

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

JUNIE FRANCOIS, individually, and on)	
behalf of all others similarly situated,)	
)	
Plaintiff,)	
)	Case No. 2022-CH-01041
vs.)	
)	Hon. Judge Thaddeus L. Wilson
SWIPECLOCK, LLC,)	
)	
Defendant.)	

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (herein referred to as “Settlement Agreement” or “Settlement”) is made and entered into by and between Plaintiff JUNIE FRANCOIS (“Plaintiff”) on behalf of herself and each member of the Settlement Class as defined below, and Defendant SWIPECLOCK, LLC (“Defendant” or “SwipeClock”) (together with Plaintiff, the “Parties”).

I. RECITALS

1. Plaintiff Junie Francois filed the operative Class Action Complaint on February 7, 2022, seeking redress for herself and all aggrieved individuals who used an alleged SwipeClock biometric timekeeping device at their respective place of employment in the state of Illinois during the relevant Class Period. Plaintiff alleges Defendant violated the Illinois Biometric Information Privacy Act (“BIPA” or “Act”), 740 ILCS 14/1, *et seq.*, by disregarding Plaintiff’s and other similarly situated individuals’ statutorily protected privacy rights by unlawfully collecting, otherwise obtaining, storing, using, and disseminating their biometric identifiers and biometric information (collectively referred to herein as “biometric data”), all while ignoring BIPA’s notice and consent requirements. Specifically, the Class Action Complaint alleges Defendant violated

Sections 15(a), (b) and (d) of BIPA – its publicly-available policy, informed consent, and unauthorized disclosure requirements. *See* 740 ILCS 14/15(a), (b) and (d).

2. Defendant denies all allegations of wrongdoing or liability of any kind asserted in the Action. Despite Defendant's belief it is not liable for and has good defenses to the claims in the Action, Defendant desires to settle the Action to avoid the burden and expense of continued litigation of all claims relating to the matters being settled by this Settlement Agreement. Neither this Settlement Agreement, nor any negotiation or discussion thereof, may be deemed to be, or used as, an admission of or evidence of any wrongdoing or liability by Defendant.

3. Class Counsel has conducted an investigation into the facts and the law regarding the Action and has concluded that a settlement according to the terms set forth herein is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiff and the Settlement Class, recognizing: (a) the existence of complex and contested issues of law and fact; (b) the risks inherent in litigation; (c) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement; (d) the magnitude of the benefits derived from the contemplated Settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever; and (e) Class Counsel's determination that the Settlement is fair, reasonable, adequate, and will substantially benefit the Settlement Class Members. For purposes of this Settlement Agreement, Class Counsel has also determined that the Settlement Agreement procedures described herein are superior to other available methods for the fair and efficient resolution of this controversy.

4. 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.

5. The Parties agree to cooperate and take all reasonable steps necessary and appropriate to obtain preliminary and final approval of the Settlement Agreement, to effectuate all aspects of the Settlement Agreement, and to dismiss this Action with prejudice upon final approval and entry of final judgment.

6. 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, as that term is defined herein, release the Released Parties, as that term is defined herein, of the Released Claims, as that term is defined herein, without costs as to Defendant, the Released Parties, Plaintiff, Class Counsel, or the Settlement Class, except as explicitly provided for in this Settlement Agreement, subject to the approval of the Court, on the following terms and conditions.

II. SETTLEMENT TERMS

A. DEFINITIONS

The following terms, as used in this Settlement Agreement, have the following meanings:

7. “Action” means the class action lawsuit pending in the Circuit Court of Cook County, Illinois, Chancery Division, captioned *Francois v. SwipeClock, LLC*, Case No. 2022-CH-01041.

8. “Administrative Fees” refers to the Settlement Administrator’s fees arising from its administration of the Settlement, including but not limited to creating and maintaining the settlement website, costs in providing Notice, communicating with the Parties and Settlement Class Members, disbursing payments to the proposed Settlement Class Members, and tax

reporting, among other duties.

9. “Biometric Timekeeping System” means the alleged biometric timekeeping devices, time clocks, and/or cloud-based time and attendance software products provided, sold, and/or leased through or by Defendant and/or one of its authorized resellers to companies in the state of Illinois and used between February 7, 2017, to the Objection Deadline, which utilized a scan of Plaintiff’s and the other Settlement Class Members’ biometric identifiers and/or biometric information for authentication and timekeeping purposes.

10. “Class,” “Settlement Class,” “Class Member,” or “Settlement Class Member” means each member of the Settlement Class, as defined in Paragraph 37 of this Agreement.

11. “Class Counsel” refers to Stephan Zouras, LLC, 222 W. Adams Street, Suite 2020, Chicago, IL 60606.

12. “Class Period” is from February 7, 2017, to the date of the Objection Deadline.

13. “Court” means the Circuit Court of Cook County, Illinois County Department, Chancery Division, and the Honorable Judge Thaddeus L. Wilson or any judge sitting in his stead.

14. “Defendant” means Defendant SwipeClock, LLC.

15. “Defendant’s Counsel” means Katten Muchin Rosenman LLP, 525 W. Monroe Street, Chicago, IL 60661.

16. “Effective Date” means the first business day after the date on which Final Judgment becomes final. For purposes of this definition, the Final Judgment “becomes final” when the Final Approval Order has been entered on the docket and the latest of the following dates: (a) on the date that the time to appeal from the Final Approval Order has expired and no appeal has been timely filed but no later than 35 calendar days after the Court enters the Final Approval Order; (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 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). In the event that the Court does not approve the Settlement Agreement and/or does not enter a Final Judgment, or in the event that entry of the Final Judgment is reversed on appeal, then there shall be no Effective Date and this Settlement Agreement shall become null and void.

17. “Exclusion Deadline” means the date by which a request for exclusion submitted by a member of the Settlement Class must be postmarked and delivered to the Settlement Administrator by forty-five (45) days following the initial mailing of the Notice, or such other date as ordered by the Court.

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

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

20. “Final Approval Hearing” means the hearing before the Court where Plaintiff will request final approval of the Settlement and make such other final rulings as are contemplated by the Settlement Agreement.

21. “Final Approval Order” means the Court’s order granting final approval of this Settlement Agreement on the terms provided herein or as those terms may be modified by the Court or subsequent written agreement of the Parties. The Final Approval Order shall:

- a. Grant final certification of the Settlement Class;
- b. Find that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of the Settlement Agreement;

- c. Dismiss Plaintiff's and Class Members' claims pending before it with prejudice and without costs, except as explicitly provided for in this Settlement Agreement;
- d. Approve the Release provided in the Settlement Agreement and order that, as of the Effective Date, the Released Claims will be released as to the Released Parties; and
- e. Enter a Final Judgment.

The Parties shall submit a proposed Final Approval Order setting forth the terms of this Settlement Agreement, by incorporation or otherwise, for execution and entry by the Court at the time of the Final Approval Hearing or at such other time as the Court deems appropriate.

22. "Final Judgment" refers to the judgment entered by the Court in conjunction with the Final Approval Order.

23. "Incentive Award" means the amount to be paid to the Plaintiff, subject to the approval of the Court, as payment for her efforts for the benefit of the Class, including assisting Class Counsel with the prosecution of the Action.

24. "Notice" means the notice of class action settlement to be directed to Settlement Class Members consistent with due process. The Notice shall be substantially in the form of **Group Exhibit A** attached hereto and will provide a summary of the Action, a summary of the Settlement Agreement, information on how Class Members can join, opt-out, or object to the Settlement, and the scope of the release of claims.

25. "Objection Deadline" means the date by which a written objection to this Settlement Agreement submitted by a member of the Settlement Class must be filed with the Court and copies sent via U.S. Mail to Class Counsel and the Settlement Administrator postmarked by forty-five (45) days following the initial mailing of the Notice, or such other date as ordered by the Court.

26. “Parties” means Plaintiff and Defendant, collectively.

27. “Plaintiff” or “Class Representative” shall mean the named class representative, Junie Francois.

28. “Preliminary Approval Order” or “Preliminary Approval” refers to 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.

29. “Qualified Settlement Fund” or “QSF” means the interest-bearing escrow account with the Settlement Fund to be opened, administered, and controlled by the Settlement Administrator as a “Qualified Settlement Fund” under Section 468B of the IRC and Treas. Reg. § 1.468B-1, 26 C.F.R. § 1.468B-1, *et seq.*

30. “Released Claims” means that final approval of the Settlement Agreement will settle and resolve with finality, on behalf of the Settlement Class, any claims that have been brought or could have been brought at any time for the released claims and will result in dismissal with prejudice of the Lawsuit. Members of the Settlement Class who do not opt out shall broadly release, relinquish, and give up any and all actual, potential, filed, unfiled, known or unknown claims, suits, actions, controversies, demands, damages and/or causes of action of every kind or nature, whether based in law or in equity, or under state, federal or common law, arising out of or related to any matters, actions, omissions, and/or allegations set forth in the pleadings in the Action including, but not limited to, those arising under BIPA and any similar law that were brought or could have been brought in the Action or that were brought or could have been brought in the Action relating to alleged biometric timekeeping devices that concern or involve any Released Party.

31. “Released Party” or “Released Parties” refers to individually and collectively, Defendant SwipeClock, LLC and its past and present parent entities, subsidiaries, predecessors, successors and assigns, and each of their respective officers, members, partners, directors, owners, insurers, attorneys, employees, and agents (each a “Released Party”). For the avoidance of doubt, Released Parties shall not include: (1) Resellers, customers and/or partners of SwipeClock, LLC who are involved in the sale, distribution or use of alleged Biometric Timekeeping System, including any customers or partners of its Resellers; (2) any vendors of alleged Biometric Timekeeping System, hardware, and/or software; (3) any staffing companies; and (4) Twin City Fire Insurance Company, and its past, present and future predecessors, affiliates, owners, partners, shareholders, parent companies, subsidiaries, assigns and successors.

32. “Releasor(s)” refers to, jointly and severally, and individually and collectively, to Plaintiff and the Settlement Class Members, and to each of their predecessors, successors, beneficiaries, heirs, executors, conservators, administrators, agents, and assigns of each of the foregoing, and anyone claiming by, through or on behalf of them.

33. “Settlement Administrator” refers to the third-party entity selected and supervised by the Parties to administer the Settlement. Costs for administration shall be paid from the Gross Settlement Fund.

34. “Settlement Fund” means a monetary fund established by Defendant in the amount of \$1,630,000.00 (“Gross Settlement Fund”) within 7 calendar days after the Effective Date. The following will be paid from the Gross Settlement Fund: Class Member claims, which will be paid on a *pro rata* basis; Class Counsel’s attorney’s fees and litigation costs; an Incentive Award to the Named Plaintiff/Class Representative; class and claims administration costs; notice; and any other costs or expenses with the Action and/or this Settlement (“Net Settlement Fund”). The Gross

Settlement Fund is the maximum amount Defendant shall be obligated to pay under this Settlement.

B. SETTLEMENT CLASS CERTIFICATION

35. Solely for the purposes of this Settlement Agreement, the Parties stipulate and agree that (a) the Class shall be certified under 735 ILCS 5/2-801 in accordance with the definition contained in Paragraph 37, 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.

36. Defendant expressly reserves its right to oppose class certification and oppose the merits of the Action should the Effective Date not occur for any reason whatsoever.

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

All individuals who had their biometric data collected, captured, taken, received, converted, obtained, maintained, stored, shared, disseminated, or disclosed by SwipeClock, as a result of the use of a SwipeClock alleged biometric timekeeping device located in the state of Illinois, between February 7, 2017, and the Objection Deadline.

38. Excluded from the Settlement Class are: (1) the Court and members of their families; (2) persons who properly execute a timely request for exclusion from the Class; and (3) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released. Defendant estimates the number of potential class members is approximately 7,600 based upon available data relating to the apparent customers of its Illinois Resellers to whom its alleged biometric timekeeping devices were sold and the review and analysis it performed of such data and unknown variables, all as described in the Declaration of Mark Pocock, attached hereto as **Exhibit B**. If identifiable class members are determined to exceed 11,500, Plaintiff or Defendant

can terminate and unilaterally void this Settlement Agreement.

39. If the Settlement Agreement is not granted Preliminary and/or Final Approval, Defendant's agreement to certification of the Settlement Class shall not be used for any purpose including, but not limited to, any request for class certification in the Action or any other proceeding.

C. SETTLEMENT APPROVAL REQUIREMENTS

40. The Settlement is conditioned upon preliminary approval and final approval of the Settlement Agreement by the Court.

41. The Settlement Agreement requires the occurrence of all of the following events: (a) execution of the Settlement Agreement by the Parties; (b) submission of the Settlement Agreement by the Parties to the Court for preliminary approval; (c) entry of the Preliminary Approval Order by the Court granting preliminary approval of the Settlement Agreement and certification of a class action for purposes of this Settlement only; and (d) Court approval of the method of distribution and the form and content of the Settlement Notice.

42. The Settlement Agreement will become final and effective only upon the occurrence of the following events: (a) the Court enters the Final Approval Order; (b) the Effective Date occurs; and (c) any challenge to the Settlement, whether by objection or appeal, is resolved in favor of enforcement of the Settlement.

D. MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

43. Within ten (10) business days after execution of this Settlement Agreement, Plaintiff, through Class Counsel, will file with the Court an Unopposed Motion for and Memorandum in Support of Preliminary Approval of Class Action Settlement ("Preliminary Approval Motion") to be prepared by Plaintiff and shared with Defendant's Counsel prior to filing.

44. The Preliminary Approval Motion shall submit this Settlement Agreement, together with its exhibits, to the Court and shall request that the Court enter the Preliminary Approval Order: (a) granting preliminary approval of the Settlement Agreement described herein; (b) conditionally certifying the Class for settlement purposes only; (c) approving the Notice and the proposed plan of settlement administration described herein; and (d) scheduling a tentative date for a Final Approval Hearing approximately ninety (90) days after entry of the Preliminary Approval Order.

45. Should the Court decline to enter the Preliminary Approval Order or otherwise 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. Only after both Parties agree that they have fully exhausted their efforts at obtaining 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.

E. ESTABLISHMENT AND ALLOCATION OF THE SETTLEMENT FUND

46. Defendant agrees to pay amounts to the Settlement Administrator necessary to create the Settlement Fund as follows:

- a. Within seven (7) calendar days after the Effective Date, Defendant shall pay to the Settlement Administrator the total Settlement Fund in the amount of \$1,630,000.00. 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 Released Parties from Released Claims, and dismissal of the Action with prejudice.

- b. The Settlement Fund shall be used to pay: (i) Settlement Class Members' claims; (ii) reasonable attorney's fees of no more than 37.5% of the Gross Settlement Fund plus all out-of-pocket costs to be approved by the Court and which Defendant agrees not to oppose; (iii) Class Notice and settlement administration costs to be paid out of the Gross Settlement Fund; and (iv) an Incentive Award to the Named Plaintiff in the amount of \$7,500 to be paid out of the Gross Settlement Fund, which will be determined by the Court and which Defendant agrees not to oppose.
- c. 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.

47. Each Settlement Class Member, including the Class Representative, who does not timely and validly opt out, and whose Illinois resident contact information is secured through the procedures set forth herein, shall be paid his or her *pro rata* share of the Net Settlement Fund via a direct check to their last known address, without the need to file a claim or otherwise "opt in" to participate in the Settlement. All other potential Class Members will be obligated to provide a claim form with the necessary averments and data to participate in, and be paid, a *pro rata* share of the Net Settlement Fund. The Claim Form shall be in the format reflected in **Exhibit C**, attached hereto, which, among other things, will require the potential Class Members to furnish the name, location and dates of employment of the company for which he or she worked when their alleged biometric data was captured by a SwipeClock device. In the event the company name is not one of the customers identified from the information provided as discussed herein, the Settlement Administrator will contact Defendant's counsel, who will have SwipeClock research its database to verify whether the customer had an account opened at SwipeClock for use of a SwipeClock alleged Biometric Timekeeping System since February 7, 2017. The Settlement Administrator may also take other reasonable and appropriate steps to determine if a claim submitted through a Claim Form is valid.

48. Payment to each Settlement Class Member shall be treated as 1099 income. If required, the Settlement Administrator shall issue an IRS Form 1099 to each Class Member as necessary. Each Class Member shall be solely responsible for the reporting and payment of their share of any federal, state, and/or local income or other taxes on payments received pursuant to this Settlement.

49. The funds provided by Defendant to the Settlement Administrator will be maintained by an escrow agent as a Court-approved Qualified Settlement Fund and shall be deposited in an FDIC insured interest-bearing account created and controlled by the Settlement Administrator.

50. Class Members who do not timely and validly opt out will receive an identical *pro rata* share of the Net Settlement Fund, subject to a potential second round of distribution. Within sixty (60) calendar days of issuance of settlement checks, the Settlement Administrator shall provide a list of any settlement checks that are not cashed/negotiated within forty-five (45) calendar days of issuance to Counsel for the Parties. The Settlement Administrator, within seven (7) calendar days thereafter, shall send reminder postcards, emails, and/or texts to those who have not yet cashed a check.

51. If there is any amount remaining after the first distribution of checks, providing a 120-day check cashing period (“uncashed check amount”), 50% of this amount will be returned to Defendant. If the other 50% of the uncashed check amount totals \$250,000 or more, this amount will be redistributed to those Settlement Class Members who participated in the Settlement by cashing their initial checks and providing an additional 120-day check cashing period. If the other 50% of the uncashed check amount totals less than \$250,000, this amount will be transferred to a mutually agreeable *cy pres* that is approved by the Court.

52. The Settlement Administrator shall be responsible for making all reporting and filings with respect to amounts payable to Settlement Class Members required pursuant to any federal, state, or local tax law or regulation hereunder under the EIN of the escrow account. The Settlement Administrator shall also be responsible for filing and sending Form 1099s, if necessary, to any applicable recipient of a payment from the Settlement Fund.

53. The Settlement Administrator shall be responsible for such things as establishment of the escrow account for the Settlement Fund, setting up and managing a settlement website (whose URL will be agreed upon by the Parties), providing Notice to the Class via direct, internet, and publication, verifying addresses, skip tracing as necessary, communicating with Class Members, validating Claim Forms, disbursing payments to Class Members who do not exclude themselves from the Settlement, tax reporting, and other administrative activities contemplated in this Settlement Agreement. All costs and fees of the Settlement Administrator shall be payable solely from the Gross Settlement Fund.

F. PLAN OF SETTLEMENT ADMINISTRATION

54. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the Settlement Agreement.

55. At no time shall any of the Parties or their counsel: (a) discourage any Settlement Class Member from participating in the Settlement; or (b) encourage any Settlement Class Member to object to the Settlement Agreement or opt out of the Settlement Agreement.

56. Within seven (7) calendar days after Preliminary Approval of the Settlement, Defendant will provide Class Counsel: (a) the name and available contact information for all customers who bought and used an alleged SwipeClock Biometric Timekeeping System on and

after February 7, 2017, which was leased, sold, or provided to it by an Illinois Reseller and whose account listed a business address in Illinois at the time the account was opened; and (b) as to customers who were sold and used a SwipeClock alleged Biometric Timekeeping System (furnished by an Illinois Reseller) on and after February 7, 2017, for whom SwipeClock does not have an address but, when the account was opened, listed a central time zone: (i) the names of the 10 largest customers, measured by employee user numbers, potentially located in Illinois; and (ii) in the event Class Counsel is unable to determine an address for such customer(s), Class Counsel will promptly advise Defendant's Counsel of this and Defendant will furnish to Class Counsel the name and address of the Illinois Reseller(s) who sold a SwipeClock alleged Biometric Timekeeping system to those customers.

57. Within seven (7) calendar days of receiving the information noted above in Paragraph 56, Class Counsel will issue subpoenas to the identified customers to produce to the Settlement Administrator documents sufficient to show: (a) all business location(s) of the customer and its SwipeClock alleged Biometric Timekeeping System (with listed addresses) on and after February 7, 2017; and (b) the names, last known mailing address, telephone number, and email address for individuals who worked for or at the customer at an Illinois location on or after February 7, 2017, and were required to use a SwipeClock alleged Biometric Timekeeping System.

58. In the event Class Counsel needs to subpoena an Illinois Reseller to secure the address of specific customer(s) as noted herein, including Paragraph 56 above, Class Counsel will issue such within seven days of receiving the Reseller name and address from SwipeClock, seeking documents sufficient to reflect the full name and contact information for those customers listed as noted above in Paragraph 56. Within seven days of receipt of such information from the Illinois Reseller, Class Counsel will issue a subpoena to such customers seeking documents providing the

information described in Paragraph 56 above, which documents are to be produced to the Settlement Administrator.

59. The Settlement Administrator shall provide a list to Class Counsel containing only the names of the employees received pursuant to Paragraph 56 above. The contact information of the employees received pursuant to Paragraph 56 above will not be shared by the Settlement Administrator with Class Counsel unless required in order to effectuate Notice to Class Members.

60. Class Counsel will be responsible for enforcing compliance with all subpoenas, and Defendant agrees not to oppose such subpoenas.

61. Class Counsel and Plaintiff agree not to seek any additional discovery in the Action beyond that set forth in Paragraph 56, including agreeing not to request or subpoena data, documents, or information from SwipeClock or third parties pertaining to SwipeClock's non-Illinois Resellers, sales by such non-Illinois Resellers of SwipeClock's alleged Biometric Timekeeping System or the names of customers of SwipeClock's non-Illinois Resellers.

62. Within seven (7) calendar days after the Settlement Administrator receives the Settlement Class Members' necessary data as described herein, the Settlement Administrator shall send the Notice to the Settlement Class Members *via* email, text message, and First-Class U.S. Mail, postage prepaid, to their mailing addresses as updated using the U.S.P.S. database of verifiable mailing addresses and the National Change-of-Address database. If any such mailing is returned as undeliverable with an indication of a more current address, the Settlement Administrator will mail the Notice to the new address. If any such mailing is returned as undeliverable without any indication of a more current address, the Settlement Administrator will perform a reverse look up or skip trace using social security numbers to find an updated address, and if one is so identified, will mail the Notice to the new address. For any Notice sent to members

of the Settlement Class that are returned as undeliverable, the Settlement Class Member will have the longer of the remaining period or fourteen (14) calendar days from the date of any re-mailing to seek exclusion or object.

63. Within seven (7) calendar days after the Settlement Administrator receives the Settlement Class Members' necessary data as described herein, the Settlement Administrator will create and maintain a Settlement Website. The Settlement Administrator shall also place targeted advertisements on LinkedIn, Facebook, Google, and any other appropriate social media platforms, reasonably targeted at members of the Settlement Class, which shall direct them to the Settlement Website. The Settlement Administrator will provide print publication notice by placing a one-time eighth of a page summary publication notice in appropriate newspapers circulating in Illinois.

64. The Settlement Administrator will provide counsel for the Parties with bi-weekly reports regarding the status of administration of this Settlement. Defendant's Counsel and Class Counsel have the right to make inquiries and receive any information from the Settlement Administrator as is necessary to the administration of the Settlement.

65. The Notices, which shall be substantially in the form of **Group 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; (iv) submit a Claim Form; and (v) 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.

66. **Exclusions.**

- a. Settlement Class Members who do not want to participate in the Settlement will have up to and including forty-five (45) calendar days following the initial mailing of the Notice to exclude themselves from the Settlement.
- b. In order to exercise the right to be excluded, a Settlement Class Member 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 Notice, or that is not postmarked on or before the Exclusion Deadline, shall be invalid, and the person serving such a request shall be considered a member of the Settlement Class and shall be bound by the Settlement Agreement, if approved.
- c. The request for exclusion must be personally signed by the person requesting exclusion. So-called “mass” or “class” exclusion requests shall not be permitted.
- d. No person shall have any claim against Defendant, Defendant’s Counsel, the Plaintiff, Class Counsel, or the Settlement Administrator based on any claim that a request for exclusion was not received in a timely manner.
- e. Any Settlement Class Member who elects to be excluded shall not: (i) be bound by any order or the Final 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 Settlement Class Member who requests to be excluded from the Settlement Class cannot also object to the Settlement Agreement.
- f. If the Settlement Agreement receives final Court approval, all Settlement Class Members who have not opted out by the Exclusion Deadline will be bound by the Settlement Agreement and will be deemed a Releasor as defined herein, and the relief provided by the Settlement will be their sole and exclusive remedy for the claims alleged in the Action.

67. **Objections.**

- a. Settlement Class Members may object to the Settlement Agreement by following the instructions on the Notices. To object to the Settlement Agreement or any terms of it, the person making the objection must be a member of the Settlement Class, must not have requested to be excluded from the Settlement, and must file a timely written statement of objection with the Court, and mail a copy of that objection with the requisite postmark

to the Settlement Administrator, Class Counsel, and Defendant's Counsel no later than the Objection Deadline. The notice of objection must state the case name and number; the basis for and an explanation of the objection; the name, address, telephone number, and email address of the Settlement Class Member making the objection; a list of any other objections filed; a statement of whether he or she is represented by counsel and, if so, a list of all objections filed by that counsel; and a statement of whether the Settlement Class Member intends to appear at the Final Approval Hearing with or without counsel. In addition, any objection must be personally signed by the Settlement Class Member. Any objection that does not meet the requirements of this paragraph shall not be considered by the Court, unless otherwise ordered by the Court.

- b. If any 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.
- c. Settlement Class Members who fail to file and serve timely and proper written objections shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement Agreement. The Parties may file a response to any objections no later than seven (7) calendar days before the Final Approval Hearing.

68. Within three (3) business days after the Objection and Exclusion Deadlines, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel a written list reflecting all timely and valid exclusions from the Settlement Class and all objections to the Settlement, including all supporting documentation provided.

G. MOTION FOR FINAL APPROVAL OF SETTLEMENT AND FEE PETITION

69. No later than seven (7) calendar days before the Final Approval Hearing, or by some other date as directed by the Court, the Parties will jointly move for final approval of the Settlement Agreement, and Class Counsel will file a Fee Petition seeking approval of the award of attorneys' fees and litigation costs relating to their representation of the Settlement Class in the

amount agreed by the Parties herein, which Defendant agrees not to oppose.

70. Class Counsel's Fee Petition shall seek: (a) an award of attorneys' fees not to exceed 37.5% of the Gross Settlement Fund, or \$611,250.00, plus reasonable litigation costs incurred in their representation of Plaintiff and the Settlement Class Members; (b) an award for Administrative Fees in an amount to be determined; and (c) an Incentive Award to the Plaintiff, not to exceed \$7,500, as payment for her efforts on behalf of the Class, including assisting Class Counsel with the prosecution of the Action. Defendant will not oppose Class Counsel's application so long as it is consistent with the provisions of this Settlement Agreement. The amounts approved by the Court will be deducted from the Gross Settlement Fund, and the remaining amount (*i.e.*, "Net Settlement Fund") shall be distributed to the Settlement Class in accordance with this Settlement Agreement.

71. At the Final Approval Hearing, the Parties will ask the Court to: (a) grant final approval of the Settlement Agreement as fair, reasonable and adequate, and entered into in good faith and without collusion; (b) grant final certification of the Settlement Class; (c) consider any properly-submitted objections; and (d) approve the amounts allocated for the Fee Award, the Administrative Fees, and the Incentive Award to Plaintiff. Counsel for the Parties shall jointly present the Court with a proposed Final Approval Order to accomplish that purpose.

72. If the Court raises concerns regarding the terms of the Settlement Agreement or does not approve any material condition of this Settlement Agreement that effects a fundamental change to the terms of the Settlement hereunder, the Parties will work together in good faith to renegotiate and agree upon terms as close to this Settlement Agreement as possible and to resolve any concerns raised by the Court. Only after both Parties agree that they have fully exhausted such efforts will the Class Action Settlement Term Sheet and this Settlement Agreement become null

and void. The Parties will then return to their positions immediately prior to the execution of the Class Action Settlement Term Sheet.

H. SETTLEMENT PAYMENTS

73. No later than fourteen (14) calendar days after the Effective Date, the Settlement Administrator shall disburse the QSF as follows:

- a. Payments to Class Members. The Settlement Administrator shall send a check by First Class U.S. Mail to all applicable Class Members, including the Plaintiff, who did not submit an exclusion request, equal to each Settlement Class Member's *pro rata* share of the Settlement Fund, less Administrative Fees paid to the Settlement Administrator, the Incentive Award to the Class Representative, and the Fee Award to Class Counsel. This payment is not subject to any withholdings, and the Settlement Administrator shall issue Class Members an IRS Form 1099 (marked "Other Income"). Class Members acknowledge that the Settlement Administrator must report to the IRS (as well as state and local taxing authorities where applicable) the payment made to them under this Settlement Agreement and that it is each Class Member's individual responsibility to make tax payments on these amounts, if applicable.
- b. Payment of the Incentive Award to Plaintiff. The Incentive Award of \$7,500, if approved by the Court, shall be paid in the form of one check made payable to Plaintiff. This payment is not subject to any withholdings, and the Settlement Administrator shall issue Plaintiff an IRS Form 1099 (marked "Other Income"). The Plaintiff acknowledges the Settlement Administrator must report to the IRS (as well as state and local taxing authorities where applicable) the payment made to her under this provision.
- c. Payment of the Fee Award to Class Counsel. Attorneys' fees and litigation costs approved by the Court shall be paid in the form of wire transfer to an account designated by Class Counsel. Class Counsel shall provide the Settlement Administrator with its completed W-9 before the payment of the Fee Award is due. The Settlement Administrator shall issue Class Counsel an IRS Form 1099 (marked "Other Income") for their award of attorneys' fees and costs. Class Counsel is responsible for all federal, state, and local tax liabilities that may result from the payment of such attorneys' fees and Defendant shall bear no responsibility for such tax liabilities.

74. Checks to the Settlement Class Members shall remain valid and negotiable for one hundred twenty (120) calendar days from the date of their issuance and may thereafter

automatically be cancelled if not cashed within that time period. The Settlement Administrator will include language on all settlement checks stating that such checks are void one hundred twenty (120) calendar days following the date such check was originally issued.

75. The Settlement Administrator will provide counsel for the Parties with bi-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.

76. Within sixty (60) calendar days of issuance of settlement checks, the Settlement Administrator shall provide a list of any settlement checks that are not cashed/negotiated within forty-five (45) calendar days of issuance to counsel for the Parties. Within seven (7) calendar days thereafter, the Settlement Administrator shall attempt to confirm or obtain valid mailing and email addresses, including by telephone, and send a reminder postcard, email, and/or text to affected Class Members.

77. If there is any amount remaining after the first distribution of checks that provided a 120-day check cashing period (“uncashed check amount”), 50% of this amount will be returned to Defendant. If the other 50% of the uncashed check amount totals \$250,000 or more, this amount will be redistributed to those Settlement Class Members who participated in the settlement by cashing their initial checks and providing an additional 120-day check cashing period. If the other 50% of the uncashed check amount totals less than \$250,000, this amount will be transferred to a mutually agreeable *cy pres* that is approved by the Court.

78. No person or entity shall have any claim against Defendant, Defendant’s Counsel, the Plaintiff, the Settlement Class Members, Class Counsel, or any Settlement Administrator based on distributions and payments made in accordance with this Agreement.

I. RELEASES

79. In addition to the effect of the Final Judgment entered in accordance with this Settlement Agreement, upon the Effective Date, and for other valuable consideration as described herein, the Released Parties shall be fully, finally, and completely released, relinquished, acquitted, and forever discharged from any and all Released Claims.

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

81. Each Releasing Party waives any and all defenses, rights, and benefits that may be derived from the provisions of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the Release described in Section I of this Agreement.

J. NO TERMINATION OF THE SETTLEMENT WITHOUT CONTINUED GOOD FAITH NEGOTIATION

82. In the unlikely event that the Court does not grant preliminary or final approval or makes material modifications to the terms of the Settlement Agreement or if the Court of Appeals reverses final judgment and/or makes material modifications to the Settlement Agreement, the Parties shall work together in good faith to address these changes or concerns.

83. Only after both Parties agree that they have fully exhausted such efforts will this Settlement Agreement become null and void. The Settlement Administrator shall promptly return to Defendant and/or its insurer the amounts they paid into the Settlement Fund, less any Administrative Fees to date. 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.

K. MISCELLANEOUS REPRESENTATIONS

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

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

86. Defendant will, at least seven (7) calendar days before the Objection Deadline, provide a declaration to Class Counsel attesting to: (a) the date that certain of its Biometric Timekeeping System ceased collecting or hosting alleged biometric data; and (b) the date Defendant commenced requiring written consumer consent in advance of any alleged biometric data being collected or hosted by Defendant.

87. Defendant retains the option to unilaterally void the Settlement if opt outs exceed 7% of the Class.

88. The Class Action Settlement Term Sheet Agreement and this Settlement Agreement shall not be construed in whole or in part as an admission on the part of SwipeClock

of any liability, wrongdoing, or fault in the Action or otherwise, which is expressly denied. No portion of the Class Action Settlement Term Sheet Agreement may be admitted into evidence in any other case or proceeding except as may be required to enforce the terms hereof. SwipeClock's sole motivation for entering this Settlement is to avoid the expense and burden of protracted litigation. SwipeClock denies any liability or fault to Plaintiff and the Class in the Action. Conversely, nothing contained herein shall be construed as an admission by Plaintiff that she would not have prevailed on liability on any of her claims in the Action.

89. The Parties shall have the right, but not the obligation, to void or rescind this Settlement as set forth herein. Additionally, the Parties shall have the right, but not the obligation, to void or rescind this Settlement if the Settlement Agreement is modified in any material respect by the Cook County Circuit Court or by any other Court; provided, however, that a modification of the proposed Incentive Award or modification of Class Counsel's Fee Award does not provide either Party the right to void or rescind this Settlement. This Settlement is expressly contingent on: (i) preliminary approval of the Settlement Agreement by the Cook County Circuit Court; (ii) final approval of the Settlement Agreement by the Court, which is no longer subject to appeal; and (iii) the final, non-appealable dismissal of the litigation with prejudice.

90. 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 other Releasors, and each or any of them, on the one hand, against the Released Parties, on the other hand.

91. 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 exhibits, 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.

92. Paragraph titles and headings are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any of its provisions. Each term of this Settlement Agreement is contractual and not merely a recital.

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

94. This Settlement 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 exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.

95. This Settlement 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.

96. The Parties agree the exhibits to this Settlement Agreement are material and an integral part thereof and are fully incorporated herein by this reference.

97. 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 Settlement Agreement.

98. The Parties represent, covenant, and warrant that they have not directly or

indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any claims, causes of actions, demands, rights, and liabilities of every nature and description released under this Settlement Agreement.

99. Each Party represents that it has obtained the requisite authority to enter into this Settlement Agreement in a manner that binds such Party to its terms.

100. Defendant, while continuing to deny all allegations of wrongdoing and disclaiming all liability with respect to all claims, considers it desirable to resolve the Action on the terms stated herein to avoid further expense, inconvenience and burden, and therefore has determined that this Settlement on the terms set forth herein is in Defendant's best interests. Neither the Settlement Agreement nor any actions taken to carry out the Settlement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or of the validity of any claim, defense, or of any point of fact or law on the part of any Party. Defendant denies the material allegations of the Complaint. Neither the Settlement Agreement, nor the fact of settlement, nor settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by Defendant, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by Defendant in any proceeding.

101. Except in accordance with Paragraph 102 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, 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 (a) constitute, be construed, be offered, or received into evidence as an admission of any kind, of any liability or wrongdoing in any court or other tribunal, including but not limited to any negligent, reckless, or illegal action or omission or other wrongdoing, the appropriateness of class certification, the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Action 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.

102. 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 adversarial hearing upon application of a Party hereto; (c) in order to establish payment hereunder, 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 and/or the enforcement of the Settlement Agreement.

103. The Parties agree this Settlement Agreement and its exhibits, along with all related drafts, motions, pleadings, negotiations, orders, or other documents related to 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 in the Action for settlement purposes only.

104. This Settlement Agreement may be executed in one or more counterparts by facsimile or other electronic means, including DocuSign and/or portable document format (“PDF”), and 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 Settlement Agreement all exchange signed counterparts.

105. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. The Court shall retain jurisdiction over the interpretation, implementation, and enforcement of this Settlement Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Settlement Agreement and of the settlement contemplated thereby. Any dispute or controversies arising with respect to the interpretation, enforcement, or implementation of the Settlement Agreement, if they cannot be resolved by the Parties in the first instance, shall be presented by motion to the Court. The Parties agree that the Court shall retain jurisdiction for enforcement of the Settlement Agreement.

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

107. Unless otherwise specifically provided, all notices, demands, or other communications in connection with this Settlement Agreement shall be in writing and shall be sent by electronic mail or hand delivery, postage prepaid, as follows:

To Class Counsel:

Ryan F. Stephan (rstephan@stephanzouras.com)
James B. Zouras (jzouras@stephanzouras.com)
Andrew C. Ficzko (aficzko@stephanzouras.com)
Stephan Zouras, LLC
222 West Adams Street, Suite 2020
Chicago, Illinois 60606

To Defendant's Counsel:

Bonita L. Stone (bonita.stone@katten.com)
Katten Muchin Rosenman LLP
525 W. Monroe Street
Chicago, Illinois 60661

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

IN WITNESS WHEREOF, the undersigned duly executed this Settlement Agreement as of the date indicated below:

JUNIE FRANCOIS

By: _____
Junie Francois, Plaintiff

Date: _____

SWIPECLOCK, LLC

By: _____

Name: _____

Title: _____

Date: _____