs in providing notice, communicating with the Settlement Class Members, and disbursing payments to the proposed Settlement Class Members. In no event will Administrative Expenses exceed \$35,000.00.

1.3 **“Class,” “Settlement Class,” “Class Member,” or “Settlement Class Member”** shall mean each member of the Settlement Class, as defined in Section III of this Agreement, who does not timely elect to be excluded from the Settlement Class and includes, but is not limited to, Plaintiff.

1.4 **“Class Counsel”** shall mean Brandon M. Wise, Esq., Peiffer Wolf Carr & Kane, APLC.

1.5 **“Counsel” or “Counsel for the Parties”** means both Class Counsel and Defendants’ Counsel, collectively.

1.6 **“Court”** shall mean the Circuit Court of Macoupin County, Illinois, and the Honorable Kenneth Deihl or any judge sitting in his stead.

1.7 **“Defendants”** shall mean Macoupin Energy, LLC; MaRyan Mining, LLC; Hillsboro Energy, LLC; Patton Mining, LLC; Mach Mining, LLC and Viking Mine, LLC and/or any or all of their past or present, direct or indirect, parents, subsidiaries, divisions, predecessors, successors, assigns, insurers, reinsurers, directors, officers, partners, shareholders, principals,

owners, members, trustees, administrators, executors, managers, representatives, attorneys, accountants, financial and other advisors, investment bankers, underwriters, legal representatives, and successors in interest including but not limited to Foresight Energy, LP; M-Class Mining, LLC; Williamson Energy LLC, Pond Creek Mine #1, Shay #1 Mine and Deer Run Mine.

1.8 “**Defendant’s Counsel**” shall mean Brian W. Bell, Esq., Anthony J. Monaco, Esq., Eric J. Skwiat, Esq., Madison C. Shepley, Esq., Swanson, Martin & Bell, LLP.

1.9 “**Effective Date**” shall " mean one business day following the later of: (i) the date upon which the time expires for filing or noticing any appeal of the Final Judgment; (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(s) (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(s) following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari with respect to the Final Judgment.

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

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

1.12 “**Final**” means the Final Approval Order has been entered on the docket, and if a timely objection has been submitted (a) the time to appeal from such order has expired and no appeal has been timely filed; (b) if such an appeal has been filed, it has been finally resolved and has resulted in an affirmation of the Final Approval Order; or (c) the Court, following the

resolution of the appeal, enters a further order or orders approving the settlement on the material terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s).

1.13 **“Final Approval Hearing”** means the hearing before the Court where the Plaintiff will request a judgment to be entered by the Court approving the Settlement Agreement, approving the Fee Award, and approving a Service Award to the Class Representative.

1.14 **“Final Approval Order”** shall mean an order entered by the Court that:

- a. Certifies the Settlement Class pursuant to 735 ILCS §§ 5/2-801;
- b. Finds that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of this Agreement;
- c. Dismisses the Plaintiff’s and Class Members’ claims pending before it with prejudice and without costs, except as explicitly provided for in this Agreement;
- d. Approves the Release provided in Section VII and orders that, as of the Effective Date, the Released Claims will be released as to the Releasees; and
- e. Finds that, pursuant to 735 ILCS 5/2-1301, there is no just reason for delay of entry of final judgment with respect to the foregoing.

1.15 **“HandPunch Timekeeping System”** shall mean the at issue Schlage HandPunch timekeeping technology used by any employee of Defendants between August 16, 2012 and the date of the Court entering a Preliminary Approval Order. This system operated by shining a light through the user’s hand and looking at the hand silhouette. Measurements of the hand were taken from the silhouette and then compressed by a mathematical formula into a 9-byte numerical template. The numerical value was encrypted and associated with the employee’s account known



as an ID number, and then stored in an encoded format at the Schlage time clock terminal for timekeeping purposes.

1.16 **“Notice”** means the direct notice of this proposed Settlement, which is to be provided substantially in the manner set forth in this Agreement and Exhibit A and is consistent with the requirements of due process and 735 ILCS 5/2- 801.

1.18 **“Objection/Exclusion Deadline”** means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a person within the Settlement Class must be postmarked and/or filed with the Court, which shall be designated as a date approximately sixty (60) days after the entry of the Preliminary Approval Order, or such other date as ordered by the Court.

1.19 **“Parties”** shall mean Plaintiffs and Defendants, collectively.

1.20 **“Plaintiffs” or “Class Representatives”** shall mean the named class representatives, Robert Yeske, Dan Hopley, Ronald Stout, Douglas Denoon, and Gregory Roach.

1.21 **“Preliminary Approval Order”** shall mean the Court’s Order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing Notice of the Settlement to the Settlement Class substantially in the form of the Notices set forth in this Agreement.

1.22 **“Released Claims”** means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra-contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys' fees and/or obligations, whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on the Illinois Biometric Information Protection Act

(BIPA) or other federal, state, local, statutory or common law or any other law, including without limitation any cause of action under any equitable theory, rule or regulation, including the law of any jurisdiction outside the United States, against the Released Parties, or any of them, arising out of the facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act regarding the alleged collection, capture, receipt, storage, and dissemination of handscan data including all claims that were brought or could have been brought in the Action relating to such collection, capture, receipt, storage, and dissemination of biometric and/or handscan data, belonging to any and all Releasing Parties. Nothing herein is intended to release any claims any governmental agency or governmental actor has against the Released Parties.

1.23 **“Releasees”** shall refer, jointly and severally, and individually and collectively, to Foresight Energy LP, Macoupin Energy LLC, Maryan Mining LLC, Hillsboro Energy LLC, Patton Mining LLC, Mach Mining LLC, Viking Mining LLC, M-Class Mining LLC, Williamson Energy LLC, Pond Creek Mine #1, Shay #1 Mine, Deer Run Mine, and all of the parents, successors, assigns, affiliates and wholly- owned subsidiaries from any and all past, present and future claims or causes of action from the beginning of time to the date of the signed release including but not limited to any claims for violations of the Biometric Information Privacy Act.

1.24 **“Releasers”** shall refer, jointly and severally, and individually and collectively, to Plaintiff, the Settlement Class Members, and to each of their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, through or on behalf of them.

1.25 “**Settlement Administrator**” means, subject to Court approval, JND Legal Administration Co., which is the entity selected and supervised by Class Counsel to administer the Settlement.

1.26 “**Settlement Fund**” means a cash settlement fund to be established by Defendants and/or their insurers in the amount of \$750,000.000.

1.27 “**Service Award**” shall have the meaning ascribed to it as set forth in Section 13 of this Agreement.

## **2. SETTLEMENT CLASS CERTIFICATION**

2.1 For the purposes of the Settlement only, the Parties stipulate and agree that (a) the Class shall be certified in accordance with the definition contained in Paragraph 2.3, below; (b) Plaintiff shall represent the Class for settlement purposes and shall be the Class Representative; and (c) Plaintiff’s Counsel shall be appointed as Class Counsel.

2.2 Defendant does not consent to certification of the Class for any purpose other than to effectuate the Settlement. If the Court does not enter Final Approval of the Settlement Agreement, or if for any other reason Final Approval of the Settlement Agreement does not occur, is successfully objected to, or challenged on appeal, any certification of any Class will be vacated and the Parties will be returned to their positions with respect to the Action as if the Agreement had not been entered into.

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

“All persons who were enrolled with the Schlage HandPunch timekeeping technology at Defendants’ coal mines when clocking in or clocking out of work.”

2.4 Excluded from the Settlement Class are (1) all persons who properly elect to exclude themselves from the Settlement Class, (2) the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family, (3) the legal representatives, successors or assigns of any such excluded persons.

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

### **3. SETTLEMENT OF THE ACTION AND CLAIMS AGAINST RELEASEES**

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

### **4. SETTLEMENT FUND**

#### **4.1 Establishment of Settlement Fund.**

- a. Within twenty-one (21) days of the entry of the Preliminary Approval Order and receipt of Settlement Administrator instructions and a Form W-9 for the Settlement Administrator, Defendant and/or their insurers shall pay to the Settlement Administrator the total sum of \$750,000.000 to create a Settlement Fund. Provided that Final Approval of this Agreement is granted by the Court without material change, material amendment, or material modification, the Settlement Fund will be used to satisfy all claims for Settlement Class Members in exchange for a comprehensive release and the

covenants set forth in this Agreement, including, without limitation, a full, fair, and complete release of all Releasees from Released Claims, and dismissal of the Action with prejudice.

- b. The funds provided by or on behalf of Defendant to the Settlement Administrator will be maintained by an escrow agent as a Court-approved Qualified Settlement Fund pursuant to Section 1.468B-1, *et seq.*, of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended, and shall be deposited in an interest-bearing account.
- c. If the Settlement Agreement is not finally approved, the Settlement Fund belongs to Defendant or its insurers, as the case may be, less any Administrative Expenses paid to date. Plaintiffs shall have no financial responsibility for any Administrative Expenses paid out of the Settlement Fund in the event that the Settlement Agreement is not finally approved.
- d. The Settlement Fund shall be used to pay (i) Settlement Class Members' claims; (ii) a Service Award to the Class Representative per paragraph 13.4; (iii) the Fee Award; and (iv) the costs of administration of the Agreement to the Settlement Administrator, including without limitation payment of Administrative Expenses not to exceed \$35,000.00.
- e. The Settlement Fund represents the total extent of the Defendants' monetary obligations under the Settlement Agreement. Defendants' contributions to the Settlement Fund shall be fixed under this Section and final. Defendant shall not be required to pay any amounts in excess of \$750,000.00.

Defendants and the other Releasees shall have no obligation to make further payments into the Settlement Fund and shall have no financial responsibility or obligation relating to the Settlement beyond the Settlement Fund.

- f. The Court may require changes to the method of allocation to Settlement Class Members without invalidating this Settlement Agreement, provided that the other material terms of the Settlement Agreement are not altered, including but not limited to the scope of the Release, the scope of the Settlement Class, and the amount of the Settlement Fund.

4.2 Each Settlement Class Members shall be entitled to a pro rata share of the Settlement Fund after Administrative Expenses paid to the Settlement Administrator, a Fee Award to Class Counsel, and a Service Award to the Class Representative are deducted. All valid and timely claims will be paid pro rata, with the exception for any Class Member who previously accepted a \$100.00 payment from the Defendants - such persons will receive \$100.00 less than a Class Member who has not already accepted \$100.00 with relation to this litigation (i.e, no person will be allowed to "double-dip" by accepting the \$100.00 payment from Defendants, and receiving the full settlement value here).

4.3 Settlement Class Members will be given Notice and a sixty (60) day time period following Preliminary Approval to submit a Claim Form to the Settlement Administrator.

**4.4 Procedure for Approving Settlement.**

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

- b. At the hearing on the Joint Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the Unopposed Motion for Preliminary Approval, and submit a proposed order granting conditional certification of the Class and preliminary approval of the Settlement Agreement; appointing the Class Representative and Class Counsel; approving the forms of Notice to the Class of the Settlement; and setting the Final Approval Hearing.
- c. For the purposes of the Settlement and the proceedings contemplated herein only, the Parties stipulate and agree that the Class shall be conditionally certified in accordance with the definition and on the terms contained above, that Plaintiff shall be conditionally appointed Class Representative, and that Plaintiff's Counsel shall be conditionally appointed as Class Counsel. Should the Court decline to preliminarily approve any aspect of the Settlement Agreement, the Parties will attempt to renegotiate those aspects of the Settlement Agreement in good faith, with the mutual goal of attempting to reach an agreement as close to this Settlement Agreement as possible, and will then submit the renegotiated settlement agreement to the Court for preliminary approval. If and only if the Parties are unable to obtain preliminary approval of a settlement agreement after submitting at least two renegotiated settlements to the Court, the Settlement Agreement will be null and void, and the Parties will have no further obligations under it, and the Parties will revert to their prior positions in the Action as if the Settlement had not occurred. In the event such occurs, the Settlement Administrator shall, upon notice, return all settlement funds to Defendants within 10 days.

#### **4.5 Procedure for Administering Settlement.**

**a. Class List.**

- i. Defendants shall create a Class List, based on readily available information already within its possession (“Class List”). The Class List shall include, at least the following: last known name, address, telephone number, and email address (if known) for each Settlement Class member. The Settlement Administrator will update the Class List using the U.S. Postal Service’s database of verifiable mailing addresses and the National Change-of-Address database.
- ii. The Class List shall include the names, social security numbers, last known phone numbers (if known), last known e-mail addresses (if known), and last known mailing addresses of potential Settlement Class Members, to the extent such information is available. Defendant shall provide the Class List to Plaintiffs’ Counsel and the Claims Administrator within seven (7) days after entry of the Preliminary Approval Order.

**b. Type of Notice Required.**

- i. The Notice, which shall be substantially in the form of Exhibit A attached hereto, shall be used for the purpose of informing proposed Settlement Class Members, prior to the Final Approval Hearing, that there is a pending settlement, and to further inform Settlement Class Members how they may: (i) protect their rights regarding the settlement; (ii) request exclusion from the Settlement Class and the proposed settlement, if desired; (iii) object to any aspect of the proposed settlement, if desired; and (iv) participate in the Final



Approval Hearing, if desired. The Notice shall make clear the binding effect of the settlement on all persons who do not timely request exclusion from the Settlement Class.

- ii. Dissemination of the Notice shall be the responsibility of the Settlement Administrator. The text of the Notice shall be agreed upon by the Parties and shall be substantially in the form attached as Exhibit A.
- iii. Within fourteen (14) days of entry of the Preliminary Approval Order, individual notice shall be sent via US Mail and e-mail (if available) (substantially in the form of Exhibit A). For all mailings returned as undeliverable, the Settlement Administrator shall perform a reverse look-up to find updated addresses and will cause the Notice mailing to be re-mailed to those members of the Settlement Class. Defendant will also post the notice at each job site.
- iv. Within fourteen (14) days of entry of the Preliminary Approval Order, the Settlement Administrator will establish a settlement website containing pertinent case documentation, including a copy of the Complaint, the Settlement Agreement, Preliminary Approval Order, and Notice.

#### **4.7 Allocation.**

- a. Class members will be given Notice and sixty (60) day time period to submit a Claim Form to the Settlement Administrator. All valid and timely claims will be

paid pro rata, with the exception for any Class Member who previously accepted a \$100.00 payment from the Defendants - such persons will receive \$100.00 less than a Class Member who has not already accepted \$100.00 with relation to this litigation.

- b. Within ten (10) business days after the Effective Date, the Settlement Administrator shall send to the Named Plaintiffs a check in the amount referenced in paragraph 13.4 below. This amount will be paid to Plaintiff as 1099 income.
- c. The Settlement Administrator shall notify the Parties that all payments have been made within five (5) business days of the last such payment. The Settlement Administrator will provide Counsel for the Parties with weekly reports regarding the status of administration of this Settlement.
- d. Checks to the Settlement Class Members shall remain valid and negotiable for one hundred twenty (120) days from the date of their issuance and may thereafter automatically be cancelled if not cashed within that time period. Within seventy-five (75) days of issuance of settlement checks, the Claims Administrator shall provide a list of any settlement checks that are not cashed/negotiated within sixty (60) days of issuance to Counsel for the Parties. Within ten (10) days thereafter, the Claims Administrator shall attempt to obtain valid mailing addresses and send a reminder post-card to affected class members. Additionally, at the conclusion of the 120-day period, the Claims Administrator shall provide a list of any settlement checks that are not then cashed/negotiated to counsel for the Parties. Within ten (10) days of the expiration of the 120-day period, the Claims Administrator shall

transfer such uncashed funds to the *cy pres* recipient and Defendant as outlined above.

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

## **5. PROSPECTIVE RELIEF**

5.1 Defendants have taken steps to comply with BIPA. Having reviewed the policies, procedures, and practices, of Defendants, Plaintiffs' Counsel believes that Defendants have come into compliance with BIPA. Defendants agree to remain in compliance with BIPA. Neither the fact of, or documents in support of BIPA compliance shall be used against Defendant as an admission of any kind.

## **6. RELEASE**

6.1 In addition to the effect of any Final judgment entered in accordance with this Agreement, upon Final Approval of this Agreement, and for other valuable consideration as described herein, Releasees shall be completely released, acquitted, and forever discharged from any and all Released Claims.

6.2 As of the Effective Date, and with the approval of the Court, all Releasers hereby fully, finally, and forever release, waive, discharge, surrender, forego, give up, abandon, and cancel any and all Released Claims against Releasees. As of the Effective Date, all

Releasers will be forever barred and enjoined from prosecuting any action against the Releasees asserting any and/or all Released Claims.

6.3 The named Plaintiffs release and forever discharged Foresight Energy LP, Macoupin Energy LLC, Maryan Mining LLC, Hillsboro Energy LLC, Patton Mining LLC, Mach Mining LLC, Viking Mining LLC, M-Class Mining LLC, Williamson Energy LLC, Pond Creek Mine #1, Shay #1 Mine, Deer Run Mine and all of the parents, successors, assigns, affiliates and wholly- owned subsidiaries from any and all past, present and future claims or causes of action from the beginning of time to the date of the signed release including but not limited to any claims for violations of the Biometric Information Privacy Act.

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

7.1 This Settlement Agreement shall be subject to approval of the Court. As set forth in Section XIV, Defendant shall have the right to withdraw from the Settlement Agreement if the Court does not approve the material aspects of the Agreement.

7.2 Plaintiff, through Class Counsel, shall submit this Agreement, together with its exhibits, to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement, certification of the Settlement Class, appointment of Class Counsel and the Class Representative, and entry of the Preliminary Approval Order, which order shall seek a Final Approval Hearing date and approve the Notice for dissemination in accordance with the Notice plan.

7.3 At the time of the submission of this Settlement Agreement to the Court as described above, the Parties shall request that, after Notice is given, the Court hold a Final

Approval Hearing approximately ninety (90) days after entry of the Preliminary Approval Order and approve the settlement of the Action as set forth herein.

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

## **8. EXCLUSIONS**

### **8.1 Exclusion Period.**

a. Settlement Class Members will have up to and including sixty (60) days following the date Notice is distributed to exclude themselves from the Settlement in accordance with this Section. If the Settlement Agreement is finally approved by the Court, all Settlement Class Members who have not opted out by the end of the Objection/Exclusion Deadline will be bound by the Agreement and will be deemed a Releasor as defined herein, and the relief provided by the Agreement will be their sole and exclusive remedy for the claims alleged by the Settlement Class.

### **8.2 Exclusion Process.**

- a. A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked on or before the Objection/Exclusion Deadline.
- b. In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his/her name, address, and telephone number; the name and number

of this case; a statement that he/she wishes to be excluded from the Settlement Class; and a signature. A request to be excluded that is sent to an address other than that designated in the Class Notice, or that is not postmarked within the time specified, shall be invalid and the person serving such a request shall be considered a member of the Settlement Class and shall be bound as Settlement Class Members by the Agreement, if approved.

- c. Any member of the Settlement Class who elects to be excluded shall not: (i) be bound by any order or the Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement. A member of the Settlement Class who requests to be excluded from the Settlement Class cannot also object to the Settlement Agreement.
- d. The request for exclusion must be personally signed by the person requesting exclusion. So-called “mass” or “class” exclusion requests shall not be allowed.
- e. Within three (3) business days after the Objection/Exclusion Deadline, the Settlement Administrator shall provide Class Counsel and Defendants’ Counsel a written list reflecting all timely and valid exclusions from the Settlement Class.

8.3 A list reflecting all individuals who timely and validly excluded themselves from the settlement shall also be filed with the Court at the time of the motion for Final Approval of the Settlement.

## **9. OBJECTIONS**

9.1 The Notice shall advise Settlement Class Members of their rights, including the right to be excluded from or object to the Settlement Agreement and its terms. The Notice shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing, only if, on or before the Objection/Exclusion Deadline approved by the Court, the person making an objection shall file notice of his/her intention to do so and at the same time: (a) file copies of such papers he/she proposed to submit at the Final Approval Hearing with the Clerk of the Court; and (b) send copies of such papers via US Mail, hand delivery, or overnight delivery to both Class Counsel and the Defendant's Counsel. A copy of the objection must also be mailed to the Settlement Administrator at the address that the Settlement Administrator will establish to receive requests for exclusion or objections and any other communication relating to this settlement.

9.2 Any Settlement Class Member who intends to object to this Settlement Agreement must include in any such objection: (a) his/her full name, address, and current telephone number; (b) the case name and number of this Action; (c) the date range during which he/she was employed by Defendant; (d) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (e) the identification of any other objections he/she has filed, or has had filed on his/her behalf, in any other class action cases in the last five years; and (f) the objector's signature. If represented by counsel, the objecting Settlement Class Member must also provide the name, address and telephone number of his/her counsel. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he/she must state as such in the written objection, and must also identify any witnesses he/she may seek to call to testify at the Final Approval Hearing and all exhibits he/she intends to

seek to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection.

9.3 Any Settlement Class Member who fails to timely file and serve a written objection and notice of intent to appear at the Final Approval Hearing pursuant to this Settlement Agreement, shall not be permitted to object to the approval of the Agreement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Agreement or its terms by appeal or other means.

## **10. FINAL APPROVAL HEARING**

10.1 The Parties will jointly request that the Court hold a Final Approval Hearing approximately ninety (90) days after entry of the Preliminary Approval Order. At the Final Approval Hearing, the Parties will request that the Court consider whether the Settlement Class should be certified as a class pursuant to 735 ILCS 2-801 for settlement and, if so, (a) consider any properly-filed objections; (b) determine whether the Settlement Agreement is fair, reasonable and adequate, was entered into in good faith and without collusion, and should be approved, and shall provide findings in connection therewith; and (c) enter the Final Approval Order, including final approval of the Settlement Class and the Settlement Agreement, and a Fee Award.

## **11. FINAL APPROVAL ORDER**

11.1 The Parties shall jointly seek entry of a Final Approval Order, the text of which the Parties shall agree upon. The dismissal orders, motions, or stipulation to implement this Section shall, among other things, seek or provide for a dismissal with prejudice and waiver of any rights of appeal.

11.2 The Parties shall jointly submit to the Court a proposed order that without limitation:



- a. Approves finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of 735 ILCS 2-801 and directing its consummation according to its terms; and
- b. Dismisses, with prejudice, all claims of the Settlement Class against the Defendant in the Action, without costs and fees except as explicitly provided for in this Agreement.

## **12. TERMINATION OF THE SETTLEMENT**

12.1 The Settlement is conditioned upon Preliminary and Final Approval of the Parties' written Settlement Agreement, and all terms and conditions thereof without material change, material amendments, or material modifications by the Court (except to the extent such changes, amendments, or modifications are agreed to in writing between the Parties). All Exhibits attached hereto are incorporated into this Settlement Agreement. Accordingly, any Party may elect to terminate and cancel this Settlement Agreement within ten (10) days of any of the following events:

- a. This Settlement Agreement is changed in any material respect to which the Parties have not agreed in writing;
- b. The Court refuses to grant Preliminary Approval of this Agreement even after the renegotiation process described in Paragraph 46(c) of this Agreement;
- c. The Court refuses to grant Final Approval of this Agreement in any material respect; or
- d. The Court refuses to enter a Final judgment in this Action in any material respect.

12.2 In the event the Settlement Agreement is not approved or does not become Final, or is terminated consistent with this Settlement Agreement, the Parties, pleadings, and proceedings will return to the *status quo ante* as if no settlement had been negotiated or entered into, and the Parties will negotiate in good faith to establish a new schedule for the Action.

**13. ATTORNEYS' FEES, COSTS, AND EXPENSES AND SERVICE AWARD**

13.1 No later than seven (7) days prior to the date of the Final Approval Hearing, Class Counsel will move the Court for an award of attorneys' fees not to exceed 33.33% of the Settlement Fund, or Two Hundred and Fifty Thousand Dollars (\$250,000.00), plus costs and expenses not to exceed Fifteen Thousand Dollars. (\$15,000.00).

13.2 Notwithstanding any contrary provision of this Agreement, and subject to Paragraph 11.1 of this Agreement, the Court's consideration of the Fee Award is to be conducted separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement Agreement, and any award made by the Court with respect to Class Counsel's attorneys' fees or expenses, or any proceedings incident thereto, including any appeal thereof, shall not operate to terminate or cancel this Agreement or be deemed material thereto.

13.3 Class Counsel shall provide the Settlement Administrator with its completed W-9 before the payment of the Fee Award is due. Within three (3) business days after the Effective Date, the Settlement Administrator shall pay to Class Counsel from the Settlement Fund the amount awarded by the Court in the Fee Award. Any payment of the Fee Award shall be paid via electronic wire transfer to an account designated by Class Counsel.

13.4 Prior to or at the same time as Plaintiff seeks final approval of the Settlement Agreement, Class Counsel shall move the Court for a Service Award for the Class Representatives in an amount not to exceed Five Thousand Dollars (\$5,000.00) for Class Representatives who were

deposed (Robert Yeske, Dan Hopley, and Ronald Stout) and Three Thousand Dollars (\$3,000) for Class Representatives who were not deposed Douglas Denoon; Jason Moore; And Gregory Roach and Defendants agree that they will not oppose such a request. The Service Award shall be paid solely from the Settlement Fund by check written by the Settlement Administrator within ten (10) days of the Effective Date.

13.5 In no event will Defendant's liability for attorneys' fees, expenses, and costs, Administrative Expenses, and/or a Service Award exceed the funding obligations (\$750,000.000) set out in this Agreement. Defendants shall have no financial responsibility for this Settlement Agreement outside of the Settlement Fund. Defendants shall have no further obligation for attorneys' fees or expenses to any counsel representing or working on behalf of either one or more individual Settlement Class Members or the Settlement Class. Defendants will have no responsibility, obligation, or liability for allocation of fees and expenses among Class Counsel.

#### **14. MISCELLANEOUS REPRESENTATIONS**

14.1 The Parties agree that the Settlement Agreement provides fair, equitable, and just compensation, and a fair, equitable, and just process for determining eligibility for compensation for any given Settlement Class Member related to the Released Claims.

14.2 The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement, and (b) agree, subject to their fiduciary and other legal obligations, to cooperate in good faith to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement. Class Counsel and Defendant's Counsel agree to cooperate with each other in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, and the Final Approval Order, and promptly to agree upon and execute all such other

documentation as may be reasonably required to obtain final approval of the Settlement Agreement.

14.3 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 and the Settlement Class, and each or any of them, on the one hand, against the Releasees, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiff or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.

14.4 The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully this Settlement Agreement, including its Exhibit, and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

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

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

14.7 This Agreement and its Exhibits set forth the entire Agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements, and undertakings with respect to the matters set forth herein. No representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibit other than the representations, warranties, and covenants contained and memorialized in such documents.

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

14.9 The Parties agree that Exhibit A to this Settlement Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

14.10 The Parties may agree, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of the Agreement.

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

14.12 Plaintiff represents and warrants that she has not assigned any claim or right or interest therein as against the Releasees to any other person or party.

14.13 The Parties represent that they have obtained the requisite authority to enter this Settlement Agreement in a manner that binds all Parties to its terms.

14.14 The Parties specifically acknowledge, agree, and admit that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders, or other documents shall be considered a compromise within the meaning of Illinois Rule of Evidence 408, and any other equivalent or similar rule of evidence, and shall not, except in accordance with Paragraph 14.17 of this Agreement, (a) constitute, be construed, be offered, or received into evidence as an admission of the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Litigation or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, or (b) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue.

14.15 The Parties also agree that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders or other documents entered in furtherance of this Settlement Agreement, and any acts in the performance of this Settlement Agreement, are not intended to establish grounds for certification of any class involving any Settlement Class Member other than for certification of the Settlement Class for settlement purposes.

14.16 Except in accordance with Paragraph 88 of this Agreement, this Settlement Agreement, whether approved or not approved, revoked, or made ineffective for any reason, and any proceedings related to this Settlement Agreement and any discussions relating thereto shall be inadmissible as evidence of any liability or wrongdoing whatsoever and shall not be offered as evidence of any liability or wrongdoing in any court or other tribunal in any state, territory, or jurisdiction, or in any manner whatsoever. Further, neither this Settlement Agreement, the settlement contemplated by it, nor any proceedings taken under it, will be construed or offered or received into evidence as an admission, concession, or presumption that class certification is appropriate, except to the extent necessary to consummate this Agreement and the binding effect of the Final Order and Judgment.

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

14.18 This Agreement may be executed in one or more counterparts exchanged by hand, messenger, or PDF as an electronic mail attachment, and any such signature exchanged shall be deemed an original signature for purposes of this Settlement Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument, provided that counsel for the Parties to this Agreement all exchange signed counterparts.

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

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

14.21 This Agreement is deemed to have been prepared by counsel for all Parties as a result of arms-length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Agreement and its Exhibits, it shall not be construed more strictly against one Party than another.

14.22 Unless otherwise stated herein, any notice required or provided for under this Agreement shall be in writing and shall be sent by electronic mail or hand delivery, postage prepaid, as follows:

If to Class Counsel:

Brandon M. Wise  
**PEIFFER WOLF CARR & KANE, APLC**  
818 Lafayette Ave., Floor 2  
St. Louis, MO 63104  
Phone: 314-833-4827  
[bwise@pwcklegal.com](mailto:bwise@pwcklegal.com)

If to the Defendant's Counsel:

Brian W. Bell  
Anthony J. Monaco  
Eric J. Skwiat  
Madison C. Shepley  
**SWANSON, MARTIN & BELL, LLP**  
330 North Wabash Avenue, Suite 3300  
Chicago, Illinois 60611  
Phone: 312-321-9100  
[bbell@smbtrials.com](mailto:bbell@smbtrials.com)  
[amonaco@smbtrials.com](mailto:amonaco@smbtrials.com)  
[eskwiat@smbtrials.com](mailto:eskwiat@smbtrials.com)  
[mshepley@smbtrials.com](mailto:mshepley@smbtrials.com)

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

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

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**



**ROBERT YESKE**

X *Robert L. Yeske*  
Robert Yeske, Plaintiff

X Date: 6-26-2020

**DAN HOPLEY**

\_\_\_\_\_  
Dan Hopley, Plaintiff

Date: \_\_\_\_\_

**RONALD STOUT**

\_\_\_\_\_  
Ronald Stout, Plaintiff

Date: \_\_\_\_\_

**DOUGLAS DENOON**

\_\_\_\_\_  
Douglas Denoon, Plaintiff

Date: \_\_\_\_\_

**GREGORY ROACH**

\_\_\_\_\_  
Gregory Roach, Plaintiff

Date: \_\_\_\_\_

**JASON MOORE**

\_\_\_\_\_  
Jason Moore, Plaintiff

Date: \_\_\_\_\_

\_\_\_\_\_  
Brandon M. Wise  
**PEIFFER WOLF CARR & KANE, APLC**  
818 Lafayette Ave., Floor 2  
St. Louis, MO 63104  
Phone: 314-833-4827  
[bwise@pwcklegal.com](mailto:bwise@pwcklegal.com)

**MACOUPIN ENERGY, LLC**

\_\_\_\_\_  
Date: \_\_\_\_\_

**DEFENDANT'S COUNSEL**

\_\_\_\_\_  
Date: \_\_\_\_\_

Brian W. Bell, Esq.  
Anthony J. Monaco, Esq.  
Eric J. Skwiat, Esq.  
Madison C. Shepley, Esq.  
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[amonaco@smbtrials.com](mailto:amonaco@smbtrials.com)  
[eskwiat@smbtrials.com](mailto:eskwiat@smbtrials.com)  
[mshepley@smbtrials.com](mailto:mshepley@smbtrials.com)

**ROBERT YESKE**

\_\_\_\_\_  
Robert Yeske, Plaintiff

Date: \_\_\_\_\_

**DAN HOPLEY**



\_\_\_\_\_  
Dan Hopley, Plaintiff

Date: 2020-06-19 12:12:39 (UTC-05:0

**RONALD STOUT**

\_\_\_\_\_  
Ronald Stout, Plaintiff

Date: \_\_\_\_\_

**DOUGLAS DENOON**

\_\_\_\_\_  
Douglas Denoon, Plaintiff

Date: \_\_\_\_\_

**GREGORY ROACH**

\_\_\_\_\_  
Gregory Roach, Plaintiff

Date: \_\_\_\_\_

**JASON MOORE**

\_\_\_\_\_  
Jason Moore, Plaintiff

Date: \_\_\_\_\_



\_\_\_\_\_  
Brandon M. Wise  
**PEIFFER WOLF CARR & KANE, APLC**  
818 Lafayette Ave., Floor 2  
St. Louis, MO 63104  
Phone: 314-833-4827  
[bwise@pwcklegal.com](mailto:bwise@pwcklegal.com)

**MACOUPIN ENERGY, LLC**

\_\_\_\_\_  
Date: \_\_\_\_\_

**DEFENDANT'S COUNSEL**

\_\_\_\_\_  
Date: \_\_\_\_\_

Brian W. Bell, Esq.  
Anthony J. Monaco, Esq.  
Eric J. Skwiat, Esq.  
Madison C. Shepley, Esq.  
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[amonaco@smbtrials.com](mailto:amonaco@smbtrials.com)  
[eskwiat@smbtrials.com](mailto:eskwiat@smbtrials.com)  
[mshepley@smbtrials.com](mailto:mshepley@smbtrials.com)

**ROBERT YESKE**

\_\_\_\_\_  
Robert Yeske, Plaintiff

Date: \_\_\_\_\_

**DAN HOPLEY**

\_\_\_\_\_  
Dan Hopley, Plaintiff

Date: \_\_\_\_\_

**RONALD STOUT**



\_\_\_\_\_  
Ronald Stout, Plaintiff

Date: 2020-06-19 13:21:20 (UTC-05:00)

**DOUGLAS DENOON**

\_\_\_\_\_  
Douglas Denoon, Plaintiff

Date: \_\_\_\_\_

**GREGORY ROACH**

\_\_\_\_\_  
Gregory Roach, Plaintiff

Date: \_\_\_\_\_

**JASON MOORE**

\_\_\_\_\_  
Jason Moore, Plaintiff

Date: \_\_\_\_\_

\_\_\_\_\_  
Brandon M. Wise  
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**MACOUPIN ENERGY, LLC**

\_\_\_\_\_  
Date: \_\_\_\_\_

**DEFENDANT'S COUNSEL**

\_\_\_\_\_  
Date: \_\_\_\_\_

Brian W. Bell, Esq.  
Anthony J. Monaco, Esq.  
Eric J. Skwiat, Esq.  
Madison C. Shepley, Esq.  
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[eskwiat@smbtrials.com](mailto:eskwiat@smbtrials.com)  
[mshepley@smbtrials.com](mailto:mshepley@smbtrials.com)

**ROBERT YESKE**

\_\_\_\_\_  
Robert Yeske, Plaintiff

Date: \_\_\_\_\_

**DAN HOPLEY**

\_\_\_\_\_  
Dan Hopley, Plaintiff

Date: \_\_\_\_\_

**RONALD STOUT**

\_\_\_\_\_  
Ronald Stout, Plaintiff

Date: \_\_\_\_\_

**DOUGLAS DENOON**



\_\_\_\_\_  
Douglas Denoon, Plaintiff

Date: 2020-06-19 12:40:18 (UTC-05:00)

**GREGORY ROACH**

\_\_\_\_\_  
Gregory Roach, Plaintiff

Date: \_\_\_\_\_

**JASON MOORE**

\_\_\_\_\_  
Jason Moore, Plaintiff

Date: \_\_\_\_\_

\_\_\_\_\_  
Brandon M. Wise  
**PEIFFER WOLF CARR & KANE, APLC**  
818 Lafayette Ave., Floor 2  
St. Louis, MO 63104  
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**MACOUPIN ENERGY, LLC**

\_\_\_\_\_  
Date: \_\_\_\_\_

**DEFENDANT'S COUNSEL**

\_\_\_\_\_  
Date: \_\_\_\_\_

Brian W. Bell, Esq.  
Anthony J. Monaco, Esq.  
Eric J. Skwiat, Esq.  
Madison C. Shepley, Esq.  
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[mshepley@smbtrials.com](mailto:mshepley@smbtrials.com)

**ROBERT YESKE**

\_\_\_\_\_  
Robert Yeske, Plaintiff

Date: \_\_\_\_\_

**DAN HOPLEY**

\_\_\_\_\_  
Dan Hopley, Plaintiff

Date: \_\_\_\_\_

**RONALD STOUT**

\_\_\_\_\_  
Ronald Stout, Plaintiff

Date: \_\_\_\_\_

**DOUGLAS DENOON**

\_\_\_\_\_  
Douglas Denoon, Plaintiff

Date: \_\_\_\_\_

**GREGORY ROACH**



\_\_\_\_\_  
Gregory Roach, Plaintiff

Date: 2020-06-19 12:50:25 (UTC-05:00)

**JASON MOORE**

\_\_\_\_\_  
Jason Moore, Plaintiff

Date: \_\_\_\_\_

\_\_\_\_\_  
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**MACOUPIN ENERGY, LLC**

\_\_\_\_\_  
Date: \_\_\_\_\_

**DEFENDANT'S COUNSEL**

\_\_\_\_\_  
Date: \_\_\_\_\_

Brian W. Bell, Esq.  
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Eric J. Skwiat, Esq.  
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**ROBERT YESKE**

\_\_\_\_\_  
Robert Yeske, Plaintiff

Date: \_\_\_\_\_

**DAN HOPLEY**

\_\_\_\_\_  
Dan Hopley, Plaintiff

Date: \_\_\_\_\_

**RONALD STOUT**

\_\_\_\_\_  
Ronald Stout, Plaintiff

Date: \_\_\_\_\_

**DOUGLAS DENOON**

\_\_\_\_\_  
Douglas Denoon, Plaintiff

Date: \_\_\_\_\_

**GREGORY ROACH**

\_\_\_\_\_  
Gregory Roach, Plaintiff

Date: \_\_\_\_\_

**JASON MOORE**

  
\_\_\_\_\_  
Jason Moore, Plaintiff

Date: 2020-06-25 14:19:04 (UTC-05:00)

\_\_\_\_\_  
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**MACOUPIN ENERGY, LLC**

\_\_\_\_\_  
Date: \_\_\_\_\_

**DEFENDANT'S COUNSEL**

\_\_\_\_\_  
Date: \_\_\_\_\_

Brian W. Bell, Esq.  
Anthony J. Monaco, Esq.  
Eric J. Skwiat, Esq.  
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[mshepley@smbtrials.com](mailto:mshepley@smbtrials.com)

**ROBERT YESKE**

Robert Yeske, Plaintiff

Date: \_\_\_\_\_

**DAN HOPLEY**

Dan Hopley, Plaintiff

Date: \_\_\_\_\_

**RONALD STOUT**

Ronald Stout, Plaintiff

Date: \_\_\_\_\_

**DOUGLAS DENOON**

Douglas Denoon, Plaintiff

Date: \_\_\_\_\_

**GREGORY ROACH**

Gregory Roach, Plaintiff

Date: \_\_\_\_\_

**JASON MOORE**

Jason Moore, Plaintiff

Date: \_\_\_\_\_

Brandon M. Wise  
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St. Louis, MO 63104  
Phone: 314-833-4827  
[bwise@pwcklegal.com](mailto:bwise@pwcklegal.com)

**MACOUPIN ENERGY, LLC**

Date: 6/29/20

**DEFENDANT'S COUNSEL**

Date: 7/1/20

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Anthony J. Monaco, Esq.  
Eric J. Skwiat, Esq.  
Madison C. Shepley, Esq.  
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[eskwiat@smbtrials.com](mailto:eskwiat@smbtrials.com)  
[mshepley@smbtrials.com](mailto:mshepley@smbtrials.com)

# EXHIBIT A



## **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

*Yeske, et. al. v. Macoupin Energy, LLC, et. al.*; 2017L24  
County of Macoupin, State of Illinois

**PLEASE READ THIS NOTICE CAREFULLY. YOU MAY BE ENTITLED TO A CASH PAYMENT FROM A CLASS ACTION SETTLEMENT IF YOU WERE REQUIRED TO PROVIDE YOUR HAND SCAN FOR EMPLOYEE TIMEKEEPING PURPOSES BY AT ANY TIME BETWEEN AUGUST 16, 2012 TO [PRELIMINARY APPROVAL DATE], UNLESS YOU HAVE PREVIOUSLY SIGNED A WAIVER OR RELEASE RELATING TO THESE CLAIMS.**

*This is a court-authorized notice of a proposed class action settlement. This is not a solicitation from a lawyer and is not notice of a lawsuit against you.*

### **WHY DID I GET THIS NOTICE?**

This is a court-authorized notice of a proposed settlement in a class action lawsuit, *Yeske, et. al. v. Macoupin Energy, LLC; 2017L24*, Macoupin County, State of Illinois, Illinois, pending in the Circuit Court. The Settlement would resolve a lawsuit brought on behalf of persons who allege that Macoupin Energy LLC, Maryan Mining LLC, Hillsboro Energy LLC, Patton Mining LLC, Mach Mining LLC, Viking Mining LLC, M-Class Mining LLC, and Williamson Energy LLC, (“Defendants”) required its employees to provide their hand scan for timekeeping purposes without first providing them with legally-required written disclosures and obtaining written consent. Defendants contest these claims and deny that they violated the Illinois Biometric Information Privacy Act. If you received this notice, you have been identified as someone who fits the Class Definition. The Court has granted preliminary approval of the Settlement and has conditionally certified the Settlement Class for purposes of settlement only. This notice explains the nature of the class action lawsuit, the terms of the Settlement, and the legal rights and obligations of the Settlement Class Members. Please read the instructions and explanations below so that you can better understand your legal rights.

### **WHAT IS THIS LAWSUIT ABOUT?**

The Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*, prohibits private companies from capturing, obtaining, storing, transferring, and/or using the biometric identifiers and/or information, such as fingerprints, of another individual for any purpose, including timekeeping, without first providing such individual with certain written disclosures and obtaining written consent. This lawsuit alleges that Defendants violated the BIPA by requiring their current and/or former employees to submit their hand scan for timekeeping purposes during the Class Period without first providing the requisite disclosures or obtaining the requisite consent. Defendants contest these claims and deny that they collected biometric information or otherwise violated BIPA.

### **WHY IS THIS A CLASS ACTION?**

A class action is a lawsuit in which an individual called a “Class Representative” brings a single lawsuit on behalf of other people who have similar claims. All of these people together are a “Class” or “Class Members.” Once a Class is certified, a class action Settlement finally approved by the Court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement Class.

### **WHY IS THERE A SETTLEMENT?**

To resolve this matter without the expense, delay, and uncertainties of litigation, the Parties have reached a Settlement, which resolves all BIPA claims against Defendants. The Settlement requires Defendants to pay

money to the Settlement Class, as well as pay settlement administration expenses, attorneys' fees and costs to Class Counsel, and incentive awards to the Class Representatives, if approved by the Court. The Settlement is not an admission of wrongdoing by Defendants and does not imply that there has been, or would be, any finding that Defendants violated the law.

The Court has already preliminarily approved the Settlement. Nevertheless, because the settlement of a class action determines the rights of all members of the class, the Court overseeing this lawsuit must give final approval to the Settlement before it can be effective. The Court has conditionally certified the Settlement Class for settlement purposes only, so that members of the Settlement Class can be given this notice and the opportunity to exclude themselves from the Settlement Class, to voice their support or opposition to final approval of the Settlement, and to submit a Claim Form to receive the relief offered by the Settlement. If the Court does not give final approval to the Settlement, or if it is terminated by the Parties, the Settlement will be void, and the lawsuit will proceed as if there had been no settlement and no certification of the Settlement Class.

### **WHO IS IN THE SETTLEMENT CLASS?**

You are a member of the Settlement Class if, during the Class Period, you were required to scan your hand for timekeeping purposes while employed by Defendants within the state of Illinois and have not previously signed a waiver or release relating to these claims. You will be considered a member of the Settlement Class unless you timely file an Exclusion Form.

### **HOW DO I RECEIVE A SETTLEMENT PAYMENT?**

To accept the Settlement and receive a monetary payment, you will need to complete the attached Claim Form. If you are receiving this notice, you are currently considered a member of the Settlement Class and will continue to be unless you exclude yourself from the Settlement. However, you will not receive any monetary payment unless a Claim Form is completed and mailed back to the Settlement Administrator.

### **WHAT OTHER OPTIONS DO I HAVE?**

#### **(1) Exclude yourself.**

You may exclude yourself from the Settlement. If you do so, you will not receive any cash payment, but you will not release any claims you may have against Defendant and the Releasees (as that term is defined in the Settlement Agreement) and are free to pursue whatever legal rights you may have by pursuing your own lawsuit against the Releasees at your own risk and expense. To exclude yourself from the Settlement, you must mail a notice that you would like to be excluded to the Settlement Administrator (address below), postmarked by **[EXCLUSION DEADLINE]**.

#### **(2) Object to the Settlement.**

If you wish to object to the Settlement, you must submit your objection in writing to Macoupin County Circuit Clerk, 201 E Main St, Carlinville, IL 62626. The objection must be received by the Circuit Clerk no later than **[OBJECTION DEADLINE]**. You must also send a copy of your objection to the attorneys for all Parties to the lawsuit, including Class Counsel (addresses below), as well as the attorneys representing Defendant (Brian W. Bell, Anthony Monaco, Eric J. Skwiat, Madison C. Shepley, Swanson, Martin, & Bell, LLP, 330 North Wabash Avenue, Suite 3300, Chicago, IL 60611), postmarked no later than **[OBJECTION DEADLINE]**. Any objection to the proposed Settlement must include your (i) full name, address, and telephone number; (ii) the case name and number of this Litigation; (iii) the date range during which you were employed by a Defendant; (iv) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (v) the identification of any other objections you

have filed, or have had filed on your behalf, in any other class action cases in the last four years; and (vi) your signature. If you hire an attorney in connection with making an objection, that attorney must also file with the Court a notice of appearance by the objection deadline of **[OBJECTION DEADLINE]**. If you do hire your own attorney, you will be solely responsible for payment of any fees and expenses the attorney incurs on your behalf. If you exclude yourself from the Settlement, you cannot file an objection.

You may appear at the Final Approval Hearing, which is to be held on **[FINAL HEARING DATE AND TIME]**, in **[FINAL APPROVAL LOCATION]**, in person or through counsel to show cause of why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement, the request for attorneys' fees and expenses, and/or the request for an incentive award to the Class Representative are required to indicate in their written objection their intention to appear at the hearing on their own behalf or through counsel and to identify the names of any witnesses they intend to call to testify at the Final Approval Hearing, as well as any exhibits they intend to introduce at the Final Approval Hearing. A failure to notify Counsel of your objection or intent to appear in opposition to the settlement at the Final Approval Hearing may waive your right to be heard at the Final Approval Hearing.

#### **WHAT DOES THE SETTLEMENT PROVIDE?**

**Cash Payments.** Defendants have agreed to create a \$750,000.00 Settlement Fund for the Class Members. All Settlement Class Members are entitled to receive a payment out of the Settlement Fund. If the Settlement is approved, each Settlement Class Member who completes a Claim Form will be entitled to an equal payment out of the Settlement Fund, less deductions for settlement administration costs, attorneys' fees, and a service award to the Named Plaintiffs. The Settlement Administrator will issue a check to each Class Member who completed a Claim Form following the final approval of the Settlement. All checks issued to Settlement Class Members will expire and become void 90 days after they are issued. Additionally, the attorneys who brought this lawsuit (listed below) will ask the Court to award them attorneys' fees of up to one-third (1/3) of the Settlement Fund, plus reasonable costs, for the substantial time, expense and effort expended in investigating the facts, litigating the case and negotiating the Settlement. The Class Representatives also will apply to the Court for a payment of up to \$5,000.00 for any deposed Class Representative, and up to \$3,000.00 for any Class Representative who did not have to sit for a deposition. The service awards are for the substantial time, effort, and service to the Class in this matter.

#### **WHAT RIGHTS AM I GIVING UP IN THIS SETTLEMENT?**

Unless you exclude yourself from this Settlement, you will be considered a member of the Settlement Class, which means you give up your right to file or continue a lawsuit against Defendants and their related entities and relating to the use of the Time-Keeping System during the Class Period. Giving up your legal claims is called a release. The precise terms of the release are in the Settlement Agreement, which is available upon request. Unless you formally exclude yourself from this Settlement, you will release your claims. If you have any questions, you can talk to the Settlement Administrator for free. Additionally, you may speak with the attorneys identified below who have been appointed by the Court to represent the Settlement Class, or you are welcome to talk to any other lawyer of your choosing at your own expense.

#### **WHEN WILL I BE PAID?**

The Parties cannot predict exactly when (or whether) the Court will give final approval to the Settlement, so please be patient. However, if the Court finally approves the Settlement, you will be paid as soon as possible after the court order becomes final, which should occur within approximately 60 days after the Settlement has been finally approved. If there is an appeal of the Settlement, payment may be delayed. Updated information about the case can be obtained through Class Counsel at the information provided below.

### **WHEN WILL THE COURT RULE ON THE SETTLEMENT?**

The Court has already given preliminary approval to the Settlement. A final hearing on the Settlement, called a Final Approval Hearing, will be held to determine the fairness of the Settlement. At the Final Approval Hearing, the Court will also consider whether to make final the certification of the Class for settlement purposes, hear any proper objections and arguments to the Settlement, as well as any requests for an award of attorneys' fees, costs, and expenses and Class Representative Incentive Award that may be sought by Class Counsel. The Court will hold the Final Approval Hearing on **FINAL APPROVAL DATE / TIME / LOCATION**.

If the Settlement is given final approval, the Court will not make any determination as to the merits of the claims against Defendants or its defenses to those claims. Instead, the Settlement's terms will take effect and the lawsuit will be dismissed on the merits with prejudice. Both sides have agreed to the Settlement in order to achieve an early and certain resolution to the lawsuit, in a manner that provides specific and valuable benefits to the members of the Settlement Class.

If the Court does not approve the Settlement, if it approves the Settlement and the approval is reversed on appeal, or if the Settlement does not become final for some other reason, you will not be paid at this time and Class Members will receive no benefits from the Settlement. Plaintiffs, Defendants, and all of the Class Members will be in the same position as they were prior to the execution of the Settlement, and the Settlement will have no legal effect, no class will remain certified (conditionally or otherwise), and the Plaintiffs and Defendants will continue to litigate the lawsuit. There can be no assurance that if the Settlement is not approved, the Settlement Class will recover more than is provided in the Settlement, or indeed, anything at all.

### **WHO REPRESENTS THE CLASS?**

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

Brandon Wise  
Paul Lesko  
Peiffer Wolf Carr & Kane, APLC  
818 Lafayette Ave., Fl. 2  
St. Louis, MO 63104  
314-833-4827  
[bwise@pwcklegal.com](mailto:bwise@pwcklegal.com)  
[plesko@pwcklegal.com](mailto:plesko@pwcklegal.com)

### **WHERE CAN I GET ADDITIONAL INFORMATION?**

This Notice is only a summary of the proposed Settlement of this lawsuit. More details are in the Settlement Agreement which, along with other documents, can be obtained by contacting Class Counsel. If you have any questions, you can also call at the numbers or email addresses set forth above. In addition to all pleadings and documents filed in court may be reviewed or copied in the Office of the Clerk. Please do not call the Judge or the Clerk of the Court about this case. They will not be able to give you advice on your option.



# EXHIBIT B

IN THE SEVENTH JUDICIAL CIRCUIT  
COUNTY OF MACOUPIN, STATE OF ILLINOIS

ROBERT YESKE; DAN HOPLEY; )  
RONALD STOUT; DOUGLAS DENOON; )  
JASON MOORE; and GREGORY ROACH, )  
each individually and on behalf of all others ) Case No. 2017-L-24  
similarly situated, )  
)  
Plaintiffs, )  
)  
v. )  
)  
MACOUPIN ENERGY LLC; MARYAN )  
MINING LLC; HILLSBORO ENERGY LLC; )  
PATTON MINING LLC; MACH MINING )  
LLC; and VIKING MINE LLC, )  
)  
Defendants. )

**[PROPOSED] PRELIMINARY APPROVAL ORDER**

This matter having come before the Court on Plaintiff’s Unopposed Motion in Support of Preliminary Approval of Class Action Settlement (the “Motion”), the Court having reviewed in detail and considered the Motion and Memorandum in Support of the Motion, the Class Action Settlement Agreement (“Settlement Agreement”) between Robert Yeske, Dan Hopley, Ronald Stout, Douglas Denoon, and Jason Moore (“Plaintiffs”) and Macoupin Energy LLC, Maryan Mining LLC, Hillsboro Energy LLC, Patton Mining LLC, Mach Mining LLC, and Viking Mine LLC, (“Defendants”, and, together, the “Parties”), and all other papers that have been filed with the Court related to the Settlement Agreement, including all exhibits and attachments to the Motion and the Settlement Agreement, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms used in this Order that are not otherwise defined herein have the same meaning assigned to them as in the Settlement Agreement.

2. The terms of the Settlement Agreement are preliminarily approved as fair, reasonable, and adequate. There is good cause to find that the Settlement Agreement was negotiated at arms-length between the Parties, who were represented by experienced counsel.

3. For settlement purposes only, the Court finds that the prerequisites to class action treatment under Section 2-801 of the Illinois Code of Civil Procedure – including numerosity, commonality and predominance, adequacy, and appropriateness of class treatment of these claims – have been preliminarily satisfied.

4. The Court hereby conditionally certifies, pursuant to Section 2-801 of the Illinois Code of Civil Procedure, and for the purposes of settlement only, the following Settlement Class consisting of:

“All persons who were enrolled in the Schlage HandPunch timekeeping technology at Defendants’ coal mines when clocking in or clocking out of work.”

5. For settlement purposes only, Plaintiffs Robert Yeske, Dan Hopley, Ronald Stout, Douglas Denoon, Jason Moore, and Gregory Roach are hereby appointed as Class Representative.

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

Brandon Wise  
Paul Lesko  
Peiffer Wolf Carr Kane & Conway, APLC  
818 Lafayette Ave., Fl. 2  
St. Louis, MO 63104  
314-833-4827  
[bwise@pwcklegal.com](mailto:bwise@pwcklegal.com)  
[plesko@pwcklegal.com](mailto:plesko@pwcklegal.com)

7. The Court recognizes that, pursuant to the Settlement Agreement, Defendants retain all rights to object to the propriety of class certification in the Litigation in all other contexts and for all other purposes should the Settlement not be finally approved. Therefore, as more fully set



forth below, if the Settlement is not finally approved, and litigation resumes, this Court's preliminary findings regarding the propriety of class certification shall be of no further force or effect whatsoever, and this Order will be vacated in its entirety.

8. The Court approves, in form and content, the Class Notice and Claim Form, attached to the Settlement Agreement as Exhibit A, and finds that Exhibit A meets the requirements of Section 2-803 of the Illinois Code of Civil Procedure and satisfies Due Process.

9. The Court finds that the planned notice set forth in the Settlement Agreement meets the requirements of Section 2-803 of the Illinois Code of Civil Procedure and constitutes the best notice practicable under the circumstances, where Class Members are current or former employees of Defendant and may be readily ascertained by Defendant's records, and satisfies fully the requirements of Due Process, and any other applicable law, such that the Settlement Agreement and Final Approval Order will be binding on all Settlement Class Members. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this action. The Parties, by agreement, may revise the Class Notice and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

10. The Court appoints JND Class Action Administration as Settlement Administrator. The Settlement Administrator is vested with authority to carry out the Notice as set forth in the Settlement Agreement.

11. The distribution of Class Notice as set forth in the Settlement Agreement shall proceed.

12. Settlement Class Members shall be bound by all determinations and orders pertaining to the Settlement, including the release of all claims to the extent set forth in the

Settlement Agreement, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. Settlement Class Members who do not timely and validly request exclusion shall be so bound even if they have previously initiated or subsequently initiate litigation or other proceedings against the Defendant or the Releasees relating to the claims released under the terms of the Settlement Agreement.

13. Any Claim Form submitted to the Settlement Administrator must be postmarked by **CLAIM FORM DATE** to be considered timely.

14. Any Person within the Settlement Class may request exclusion from the Settlement Class by expressly stating his/her request in a written exclusion request. Such exclusion requests must be received by Class Counsel, by first class mail, postage prepaid, and postmarked, no later than **EXCLUSION DEADLINE**.

15. In order to exercise the right to be excluded, a person within the Settlement Class must timely send a written request for exclusion to Class Counsel providing his/her name and address, a signature, the name and number of the case, and a statement that he or she wishes to be excluded from the Settlement Class. Any request for exclusion submitted via first class mail must be personally signed by the Person requesting exclusion. No person within the Settlement Class, or any person acting on behalf of, in concert with, or in participation with that person within the Settlement Class, may request exclusion from the Settlement Class of any other person within the Settlement Class.

16. Any person in the Settlement Class who elects to be excluded shall not: (i) be bound by any orders or the Final Approval Order; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement.

17. Class Counsel may file any motion seeking an award of attorneys' fees and costs not to exceed one-third of the settlement fund in attorneys' fees, plus their reasonable costs and expenses, as well as an Incentive Award of five thousand dollars (\$5,000.00) for Class Representatives Robert Yeske, Dan Hopley, and Ronald Stout and three thousand dollars (\$3,000.00) for Class Representatives Douglas Denoon, Jason Moore, and Gregory Roach, no later than 7 days prior to the Final Approval Hearing.

18. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who wishes to object to any aspect of the Settlement Agreement, including the amount of the attorneys' fees, costs, and expenses that Class Counsel intends to seek and the payment of the Incentive Award to the Class Representative, may do so, either personally or through an attorney, by filing a written objection, together with the supporting documentation set forth below in Paragraph 18 of this Order, with the Clerk of the Court, and served upon Class Counsel, Defendant's Counsel, and the Settlement Administrator (Class Counsel) no later than **OBJECTION DEADLINE**.

Addresses for Class Counsel, Defendants' Counsel, and the Clerk of Court are as follows:

**Class Counsel**

Brandon Wise  
Paul Lesko  
Peiffer Wolf Carr Kane & Conway, APLC  
818 Lafayette Ave., Fl. 2  
St. Louis, MO 63104  
314-833-4827  
[bwise@pwcklegal.com](mailto:bwise@pwcklegal.com)  
[plesko@pwcklegal.com](mailto:plesko@pwcklegal.com)

**Defendant's Counsel**

Brian W. Bell  
Anthony J. Monaco  
Eric J. Skwiat  
Madison C. Shepley  
Swanson, Martin, & Bell, LLP

330 North Wabash Avenue, Suite 3300,  
Chicago, IL 60611  
312-321-9100  
bbell@smbtrials.com  
amonaco@smbtrials.com  
eskwiat@smbtrials.com  
mshepley@smbtrials.com

**Clerk of Court**

Lee Ross  
Macoupin County Circuit Court Clerk  
201 East Main  
P.O. Box 197  
Carlinville, IL 62626  
217-854-3211  
lee.ross@macoupincountyil.gov

19. Any Settlement Class Member who has not requested exclusion and who intends to object to the Settlement must state, in writing, all objections and the basis for any such objection(s), and must also state in writing: (i) his/her full name, address, and telephone number; (ii) the case name and number of this Litigation; (iii) the date range and location during which/at which he/she was employed by Defendants; (iv) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (v) the identification of any other objections he/she has filed, or has had filed on his/her behalf, in any other class action cases in the last four years; and (vi) the objector's signature. Objections not filed and served in accordance with this Order shall not be received or considered by the Court. Any Settlement Class Member who fails to timely file and serve a written objection in accordance with this Order shall be deemed to have waived, and shall be forever foreclosed from raising, any objection to the Settlement, to the fairness, reasonableness, or adequacy of the Settlement, to the payment of attorneys' fees, costs, and expenses, to the payment of an Incentive Award, and to the Final Approval Order and the right to appeal same.

20. A Settlement Class Member who has not requested exclusion from the Settlement

Class and who has properly submitted a written objection in compliance with the Settlement Agreement, may appear at the Final Approval Hearing in person or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement and/or Plaintiffs' Counsels' Fee and Expense Application and/or the request for an Incentive Award to the Class Representatives are required to indicate in their written objection their intention to appear at the Final Approval Hearing on their own behalf or through counsel. For any Settlement Class Member who files a timely written objection and who indicates his/her intention to appear at the Final Approval Hearing on their own behalf or through counsel, such Settlement Class Member must also include in his/her written objection the identity of any witnesses he/she may call to testify, and all exhibits he/she intends to introduce into evidence at the Final Approval Hearing, which shall be attached.

21. No Settlement Class Member shall be entitled to be heard, and no objection shall be considered, unless the requirements set forth in this Order and in the Settlement Agreement are fully satisfied. Any Settlement Class Member who does not make his or her objection to the Settlement in the manner provided herein, or who does not also timely provide copies to the designated counsel of record for the Parties at the addresses set forth herein, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Final Approval Order.

22. All papers in support of the final approval of the proposed Settlement shall be filed no later than 7 days before the Final Approval Hearing.

23. Pending the final determination of the fairness, reasonableness, and adequacy of

the proposed Settlement, no Settlement Class Member may prosecute, institute, commence, or continue any lawsuit (individual action or class action) with respect to the Released Claims against any of the Releasees.

24. Any other matter asserting claims under BIPA against any Defendant or Releasee, as defined herein, is hereby enjoined and no party to such litigation shall take any action, other than to inform the Court in which such other action is pending of this Preliminary Approval Order.

25. A “Final Approval Hearing” shall be held before the Court on **FINAL APPROVAL DATE/TIME** in Courtroom **###** of the Macoupin County Courthouse, 201 E. Main St., Carlinville, IL 62626 (or at such other time or location as the Court may without further notice direct) for the following purposes:

(a) to finally determine whether the applicable prerequisites for settlement class action treatment under 735 ILCS 5/2-801 have been met;

(b) to determine whether the Settlement is fair, reasonable and adequate, and should be approved by the Court;

(c) to determine whether the judgment as provided under the Settlement Agreement should be entered, including an order prohibiting Settlement Class Members from further pursuing claims released in the Settlement Agreement;

(d) to consider the application for an award of attorneys’ fees, costs and expenses of Class Counsel;

(e) to consider the application for an Incentive Award to the Class Representatives;

(f) to consider the distribution of the Settlement Fund pursuant to the Settlement Agreement; and

(g) to rule upon such other matters as the Court may deem appropriate.

26. The Final Approval Hearing may be postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class. At or following the Final Approval Hearing, the Court may enter a judgment approving the Settlement Agreement and a Final Approval Order in accordance with the Settlement Agreement that adjudicates the rights of all Settlement Class Members.

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

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

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

Class List Sent to Administrator: (7): \_\_\_\_\_

Notice to be completed by (14): \_\_\_\_\_

Objection Deadline (60): \_\_\_\_\_

Exclusion Request Deadline (60): \_\_\_\_\_

Fee and Expense Application (92): \_\_\_\_\_

Final Approval Submissions (92): \_\_\_\_\_

Final Approval Hearing (105): \_\_\_\_\_

**IT IS SO ORDERED.**

ENTERED: \_\_\_\_\_

\_\_\_\_\_  
Circuit Judge