

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

FAITH MENDENHALL, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

TOMS KING (ILLINOIS), LLC and TOMS
KING, LLC,

Defendants.

Case No. 19-CH-10636

Judge Alison C. Conlon

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Settlement Agreement”) is entered into by and among Plaintiff Faith Mendenhall (“Plaintiff”), for herself individually and on behalf of the Settlement Class, and Defendants TOMS King (Illinois), LLC and TOMS King, LLC (collectively, “Defendants” or “TOMS King”). Plaintiff and Defendants are each referred to as a “Party” and are collectively referred to herein as the “Parties.” 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 following terms and conditions, and subject to the approval of the Court.

RECITALS

A. On September 13, 2019, Plaintiff filed a putative class action complaint against TOMS King, LLC, in the Circuit Court of Cook County, Illinois, alleging violations of the Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.* Plaintiff alleged that Defendant collected, used, stored, and disclosed her and other similarly-situated individuals’ biometric identifiers and/or biometric information without complying with BIPA’s requirements

when employees scanned their fingers on point-of-sale (“POS”) terminals to clock-in and clock-out of work and to authorize certain transactions.

B. On January 22, 2020, Plaintiff filed her First Amended Class Action Complaint adding TOMS King (Illinois), LLC, as a Defendant.

C. After litigation delays due to the onset of the COVID-19 pandemic and a Court-imposed a stay of the proceedings while the Illinois Supreme Court considered the issue of whether BIPA was preempted by the Illinois Workers’ Compensation Law, on May 9, 2022, TOMS King filed a Section 2-619 motion to dismiss Plaintiff’s complaint.

D. The Court denied TOMS King’s motion on October 14, 2022.

E. Defendants filed their answers and affirmative defenses to Plaintiff’s complaint, each asserting nine affirmative defenses on November 30, 2022.

F. The Parties have engaged in and exchanged substantial written and oral discovery, including interrogatories, document production, and several third-party subpoenas, as well as depositions of defense witness Dennis Greve and Plaintiff Faith Mendenhall.

G. In an effort to reach a resolution of this matter, counsel for the Parties engaged in informal settlement discussions via phone and email and participated in a full-day mediation with Hon. Morton Denlow (Ret.) of JAMS, an experienced BIPA mediator, on July 30, 2024. As a result of the mediation, the Parties reached agreement on the major terms of a class settlement and executed a binding Term Sheet.

H. Plaintiff and Class Counsel conducted a comprehensive examination of the law and facts relating to the allegations in the Action and TOMS King’s potential defenses. Plaintiff believes that the claims asserted in the Action have merit, that she would have ultimately succeeded

in obtaining adversarial certification of the proposed Settlement Class, and that she would have prevailed on the merits at summary judgment or at trial.

I. However, Plaintiff and Class Counsel recognize TOMS King has raised factual and legal defenses in the Action that presented a significant risk that Plaintiff may not prevail and/or that a class might not be certified for trial. Plaintiff and Class Counsel have also considered the uncertain outcome and risks of any litigation, especially in complex actions, as well as difficulty and delay inherent in such litigation.

J. Plaintiff and Class Counsel believe that this Settlement Agreement presents an exceptional result for the Settlement Class, and one that will be provided to the Settlement Class without delay. Plaintiff and Class Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, based on good faith negotiations, and in the best interests of Plaintiff and the Settlement Class. Therefore, Plaintiff believes that it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice pursuant to the terms and conditions set forth in this Settlement Agreement.

K. TOMS King denies the material allegations in the Action, as well as all allegations of wrongdoing and liability, including that it has violated, BIPA, and believes that it would have prevailed on the merits and that a class would not be certified for trial. Nevertheless, TOMS King has similarly concluded that this settlement is desirable to avoid the time, risk, and expense of defending protracted litigation, and to avoid the risk posed by the Settlement Class's claims for statutory damages under BIPA. TOMS King thus desires to resolve finally and completely the pending and potential claims of Plaintiff and the Settlement Class.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff, the Settlement Class, and TOMS King, that, subject to the approval of the Court after a

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

AGREEMENT

1. DEFINITIONS

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

1.1 “**Action**” means the class action lawsuit pending in the Circuit Court of Cook County, Illinois, Chancery Division and captioned *Mendenhall v. TOMS King (Illinois), LLC and TOMS King, LLC*, No. 2019 CH 10636.

1.2 “**Administration Expenses**” means the expenses reasonably incurred by the Settlement Administrator in or relating to administering the Settlement, providing Notice, creating and maintaining the Settlement Website, and dispersing Settlement Payments, related tax expenses, fees of the escrow agent, and other such related expenses, with all such expenses to be paid from the Settlement Fund. In no event will Administration Expenses exceed \$26,000.00.

1.3 “**Agreement**” or “**Settlement Agreement**” means this Class Action Settlement Agreement and the attached Exhibits.

1.4 “**Biometric POS System**” shall mean the biometric devices used by Defendants’ employees during the Class Period, which utilized a scan of Plaintiff’s and the other Settlement Class Members’ biometric identifiers or biometric information, including scans of fingers and/or fingerprints.

1.5 “**Class,**” “**Settlement Class,**” “**Class Member**” or “**Settlement Class Member**” means all individuals who had their finger and/or fingerprints scanned and/or associated biometric data collected, captured, received, converted, stored, obtained, shared, taken, used, disclosed or disseminated at any time by TOMS King (Illinois), LLC, or TOMS King, LLC, in the State of Illinois from September 13, 2014 through January 2, 2023.

Excluded from the Settlement Class are: (1) any Judge presiding over this action and members of their families; (2) persons who properly execute and file a timely request for exclusion from the Class; (3) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; and (4) the legal representatives, successors or assigns of any such excluded persons.

1.6 “**Class Counsel**” means attorneys Teresa M. Becvar and Ryan F. Stephan of Stephan Zouras, LLC.

1.7 “**Class List**” means the list of all names, last known U.S. mailing addresses, and social security numbers of all persons in the Settlement Class.

1.8 “**Class Period**” means September 13, 2014 to January 2, 2023.

1.9 “**Class Representative**” or “**Plaintiff**” means the named Plaintiff in the Action, Faith Mendenhall.

1.10 “**Confession of Judgment**” means a confession of judgment in the total amount of \$5,000,000.00 against Defendants. A proposed version of the Confession of Judgment shall be submitted to the Court in the form attached hereto as Exhibit A.

1.11 “**Court**” means the Circuit Court of Cook County, Illinois, Chancery Division, and the Honorable Alison C. Conlon presiding, or any judge who shall succeed her as the Judge assigned to the Action.

1.12 “**Defendants**” mean TOMS King (Illinois), LLC, and TOMS King, LLC.

1.13 “**Defendants’ Counsel**” means attorneys James J. Sipchen and Matthew J. Ligda of Pretzel & Stouffer, Chartered.

1.14 “**Effective Date**” means one business day following the later of: (a) the date upon which the time to appeal from the Final Approval Order has expired with no appeal having been timely filed; (b) if such an appeal has been filed, the date of final dismissal of any appeal; or (c) the date of completion of any proceeding on appeal in a manner that affirms and leaves intact the Final Approval Order without any material modification (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).

1.15 “**Escrow Account**” means the separate, interest-bearing Qualified Settlement Fund to be established by the Settlement Administrator 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, under terms acceptable to Class Counsel and Defendants at a depository institution insured by the Federal Deposit Insurance Corporation. The money in the Escrow Account shall be invested in the following types of accounts and/or instruments and no other: (a) demand deposit accounts and/or (b) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or less. Any interest earned on the Escrow Account shall inure to the benefit of the Settlement Class as part of the Settlement Payment, if practicable. The Settlement Administrator shall be responsible for all tax filings with respect to the Escrow Account.

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

1.17 “**Final Approval Hearing**” means the hearing before the Court where Plaintiff will request that the Final Approval Order be entered by the Court finally approving the Settlement Agreement as fair, reasonable, adequate, and approving the Fee Award and the Service Award to the Class Representative. The Final Approval Hearing may be held by videoconference.

1.18 “**Final Approval Order**” means the final approval order to be entered by the Court approving the settlement of the Action in accordance with this Settlement Agreement after the Final Approval Hearing and dismissing the Action with prejudice.

1.19 “**Notice**” means the notice of the proposed Settlement and Final Approval Hearing, which is to be disseminated to the Settlement Class substantially in the manner set forth in this Settlement Agreement, fulfills the requirements of Due Process, and is substantially in the form of Exhibit B attached hereto.

1.20 “**Objection/Exclusion Deadline**” means the date by which a written objection to the Settlement Agreement by a Class Member must be filed with the Court or a request for exclusion submitted by a person within the Settlement Class must be postmarked or received by the Settlement Administrator, which shall be designated as a date forty-five (45) calendar days after the mailing of the Notice, as approved by the Court. The Objection/Exclusion Deadline will be set forth in the Notice and on the Settlement Website.

1.21 “**Preliminary Approval Order**” means the Court’s order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and approving the form and manner of the Notice.

1.22 “**Released Claims**” means any and all claims, suits, actions, controversies, demands, and/or causes of action against the Released Parties, whether known or unknown, including, but not limited to, any claims arising out of or related to BIPA, sounding in tort or

contract, privacy claims, or any other federal, state, or local statute, regulation, or common law, arising out of or related to the alleged possession, collection, capture, purchase, receipt through trade, obtainment, sale, lease, trade, profit from, disclosure, re-disclosure, dissemination, storage, transmittal, and/or protection from disclosure of alleged biometric identifiers or biometric information, through the use of the Biometric POS System at Defendants' Illinois facilities, that were raised or could have been raised in the Action.

1.23 **“Released Parties”** means TOMS King (Illinois), LLC TOMS King, LLC, and their former and present owners, parents, and subsidiaries, including all members of their Board of Managers, management committee members, managers, members, officers, directors, employees, governors, trustees, volunteers, agents, attorneys, assigns, and representatives, and Defendants' insurer, Philadelphia Indemnity Insurance Company (“PIIC”), and PIIC's reinsurers, benefit plans, predecessors, successors, parents, and subsidiaries. Released Parties expressly excludes AGLIC/Zurich and any other insurers, other than PIIC and PIIC's reinsurers, and any third parties other than those identified in the release, including but not limited to biometric device manufacturers or vendors or Burger King Company.

1.24 **“Releasing Parties”** means Plaintiff and each Settlement Class Member and their respective present or past heirs, executors, estates, representatives, administrators, assigns and agents.

1.25 **“Service Award”** means the amount to be paid to Plaintiff, subject to 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.

1.26 **“Settlement”** means the final resolution of the Action as embodied by the terms and conditions of this Settlement Agreement.

1.27 “**Settlement Administrator**” means CPT Group, Inc., subject to approval of the Court, which will provide the Notice, create and maintain the Settlement Website, receive and process exclusion requests, send Settlement Payments to Settlement Class Members, be responsible for tax withholding and reporting, and perform such other settlement administration matters set forth herein or contemplated by the Settlement.

1.28 “**Settlement Fund**” means the non-reversionary cash fund that shall be established by Defendants and funded solely by PIIC in the amount of One Million Four Hundred Seventy Five Thousand Dollars (\$1,475,000.00). Within twenty-one (21) calendar days of the entry of the Preliminary Approval Order, PIIC shall deposit the Settlement Fund into the Escrow Account. The Settlement Fund shall satisfy all monetary obligations of Defendants under this Settlement Agreement, including the Fee Award, litigation costs, Administration Expenses, payments to the Settlement Class Members, any Service Award, and any other payments or other monetary obligations contemplated by this Settlement Agreement. The Settlement Fund shall be kept in the Escrow Account with permissions granted to the Settlement Administrator to access said funds until such time as the above-listed payments are made. In no event shall any amount paid by PIIC into the Escrow Account, or any interest earned thereon, revert to PIIC, Defendants, or any other Released Party except as provided in Section 9.3 of this agreement. The Settlement Fund is separate from and made in addition to Defendants’ Confession of Judgment in the amount of \$5,000,000.00 and assignment of their rights under their insurance policies, with the sole exception of insurance issued by PIIC.

1.29 “**Settlement Payment**” means a Settlement Class Member’s *pro rata* portion of the Settlement Fund less any Fee Award, litigation costs, Service Award to the Class Representative, and Administration Expenses.

1.30 “**Settlement Website**” means the website to be created, launched, and maintained by the Settlement Administrator, which will provide access to relevant settlement administration documents, including the Notice. The Settlement Website shall be live and active by the date the Notice is mailed, and the URL of the Settlement Website shall be www.tomskingbipasettlement.com, or such other URL as the Parties may subsequently agree to.

2. SETTLEMENT RELIEF

2.1 The Settlement Fund.

a. Within twenty-one (21) days of PIIC’s receipt of: (1) a filed copy of the Preliminary Approval Order; (2) a fully executed copy of this Agreement by authorized representatives of the Parties; (3) an IRS W-9 form for the recipient of the payment for the Settlement Fund; and (4) payee information including the address for providing payment of the Settlement Fund, PIIC will issue a check in the amount of One Million Four Hundred Seventy-Five Thousand Dollars (\$1,475,000.00) payable to the Settlement Fund, which PIIC will direct by Federal Express delivery to the designated Settlement Fund address. 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 claims against Defendants for Settlement Class Members in exchange for 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 claims against Defendants and the Released Parties with prejudice.

b. The Settlement Fund shall be used to pay (i) Settlement Payments to the Settlement Class Members; (ii) a Service Award to the Class Representative; (iii) the Fee Award; and (iv) Administration Expenses.

c. The Settlement Fund represents the total extent of the Released Parties' monetary obligations under the Settlement Agreement. Defendants' contributions to the Settlement Fund shall be fixed under this Section and final as of the Effective Date. Defendants and the other Released Parties 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. Defendants and the other Released Parties shall have no obligation to make any payment of the Confession of Judgment in the amount of Five Million Dollars (\$5,000,000.00) as set forth in Exhibit A.

2.2 Settlement Payments to Settlement Class Members.

a. The Settlement Fund shall be allocated on a *pro rata* basis to each Settlement Class Member who does not timely request exclusion from the Settlement. Members of the Settlement Class will receive a *pro rata* share of the Settlement Fund, less the Fee Award, a Service Award to the Class Representative, and Administration Expenses.

b. Each Settlement Class Member who does not timely request exclusion from the Settlement shall receive a Settlement Payment without having to submit a claim form or otherwise "opt in" to the Settlement Class.

c. Within twenty-one (21) calendar days of the Effective Date, the Settlement Administrator shall send Settlement Payments from the Settlement Fund by check via First Class U.S. Mail to all Settlement Class Members.

d. Each Settlement Payment will state on the face of the check that it will become null and void unless cashed within one hundred and twenty (120) calendar days after the date of issuance.

e. Plaintiff and the Settlement Class Members will be solely responsible for

all taxes, interest, penalties, or other amounts due with respect to any Settlement Payment received.

f. To the extent that any check issued to a Settlement Class Member is not cashed within one hundred twenty (120) calendar days after the date of issuance, any amount of the Settlement Fund remaining as a result of uncashed checks shall be subject to a second round of distribution to the Settlement Class Members who timely cashed their checks, if administratively feasible. Otherwise, such funds shall be distributed as *cy pres* to the Illinois Equal Justice Foundation as an “eligible organization” as the term is defined in 735 ILCS 5/2-807(a), subject to Court approval.

g. Settlement Class Members may request replacement checks within the one hundred and twenty (120) calendar day period after initial issuance, but such checks will not extend the one hundred and twenty (120) calendar day check cashing period from the date checks were originally issued.

h. Within seventy-five (75) days of the date of issuance of the settlement checks, the Settlement Administrator shall provide Class Counsel and Defendants’ Counsel a list of all Settlement Class Members who have not cashed or negotiated their settlement checks within sixty (60) days of issuance. Within ten (10) days thereafter, the Settlement Administrator shall send a reminder postcard to affected Class Members.

i. In no event shall any amount paid revert to Defendants or PIIC, except for a circumstance under which this Settlement Agreement is terminated pursuant to Section 9. In that circumstance, such funds shall be returned to PIIC, after payment of any outstanding Administration Expenses.

3. RELEASE

3.1 **The Release.** Upon the Effective Date, and in consideration of the settlement relief and other consideration described herein, the Releasing Parties, and each of them, shall be deemed to have released, and by operation of the Final Approval Order shall have, fully, finally, and forever released, acquitted, relinquished and completely discharged each of the Released Parties from any and all Released Claims (the “Release”).

4. CONFESSION OF JUDGMENT AND ASSIGNMENT OF RIGHTS

4.1 Upon Final Approval of the Settlement Agreement, Defendants agree to a Confession of Judgment in the amount of Five Million Dollars (\$5,000,000.00) and an assignment of all of their rights under their insurance policies, including but not limited to the policies listed in Section 4.2 below with the sole exception of insurance or reinsurance issued by PIIC, and assignment of any contract or tort causes of action, whether grounded in common law or statute, arising from any insurer’s denial of coverage. A proposed version of the Confession of Judgment shall be submitted to the Court in the form attached hereto as Exhibit A.

4.2 Defendants confirm they tendered this lawsuit to AGLIC/Zurich on September 25, 2019, upon which, by letter dated January 8, 2020, AGLIC/Zurich disclaimed coverage of the claim under the following policies: GLA 0386552-00 (effective 1/1/2018-1/1/2019); GLA 0386552-01 (effective 1/1/2019-1/1/2020); AUC 0386555-00 (effective 1/1/2018-1/1/2019); and AUC 0386555-01 (effective 1/1/2019-1/1/2020). Defendants also confirm their insurance broker advised they tendered this lawsuit to Travelers on or about September 25, 2019 requesting coverage under policy #106851153.

4.3 Plaintiff agrees that other than the \$1,475,000.000 Settlement Fund established herein, Plaintiff will not seek to recover any additional monies from Defendants or the Released

Parties and shall not execute upon or enforce the Confession of Judgment against Defendants or the Released Parties. Plaintiff, Class Counsel, and the Settlement Class hereby represent and warrant that they shall not undertake any action to collect, enforce or establish any lien on or against Defendants or the Released Parties with respect to the Confession of Judgment or in excess of the \$1,475,000.000 Settlement Fund.

4.4 Plaintiff, the Settlement Class, and Defendants acknowledge and agree that Defendants provide no guarantee or assurances whatsoever as to the viability or collectability of assigned claims under this Agreement, including any claims included in the Confession of Judgment. Should any such claims be determined by a court to be unenforceable or not collectable, that determination shall not be grounds for termination of this Agreement, nor shall it alter any payment obligation of Defendants or any Released Party under this Agreement, including the limitation on their monetary obligations under this Agreement as set forth in Section 2.1.

4.5 The Confession of Judgment will not be effective and valid and will not be entered by the Court until Final Approval of the Settlement Agreement.

5. NOTICE TO THE CLASS; RIGHTS TO OBJECT OR REQUEST EXCLUSION

5.1 **Methods and Form of Notice.** The Notice shall include the best notice practicable, including but not limited to:

a. *Update Addresses.* Prior to mailing the Notice, the Settlement Administrator will update the U.S. mailing addresses of persons on the Class List using the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. The Settlement Administrator shall take all reasonable steps to obtain the correct address of any Settlement Class Members for whom Notice is returned

by the U.S. Postal Service as undeliverable and shall attempt re-mailings as described below.

b. *Direct Notice.* The Settlement Administrator shall send Notice via First Class U.S. Mail substantially in the form attached as Exhibit C to all persons in the Settlement Class.

c. *Internet Notice.* On or before the Notice Date, the Settlement Administrator will develop, host, administer and maintain a Settlement Website containing the notice substantially in the form of Exhibit B.

5.2 Right to Object or Comment. The Notice shall advise the Settlement Class of their rights under the Settlement, including the right to be excluded from or object to the Settlement Agreement or its terms. Any Settlement Class Member who intends to object to this Settlement Agreement must present the objection in writing, which must be personally signed by the objector and must include: (a) the Settlement Class Member's full name and current address, (b) a statement that he or she believes himself or herself to be a member of the Settlement Class, (c) whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class, (d) the specific grounds for the objection, (e) all documents or writings that the Settlement Class Member desires the Court to consider, (f) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection, and (g) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel, who must file an appearance or seek *pro hac vice* admission). All written objections must be filed with the Court and e-mailed to Class Counsel and Defendants' Counsel no later than the Objection/Exclusion Deadline. Any Settlement

Class Member who fails to timely file a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Section and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, shall be foreclosed from seeking any review of this Settlement Agreement or the Final Approval Order by appeal or other means, and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action in any other action or proceeding, unless otherwise ordered by the Court.

5.3 Right to Request Exclusion. Any person in the Settlement Class may submit a request for exclusion from the Settlement on or before the Objection/Exclusion Deadline. To be valid, any request for exclusion must (a) be in writing; (b) state the full name and current address of the person in the Settlement Class seeking exclusion; (c) contain a statement to the effect that “I hereby request to be excluded from the proposed Settlement Class in *Mendenhall v. TOMS King (Illinois), LLC and TOMS King, LLC*, No. 2019 CH 10636 (Cir. Ct. Cook Cty.)”; (d) be signed by the person(s) seeking exclusion; and (e) be postmarked or received by the Settlement Administrator on or before the Objection/Exclusion Deadline. A request for exclusion that does not include all of the foregoing information, that is sent to an address or e-mail address other than that designated in the Notice, or that is not postmarked or electronically delivered to the Settlement Administrator within the time specified, shall be invalid and the persons serving such a request shall be deemed to remain Settlement Class Members and shall be bound as Settlement Class Members by this Settlement Agreement, if approved. Any person who elects to request exclusion from the Settlement Class shall not (a) be bound by any orders or the Final Approval Order entered in the Action, (b) receive a Settlement Payment under this Settlement Agreement, (c) gain any

rights by virtue of this Settlement Agreement, or (d) be entitled to object to any aspect of this Settlement Agreement or the Final Approval Order. No person may request to be excluded from the Settlement Class through “mass” or “class” opt-outs.

5.4 Defendants have the right to withdraw from the Settlement Agreement within ten (10) calendar days after the Settlement Administrator provides the list of timely and valid exclusions if more than 20% of the Settlement Class timely and validly requests to be excluded from the Settlement. In the event Defendants exercise their right to withdraw from the Settlement Agreement as provided herein, the settlement shall become null and void and the Parties will return to the *status quo ante*, as provided in Section 9.3 of this Settlement Agreement.

6. SETTLEMENT ADMINISTRATION

6.1 Settlement Administrator’s Duties.

a. *Creation of Settlement Website.* The Settlement Administrator shall create the Settlement Website.

b. *Dissemination of Notice.* The Settlement Administrator shall disseminate the Notice as provided in Section 5 of this Settlement Agreement.

c. *Undeliverable Notice via U.S. Mail.* If any Notice sent via U.S. Mail is returned as undeliverable, the Settlement Administrator shall forward it to any forwarding addresses provided by the U.S. Postal Service. If no such forwarding address is provided, the Settlement Administrator shall perform skip traces to attempt to obtain the most recent addresses for such Settlement Class members.

d. *Maintenance of Records.* The Settlement Administrator shall maintain reasonably detailed records of its activities under this Settlement Agreement. The Settlement Administrator shall maintain all such records as required by applicable law in

accordance with its business practices and such records will be made available to Class Counsel and Defendants' Counsel upon request. Should the Court request, the Parties shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a post-distribution accounting of all amounts from the Settlement Fund paid to Settlement Class Members, the number and value of checks not cashed, and the amount distributed to the *cy pres* recipient.

e. *Receipt of Requests for Exclusion.* The Settlement Administrator shall receive requests for exclusion from persons in the Settlement Class and provide to Class Counsel and Defendants' Counsel a copy thereof within five (5) calendar days of the Objection/Exclusion Deadline. If the Settlement Administrator receives any requests for exclusion or other requests from Settlement Class Members after the Objection/Exclusion Deadline, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendants' Counsel.

f. *Timing of Settlement Payments.* The Settlement Administrator shall make Settlement Payments contemplated in Section 2 of this Settlement Agreement to all Settlement Class Members within twenty-one (21) calendar days after the Effective Date.

g. *Tax Reporting.* The Settlement Administrator shall be responsible for all tax filings related to the Escrow Account and making any required "information returns" as that term is used in 26 U.S.C. § 1 *et seq.* Neither Class Counsel nor the Released Parties make any representations regarding the tax treatment of the Settlement Fund nor will the Released Parties accept any responsibility for the tax treatment to the Settlement Payments received by any Settlement Class Member.

7. PRELIMINARY APPROVAL AND FINAL APPROVAL

7.1 **Preliminary Approval.** Promptly after execution of this Settlement Agreement, Class Counsel shall submit this Settlement Agreement to the Court and shall move the Court to enter the Preliminary Approval Order, which shall include, among other provisions, a request that the Court:

- a. Certify the Settlement Class under Illinois Code of Civil Procedure, 735 ILCS 5/2-801, for settlement purposes only;
- b. Appoint Plaintiff as the Class Representative of the Settlement Class for settlement purposes only;
- c. Appoint Class Counsel to represent the Settlement Class;
- d. Preliminarily approve this Settlement Agreement for purposes of disseminating Notice to the Settlement Class;
- e. Approve the form and contents of the Notice and the method of its dissemination to members of the Settlement Class; and
- f. Set a date for the Final Approval Hearing.

7.2 **Final Approval.** After Notice to the Settlement Class is given, Class Counsel shall move the Court for entry of a Final Approval Order, which shall include, among other provisions, a request that the Court:

- a. find that it has personal jurisdiction over all Settlement Class Members and subject matter jurisdiction to approve this Settlement Agreement, including all attached Exhibits;
- b. approve the Settlement as fair, reasonable and adequate as to, and in the best interests of, the Settlement Class Members;

c. direct the Parties and their counsel to implement and consummate the Settlement according to its terms and conditions;

d. enter the Confession of Judgment in the amount of \$5,000,000.00 against Defendants in the form attached hereto as Exhibit A;

e. find that the Notice implemented pursuant to the Settlement Agreement (1) constitutes the best practicable notice under the circumstances, (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and their rights to object to or exclude themselves from this Settlement Agreement and to appear at the Final Approval Hearing, (3) is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice, and (4) fulfills the requirements of due process and the Illinois Code of Civil Procedure, 735 ILCS 5/2-801;

f. find that the Class Representative and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement;

g. dismiss the Action with prejudice, without fees or costs to any Party except as provided in this Settlement Agreement;

h. incorporate the Release set forth above, make the Release effective as of the Effective Date, and forever discharge the Released Parties as set forth herein;

i. enter a final judgment against Defendants pursuant to 735 ILCS 5/2-1301 with respect to the foregoing;

j. declare the Settlement to be binding on, and have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf

of Plaintiff and all other Settlement Class Members against the Released Parties for the Released Claims;

k. without affecting the finality of the Final Approval Order for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement and interpretation of the Settlement Agreement and the Final Approval Order, including the collection and enforcement of the Confession of Judgment, and for any other necessary purpose; and

l. incorporate any other provisions, consistent with the material terms of this Settlement Agreement, as the Court deems necessary and just.

7.3 **Cooperation.** The Parties shall, in good faith, cooperate, assist and undertake all reasonable actions and steps in order to accomplish these required events on the schedule set by the Court, subject to the terms of this Settlement Agreement.

8. ATTORNEYS' FEES, LITIGATION EXPENSES AND SERVICE AWARD

8.1 Defendants agree that Class Counsel is entitled to reasonable attorneys' fees and unreimbursed litigation expenses incurred in the Action as the Fee Award from the Settlement Fund. The amount of the Fee Award shall be determined by the Court based on petition from Class Counsel. Class Counsel has agreed, with no consideration from Defendants, to limit their request for attorneys' fees to thirty-seven percent (37%) of the gross Settlement Fund plus reasonable litigation expenses not to exceed Sixteen Thousand Dollars (\$16,000.00) relating to their representation of Plaintiff and the Settlement Class Members. Payment of the Fee Award shall be made from the Settlement Fund and should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this Section shall remain in the Settlement Fund and be distributed to Settlement Class Members as

Settlement Payments. The Fee Award shall be payable from the Settlement Fund within five (5) business days after the Effective Date. Payment of the Fee Award shall be made by the Settlement Administrator via wire transfer to accounts designated by Class Counsel after providing necessary information for electronic transfer.

8.2 Defendants agree that the Class Representative shall be paid a Service Award in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00) from the gross Settlement Fund, in addition to any Settlement Payment pursuant to this Settlement Agreement and in recognition of her efforts on behalf of the Settlement Class, subject to Court approval. Should the Court award less than this amount, the difference in the amount sought and the amount ultimately awarded pursuant to this Section shall remain in the Settlement Fund and be distributed to Settlement Class Members as Settlement Payments. Any Service Award shall be paid from the Settlement Fund (in the form of a check to the Class Representative that is sent care of Class Counsel), within five (5) business days after the Effective Date.

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

9.1 The Settlement is conditioned upon Preliminary Approval and Final Approval of the 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 by providing written notice of the election to do so to Class Counsel or Defendants' Counsel within ten (10) calendar days of any of the following events:

- a. the Court's refusal to enter the Preliminary Approval Order approving of this Agreement in any material respect;
- b. the Court's refusal to enter the Final Approval Order in this Action in any material respect;
- c. the Court's refusal to enter a final judgment in this Action in any material respect; or
- d. the date upon which the Final Approval Order is modified or reversed in any material respect by the Court of Appeals or the Supreme Court.

9.2 If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Settlement Agreement on notice to all other Parties. Notwithstanding anything herein, the Parties agree that the Court's decision as to the amount of the Fee Award to Class Counsel set forth above or the Service Award to the Class Representative, regardless of the amounts awarded, shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination of the Settlement Agreement.

9.3 If this Settlement Agreement is terminated or fails to become effective for the reasons set forth above, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement, the Parties shall be returned to the *status quo ante* with respect to the Action as if this Settlement Agreement had never been entered into, and the Settlement Fund payment shall be returned to PIIC.

10. MISCELLANEOUS PROVISIONS

10.1 The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent

reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Settlement Agreement. Class Counsel and Defendants' Counsel agree to cooperate with one another in seeking entry of the Preliminary Approval Order 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.

10.2 Each signatory to this Agreement represents and warrants (a) that he, she, or it has all requisite power and authority to execute, deliver and perform this Settlement Agreement and to consummate the transactions contemplated herein, (b) that the execution, delivery and performance of this Settlement Agreement and the consummation by it of the actions contemplated herein have been duly authorized by all necessary corporate action on the part of each signatory, and (c) that this Settlement Agreement has been duly and validly executed and delivered by each signatory and constitutes its legal, valid and binding obligation.

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

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

10.5 Regardless of whether the Effective Date occurs, or this Settlement is terminated, neither this Settlement Agreement nor the Settlement contained herein, nor any court order, communication, act performed, or document executed pursuant to or in furtherance of this Settlement Agreement or the Settlement:

a. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission, concession or evidence of, the validity of any Released Claims, the appropriateness of class certification, the truth of any fact alleged by Plaintiff, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the Settlement Fund, Settlement Payment or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

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

c. is, may be deemed, or shall be used, offered or received against Plaintiff or the Settlement Class, or each or any of them as an admission, concession or evidence of, the infirmity or strength of any claims asserted in the Action, the truth or falsity of any fact alleged by Defendants, or the availability or lack of availability of meritorious defenses to the claims raised in the Action;

d. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties, in any civil, criminal or

administrative proceeding in any court, administrative agency or other tribunal. However, the Settlement, this Settlement Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Settlement Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Settlement Agreement. Moreover, if this Settlement Agreement is approved by the Court, any of the Released Parties may file this Settlement Agreement and/or the Final Approval Order in any action that may be brought against such parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion, or similar defense or counterclaim;

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

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

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

10.7 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 other prior or subsequent breaches of this Settlement Agreement.

10.8 All of the Exhibits to this Settlement Agreement are material and integral parts hereof and are fully incorporated herein by reference.

10.9 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 Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents, and this Agreement is executed without reliance upon any statements or representations except as those set forth herein. This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

10.10 Except as otherwise provided herein, each Party shall bear its own attorneys' fees and costs incurred in any way related to the Action.

10.11 Plaintiff represents and warrants that she has not assigned any claim or right or interest relating to any of the Released Claims against the Released Parties to any other person or party and that she is fully entitled to release the same.

10.12 This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Signature by electronic (*i.e.*, DocuSign), digital, facsimile, or in PDF format will constitute

sufficient execution of this Settlement Agreement. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

10.13 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement, including the Confession of Judgment.

10.14 This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without reference to the conflicts of law provisions thereof.

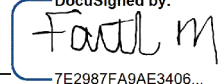
10.15 This Settlement Agreement is deemed to have been prepared by counsel for all Parties, as a result of good-faith arm's-length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Settlement Agreement, it shall not be construed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

10.16 Where this Settlement Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: Ryan F. Stephan, rstephan@stephanzouras.com, Stephan Zouras, LLC, 222 West Adams Street, Suite 2020, Chicago, Illinois 60606; James J. Sipchen, jsipchen@pretzel-stouffer.com, Pretzel & Stouffer, Chartered, 200 South Wacker Drive, Suite 2600, Chicago, IL 60606.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOW]

Dated: 10/21/2024

FAITH MENDENHALL

By (signature):  _____
DocuSigned by:
7E2987FA9AE3406...

Name (printed): Faith E Mendenhall

**TOMS KING, LLC, AND TOMS KING
(ILLINOIS), LLC**

Dated: _____

By: TOMS King Holdings, LLC
Managing Member of TOMS King, LLC,
sole Member of TOMS King (Illinois), LLC

Signed: _____
Matthew Carpenter
Manager, TOMS King Holdings, LLC, and
Former Chief Executive Officer, TOMS
King, LLC, and TOMS King (Illinois), LLC

FAITH MENDENHALL

Dated: _____

By (signature): _____

Name (printed): _____

**TOMS KING, LLC, AND TOMS KING
(ILLINOIS), LLC**

Dated: 10/21/2024

By: TOMS King Holdings, LLC
Managing Member of TOMS King, LLC,
sole Member of TOMS King (Illinois), LLC

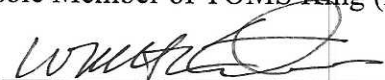
Signed: 
Matthew Carpenter
Manager, TOMS King Holdings, LLC, and
Former Chief Executive Officer, TOMS
King, LLC, and TOMS King (Illinois), LLC

Exhibit A

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

FAITH MENDENHALL, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

TOMS KING (ILLINOIS), LLC and TOMS
KING, LLC,

Defendants.

Case No. 19-CH-10636

Judge Alison C. Conlon

CONFESSION OF JUDGMENT


I, Matthew Carpenter, as Manager of TOMS King Holdings, LLC, the Managing Member of TOMS King, LLC, the sole Member of TOMS King (Illinois), LLC, do and hereby confess judgment on behalf of TOMS King (Illinois), LLC and TOMS King, LLC (“Defendants”) and in favor of Plaintiff Faith Mendenhall, individually and on behalf of all others similarly situated, for the sum of Five Million Dollars (\$5,000,000.00), and do authorize Judge Alison C. Conlon, or any judge sitting in her stead in the Circuit Court of Cook County, Illinois, to enter judgment for such sum against Defendants, jointly and severally, in favor of Plaintiff Faith Mendenhall, individually and on behalf of each member of the Settlement Class, as defined in the Class Action Settlement Agreement (“Settlement Agreement”), who does not timely elect to be excluded from the Settlement Class and includes, but is not limited to, Plaintiff. This Confession of Judgment is subject to all terms, conditions, and recitals in the Settlement Agreement.

This Confession of Judgment for money justly due to Faith Mendenhall and a class of similarly situated individuals, arises from the following facts:

- (a) Faith Mendenhall filed a putative class action against Defendants;
- (b) Matthew Carpenter is Manager of TOMS King Holdings, LLC, which is the Managing Member of TOMS King, LLC, which is the sole Member of TOMS King (Illinois), LLC; is the former Chief Executive Officer of TOMS King, LLC, and TOMS King (Illinois), LLC; and has the right and authority to bind Defendants to the terms of this Confession of Judgment and willingly does so;
- (c) Defendants are represented by experienced counsel in this matter;
- (d) The operative First Amended Class Action Complaint alleges three causes of action against Defendants for violations of the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*, arising from Defendants’ collection of the biometric data of approximately 4,956 individuals in the Settlement Class, including Plaintiff Faith Mendenhall;
- (e) BIPA provides that a prevailing party may recover for each violation against a private entity that negligently violates a provision of the Act liquidated damages of \$1,000 or actual damages, whichever is greater (740 ILCS 14/20(a)(1));
- (f) For purposes of this Confession of Judgment, Defendants confess judgment on the BIPA claims asserted by Plaintiff Faith Mendenhall and the Settlement Class against them for negligent violations only and deny all allegations that the violations of BIPA alleged in the First Amended Class Action Complaint were reckless or intentional;
- (g) For purposes of this Confession of Judgment, the Parties agree that Plaintiff Faith Mendenhall and the Settlement Class are prevailing parties as defined by BIPA (740 ILCS 14/20(a));

- (h) Solely for purposes of this Confession of Judgment, the Parties agree that Defendants' exposure to Plaintiff Faith Mendenhall and the Settlement Class is at least Six Million Four Hundred and Seventy-Five Thousand Dollars (\$6,475,000.00);
- (i) Subject to the terms and conditions of the Settlement Agreement, Defendants have agreed to settle this litigation for a cash Settlement Fund comprised of a One Million Four Hundred and Seventy-Five Thousand Dollar (\$1,475,000.00) payment by Defendants' insurer, Philadelphia Indemnity Insurance Company, plus a Confession of Judgment in the amount of Five Million Dollars (\$5,000,000.00); and
- (j) Plaintiff Faith Mendenhall and the Settlement Class agree that other than One Million Four Hundred and Seventy-Five Thousand Dollars (\$1,475,000.00), Plaintiff will not seek to recover any additional monies from Defendants or the Released Parties, as defined in the Settlement Agreement,¹ and shall not execute upon or enforce this Confession of Judgment against Defendants or the Released Parties.

Date: October 21, 2024



TOMS King Holdings, LLC
Signed by Matthew Carpenter, Manager

¹ "Released Parties" expressly exclude AGLIC/Zurich and any other insurers, other than Philadelphia Indemnity Insurance Company and its reinsurers.

Exhibit B

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Mendenhall v. TOMS King (Illinois), LLC, and TOMS King, LLC
Case No. 2019 CH 10636
Circuit Court of Cook County, Illinois

IF YOU SCANNED YOUR FINGER ON A BIOMETRIC POINT-OF-SALE SYSTEM AT A BURGER KING LOCATION OWNED BY TOMS KING IN ILLINOIS BETWEEN SEPTEMBER 13, 2014 AND JANUARY 2, 2023, YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

This is a court-authorized notice. You are not being sued. This is not an ad for a lawyer.

Para una notificación en Español, visitar [www.\[tobedetermined\].com](http://www.[tobedetermined].com).

- A proposed Settlement has been reached in a class action lawsuit between TOMS King (Illinois), LLC and TOMS King, LLC (collectively, “TOMS King” or “Defendants”) and all individuals who scanned their fingers using a biometric point-of-sale (“POS”) system at a Burger King location owned by TOMS King in Illinois between September 13, 2014 and January 2, 2023. The lawsuit claims that TOMS King collected, stored, and disclosed biometric data from individuals through its biometric POS system. The lawsuit claims these activities required compliance with an Illinois law called the Illinois Biometric Information Privacy Act, and that TOMS King did not comply. TOMS King denies these allegations. The Court has not decided who is right or wrong. The Settlement has been preliminarily approved by a state court in Chicago.
- You are included in the Settlement if you scanned your finger using a biometric POS system at a Burger King location owned by TOMS King in Illinois between September 13, 2014 and January 2, 2023. If you received a notice of the Settlement in the mail, records indicate that you are included in the Settlement.
- If the Court approves the Settlement, Class Members will receive an equal share of a \$1,475,000.00 settlement fund that TOMS King has agreed to create, after all notice and administration costs, a service award, and attorneys’ fees have been paid. Individual payments to Class Members are estimated to be approximately \$180.00.
- Please read this notice carefully. Your legal rights are affected whether you act or don’t act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	You will receive a payment under the Settlement and give up your rights to sue TOMS King or certain related companies and individuals about the issues in this case.
EXCLUDE YOURSELF	You will receive no payment, but you will retain any rights you currently have to sue TOMS King about the issues in this case.
OBJECT	Write to the Court explaining why you don't like the Settlement.
ATTEND A HEARING	Ask to speak in Court about the fairness of the Settlement.

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

The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be provided only after any issues with the Settlement are resolved. Please be patient.

BASIC INFORMATION

1. What is this notice and why should I read it?

The Court authorized this notice to let you know about a proposed Settlement with TOMS King. You have legal rights and options that you may act on before the Court decides whether to give final approval to the proposed Settlement. You may be eligible to receive a cash payment as part of the Settlement. This notice explains the lawsuit, the Settlement, and your legal rights.

The Honorable Alison C. Conlon of the Circuit Court of Cook County, Illinois is overseeing this class action. The case is called *Mendenhall v. TOMS King (Illinois), LLC, and TOMS King, LLC*, Case No. 2019 CH 10636. The person who filed the lawsuit, Faith Mendenhall, is the Plaintiff. The companies she sued, TOMS King (Illinois), LLC, and TOMS King, LLC, are the Defendants.

2. What is a class action lawsuit?

A class action is a lawsuit in which individuals called “Class Representatives” bring a single lawsuit on behalf of other people who they assert have similar legal claims. All of these people together are potential members of the “Class.” When a Class is certified for settlement and the Settlement is finally approved by the Court, the Settlement resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement Class.

THE CLAIMS IN THE LAWSUIT AND THE SETTLEMENT

3. What is this lawsuit about?

The Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*, regulates the collection, storage, and/or use of a person’s biometric data in Illinois, including requiring consent to the collection of biometric data. Biometric data includes fingerprints. This lawsuit alleges that TOMS King collected, stored, and disclosed biometric data without proper authorization from individuals who scanned their fingers using a biometric POS system at Burger King locations owned by TOMS King in Illinois. TOMS King denies these allegations and denies that it violated BIPA.

More information about Plaintiff’s complaint in the lawsuit and the Defendants’ defenses can be found in the “Court Documents” section of the Settlement Website at [www.\[tobedetermined\].com](http://www.[tobedetermined].com).

4. Who is included in the Settlement Class?

You are a member of the Settlement Class if you scanned your finger using a biometric POS system at a Burger King location owned by TOMS King in Illinois between September 13, 2014 and January 2, 2023. If you received a notice of the Settlement in the mail, records indicate that you are a Class Member and are included in the Settlement. You may email the Settlement Administrator at [\[email address\]](mailto:[email address]) to ask whether you are a member of the Settlement Class.

THE SETTLEMENT BENEFITS

5. What does the Settlement provide?

Cash Payments. If you’re eligible, you will receive a cash payment. The amount of such payment is estimated to be \$180.00. This is a *pro rata*, or equal, share of a \$1,475,000.00 fund that TOMS King has agreed to create, after the payment of settlement expenses, attorneys’ fees, and any service award for the Class Representative in the litigation approved by the Court.

HOW TO GET SETTLEMENT BENEFITS

6. How do I get a payment?

If you are a Settlement Class Member and you want to get a payment, you do not need to do anything. You will receive a check via First Class U.S. Mail following final approval of the Settlement.

7. When will I get my payment?

The hearing date to consider the fairness of the Settlement is scheduled for **[Final Approval Hearing Date]**. If the Court approves the Settlement, Class Members will be issued a check within 21 days after the Settlement has been finally approved by the Court and/or after any appeals process is complete. Please be patient. Uncashed checks and electronic payments that are unable to be completed will expire and become void 120 days after they are issued and will be donated to the Illinois Equal Justice Foundation, or such other not-for-profit organization(s) as the Court may order, as *cy pres* recipient.

THE LAWYERS REPRESENTING YOU

8. Do I have a lawyer in the case?

Yes, the Court has appointed Ryan F. Stephan and Teresa M. Becvar of Stephan Zouras, LLP as the attorneys to represent the Settlement Class. These attorneys are called "Class Counsel." In addition, the Court appointed Plaintiff Faith Mendenhall to serve as the Class Representative. She is a Settlement Class Member like you. Class Counsel can be reached by calling (312) 233-1550.

9. Should I get my own lawyer?

You don't need to hire your own lawyer because Class Counsel is working on your behalf. You may hire your own lawyer, but if you do so, you will have to pay that lawyer.

10. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees of up to 37% of the Settlement Fund and expenses and will also request an incentive award of \$7,500.00 for the Class Representative from the Settlement Fund. The Court will determine the proper amount of any attorneys' fees and expenses to award Class Counsel and the proper amount of any award to the Class Representative. The Court may award less than the amounts requested.

YOUR RIGHTS AND OPTIONS

11. What happens if I do nothing at all?

If you do nothing, you will receive a cash payment from the Settlement Fund, and you will be bound by all orders and judgments of the Court. Unless you exclude yourself from the Settlement, you will not be able to file or continue a lawsuit against TOMS King or other Released Parties (defined in the Settlement Agreement) regarding any of the Released Claims.

12. What happens if I ask to be excluded?

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 the TOMS King and the Released Parties and are free to pursue whatever legal rights you may have by pursuing your own individual lawsuit against TOMS King and the Released Parties at your own risk and expense.

13. How do I ask to be excluded?

You can mail or email a letter stating that you want to be excluded from the Settlement. Your letter must: (a) be in writing; (b) state your full name and current address; (c) contain a statement to the effect that “I hereby request to be excluded from the proposed Settlement Class in *Mendenhall v. TOMS King (Illinois), LLC, and TOMS King, LLC*, Case No. 2019 CH 10636 (Cir. Ct. Cook Cty.)”; (d) be personally signed by you; and (e) be postmarked or received by the Settlement Administrator on or before [Objection/Exclusion Deadline]. You must mail or email your exclusion request no later than [Objection/Exclusion Deadline] to:

Mendenhall v. TOMS King Settlement Administrator
P.O. Box 0000
City, ST 00000-0000

-or-

[email address]

You can't exclude yourself over the phone. No person may request to be excluded from the Settlement Class through “mass” or “class” opt-outs.

14. If I don't exclude myself, can I sue TOMS King for the same thing later?

No. Unless you exclude yourself, you give up any right to sue TOMS King and any other Released Party for the claims being resolved by this Settlement.

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

No. If you exclude yourself, you will not receive a payment.

16. How do I object to the Settlement?

If you do not exclude yourself from the Settlement Class, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should deny approval by filing an objection. To object, you must file a letter or brief with the Court stating that you object to the Settlement in *Mendenhall v. TOMS King (Illinois), LLC, and TOMS King, LLC*, Case No. 2019 CH 10636 (Cir. Ct. Cook Cty.), no later than **[Objection/Exclusion Deadline]**. Your objection must be e-filed or delivered to the Court at the following address:

Clerk of the Circuit Court of Cook County, Illinois
Daley Center
50 W. Washington Street, Suite 1001
Chicago, Illinois 60602

The objection must be in writing, must be personally signed, and must include the following information: (a) your full name and current address, (b) a statement that you believe you are a member of the Settlement Class, (c) whether the objection applies only to you, to a specific subset of the Settlement Class, or to the entire Settlement Class, (d) the specific grounds for your objection, (e) all documents or writings that you wish the Court to consider, (f) the name and contact information of any attorneys representing, advising, or in any way assisting you in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection, and (g) a statement indicating whether you intend to appear at the Final Approval Hearing. If you hire an attorney in connection with making an objection, that attorney must file an appearance with the Court or seek *pro hac vice* admission to practice before the Court, and electronically file the objection by the objection deadline of **[Objection/Exclusion 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.

In addition to filing your objection with the Court, you must send via mail, email, hand, or overnight delivery service, by no later than **[Objection/Exclusion Deadline]**, copies of your objection and any supporting documents to both Class Counsel and TOMS King's lawyers at the addresses listed below:

Class Counsel	TOMS King’s Counsel
Ryan F. Stephan lawyers@stephanzouras.com STEPHAN ZOURAS, LLC 222 West Adams Street Suite 2020 Chicago, Illinois 60606	James J. Sipchen jsipchen@pretzel-stouffer.com PRETZEL & STOUFFER, CHARTERED 200 South Wacker Drive Suite 2600 Chicago, Illinois 60606

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

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

THE COURT’S FINAL APPROVAL HEARING

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

The Court will hold the Final Approval Hearing at [time] on [date] before the Honorable Alison C. Conlon in Room 2408 at the Daley Center, 50 W. Washington Street, Chicago, Illinois 60602 and via Zoom (Meeting ID: 974 5431 3798 Password: 501494). The purpose of the hearing is for the Court to determine whether the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class. **At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed Settlement, including those related to the amount requested by Class Counsel for attorneys’ fees and expenses and the service award to the Class Representative.**

Note: The date and time of the Final Approval Hearing are subject to change by Court Order. Any changes will be posted at the Settlement Website, www.[tobedetermined].com.

19. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. You are welcome to come at your own expense. If you send an objection, you don’t have to come to Court to talk about it. As long as your written objection was filed or mailed on time and meets the other criteria described in the Settlement, the Court will consider it. You may also pay a lawyer to attend, but you don’t have to.

20. May I speak at the hearing?

Yes. If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the hearing concerning any part of the proposed Settlement. If you filed an objection (*see* Question 16 above) and intend to appear at the hearing, you must state your intention to do so in your objection.

GETTING MORE INFORMATION

21. Where do I get more information?

This notice summarizes the proposed Settlement. More details, including the Settlement Agreement and other documents are available at [www.\[tobedetermined\].com](http://www.[tobedetermined].com) or at the Clerk of the Circuit Court of Cook County, Illinois, 2502 at the Daley Center, 50 W. Washington Street, Suite 1001, Chicago, Illinois 60602, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays. You can also contact the Settlement Administrator at [\[email address\]](mailto:[email address]) or Class Counsel at the number provided above with any questions.

PLEASE DO NOT CONTACT THE COURT, THE JUDGE, THE DEFENDANTS OR THE DEFENDANTS' LAWYERS WITH QUESTIONS ABOUT THE SETTLEMENT OR DISTRIBUTION OF SETTLEMENT PAYMENTS.

Exhibit C

COURT AUTHORIZED NOTICE OF CLASS
ACTION AND PROPOSED SETTLEMENT

RECORDS INDICATE YOU
SCANNED YOUR FINGER ON
A BIOMETRIC POINT-OF-
SALE SYSTEM AT A
BURGER KING OWNED BY
TOMS KING IN ILLINOIS
AND ARE ENTITLED TO A
PAYMENT FROM A CLASS
ACTION SETTLEMENT

XXX

Mendenhall v. TOMS King
Settlement
c/o Settlement Administrator
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By Order of the Court Dated: [date]

This notice is to inform you that a proposed Settlement has been reached in a class action lawsuit between TOMS King (Illinois), LLC, TOMS King, LLC (collectively, "TOMS King") and all individuals who scanned their fingers using a biometric point-of-sale ("POS") system at a Burger King location owned by TOMS King in Illinois. The case is called *Mendenhall v. TOMS King (Illinois), LLC, and TOMS King, LLC*, Case No. 2019 CH 10636. The lawsuit claims that TOMS King collected, stored, and disclosed biometric data from individuals through its biometric POS system without complying with the requirements of an Illinois law called the Illinois Biometric Information Privacy Act. TOMS King denies those allegations. The Court has not decided who is right or wrong. Please read this notice carefully. Your legal rights are affected whether you act or don't act.

Who is included in the Settlement Class? Records indicate that you are included in the Settlement Class. The Settlement Class includes all individuals who scanned their fingers using a biometric POS system at a Burger King location owned by TOMS King in Illinois between September 13, 2014 and January 2, 2023.

What can I get out of the Settlement? If you're eligible and the Court approves the Settlement, you will receive a cash payment. The payment amount is estimated to be approximately \$180. This amount is an equal share of a \$1,475,000.00 cash fund that TOMS King agreed to create, after any Court-approved payment of Settlement administration expenses, attorneys' fees, and any service award.

How do I get my payment? You do not need to do anything to receive a payment. You will receive a check via First Class U.S. Mail following final approval of the Settlement.

What are my other options? You can do nothing, comment on or object to any of the Settlement terms, or exclude yourself from the Settlement. If you do nothing, you will get a payment, and you won't be able to sue TOMS King or certain related companies and individuals in a future lawsuit about the claims addressed in the Settlement. You can also comment on or object to the Settlement if you disagree with any of its terms by writing to the Court. If you exclude yourself, you won't get a payment but you'll keep your right to sue TOMS King on the issues the Settlement concerns. You must contact the Settlement Administrator by mail or email to exclude yourself from the Settlement. For more information, you can visit the Settlement Website, [www.\[tobedetermined\].com](http://www.[tobedetermined].com). ***All Requests for Exclusion and Objections must be received by Objection/Exclusion Deadline.***

Do I have a lawyer? Yes. The Court has appointed lawyers from the law firm Stephan Zouras, LLC as "Class Counsel." They represent you and other Settlement Class Members. The lawyers will request to be paid from the total amount that TOMS King agreed to pay to the Settlement Class Members. You can hire your own lawyer, but you'll need to pay that lawyer's legal fees if you do. The Court has also chosen Faith Mendenhall—a Class Member like you—to represent the Settlement Class as the Class Representative.

When will the Court approve the Settlement? The Court will hold a final approval hearing on [\[date\]](#) at [\[time\]](#) before the Honorable Alison C Conlon in Room 2408 at the Daley Center, 50 W. Washington Street, Chicago, Illinois 60602 and via Zoom (Meeting ID: 974 5431 3798 Password: 501494). During the hearing, the Court will hear objections, determine if the Settlement is fair, and consider Class Counsel's request for fees and expenses of up to 37% of the Settlement Fund and a service award of \$7,500 to the Class Representative.

Questions, visit [www.\[tobedetermined\].com](http://www.[tobedetermined].com)