

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

RICKY JONES, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

WHOLE FOODS MARKET GROUP, INC,

Defendant.

Case No.: 22 CH 00606

PRELIMINARY APPROVAL ORDER

This matter having come before the Court on the Plaintiff's Unopposed Motion and Memorandum in Support of Preliminary Approval of Class Action Settlement (the "Motion"), the Court having reviewed in detail and considered the Motion, the Class Action Settlement Agreement ("Settlement Agreement") between Plaintiff, Ricky Jones ("Plaintiff" or "Class Representative") and Defendant, Whole Foods Market Group, Inc. ("Defendant") (together, "the Parties"), and all other papers that have been filed with the Court related to the Settlement Agreement, including all exhibits and attachments to the Motion and the Settlement Agreement, and the Court being fully advised in the premises, IT IS HEREBY ORDERED, as follows:

1. Capitalized terms used in this Order that are not otherwise defined herein have the same meaning assigned to them as in the Settlement Agreement.
2. The terms of the Settlement Agreement are preliminarily approved as fair, reasonable, and adequate. There is good cause to find that the Settlement Agreement was

negotiated at arms-length between the Parties, who were represented by experienced counsel.

3. For settlement purposes only, the Court finds that the prerequisites to class action treatment — including numerosity, commonality and predominance, adequacy, and appropriateness of class treatment of these claims — have been preliminarily satisfied.

4. The Court hereby conditionally certifies and for the purposes of settlement only, the following Settlement Class consisting of:

All persons with last known addresses in Illinois employed by Defendant, Whole Foods Market Group, Inc. ("Defendant"), at its distribution center located at 716 East 111th St., Chicago, IL 60628 from whom it allegedly collected, captured, purchased, received through trade, or otherwise obtained any information which is or could be covered by the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.* ("BIPA"), including but not limited to any retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry, and/or any information, regardless of how it is captured, converted, stored, or shared, based on an individuals' biometric identifier used to identify an individual based on any retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry, in Illinois at any time from January 25, 2017 through the date of preliminary approval without first executing a written release.

5. For settlement purposes only, Plaintiff Ricky Jones is hereby appointed as the Class Representative.

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

David Fish
Mara Baltabols
Fish Potter Bolaños, P.C.
111 E. Wacker Dr., Suite 2300
Chicago, Illinois 60601

7. The Court recognizes that, pursuant to the Settlement Agreement, Defendant retains all rights to object to the propriety of class certification in the Litigation in all other contexts and for all other purposes should the Settlement not be finally

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

8. The Court approves, in form and content, the Class Notice, set forth in the Settlement Agreement, and finds that it meets the requirements of Due Process requirements under the U.S. and Illinois Constitutions.

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

10. Analytics Consulting, LLC, or such other entity that the parties mutually agreed upon, is hereby appointed Settlement Administrator to supervise and administer the notice process, as well as to oversee the administration of the Settlement, as more fully set forth in the Settlement Agreement.

11. The Settlement Administrator may proceed with the distribution of Class Notice as set forth in the Settlement Agreement.

12. Settlement Class Members who wish to receive benefits under the Settlement Agreement do not need to take any affirmative action to claim their pro rata share of the Settlement Fund.

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

14. Any person within the Settlement Class may request exclusion from the Settlement Class by expressly stating their request in a written exclusion request. Such exclusion requests must be received by the Settlement Administrator in written form, by first class mail, postage prepaid, and postmarked, no later than **February 17, 2023**.

15. In order to exercise the right to be excluded, a person within the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing their name, address, telephone number, the name and number of the case, a statement that they wish to be excluded from the Settlement Class, and must be personally signed by the person requesting exclusion. No person within the Settlement Class, or any person acting on behalf of, in concert with, or in participation with that person within the Settlement Class, may request exclusion from the Settlement Class of any other person within the Settlement Class.

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

17. The Court preliminarily approves Prairie State Legal Services as the *cy pres* recipient, including the distribution of 50% of uncashed funds to Prairie State Legal Services and the remaining 50% to the Defendant as set forth in the Settlement Agreement.

18. Class Counsel may file any motion seeking an award of attorneys' fees in the amount of 35% of the Settlement Fund plus reasonable their costs and expenses, as well as an Incentive Award of Five Thousand Dollars and Zero Cents (\$5,000.00) for the Class Representative, no later than **April 18, 2023**.

19. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who wishes to object to any aspect of the Settlement Agreement, including the amount of the attorneys' fees, costs, and expenses that Class Counsel intends to seek and the payment of the Incentive Award to the Class Representative, may do so, either personally or through an attorney, by filing a written objection, together with the supporting documentation set forth below in Paragraph 20 of this Order, with the Clerk of the Court, and served upon Class Counsel, Defendant's Counsel, and the Settlement Administrator no later than **February 17, 2023**.

20. Any Settlement Class Member who has not requested exclusion and who intends to object to the Settlement must state, in writing, all objections and the basis for any such objection(s), and must also state in writing: (i) their full name, address, and telephone number; (ii) the case name and number of this Litigation; (iii) the date range

during which they were employed by Defendant; (iv) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (v) the identification of any other objections they have filed, or have had filed on their behalf, in any other class action cases in the last four years; and (vi) the objector's signature. Objections not filed and served in accordance with this Order shall not be received or considered by the Court. Any Settlement Class Member who fails to timely file and serve a written objection in accordance with this Order shall be deemed to have waived, and shall be forever foreclosed from raising, any objection to the Settlement, to the fairness, reasonableness, or adequacy of the Settlement, to the payment of attorneys' fees, costs, and expenses, to the payment of the Incentive Award, and to the Final Approval Order and the right to appeal same.

21. A Settlement Class Member who has not requested exclusion from the Settlement Class and who has properly submitted a written objection in compliance with the Settlement Agreement may appear at the Final Approval Hearing in person or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement and/or Plaintiff's Counsel's Fee and Expense Application and/or the request for the Incentive Award to the Class Representative are required to indicate in their written objection their intention to appear at the Final Approval Hearing on their own behalf or through counsel. For any Settlement Class Member who files a timely written objection and who indicates their intention to appear at the Final Approval Hearing on their own behalf or through counsel, such Settlement Class Member must also include in their written objection the identity of

any witnesses they may call to testify, and all exhibits they intend to introduce into evidence at the Final Approval Hearing, which shall be attached.

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

23. All papers in support of the final approval of the proposed settlement shall be filed no later than seven (7) before the Final Approval Hearing.

24. A hearing (the "Final Approval Hearing") shall be held before the Court on **April 25, 2023, at 1:30 p.m. via Zoom Meeting ID 966 9558 1801 Zoom Meeting Password 160424** (or at such other time or location as the Court may without further notice direct) for the following purposes:

- (a) to finally determine whether the applicable prerequisites for settlement class action treatment have been met;
- (b) to determine whether the Settlement is fair, reasonable and adequate, and should be approved by the Court;
- (c) to determine whether the judgment as provided under the Settlement Agreement should be entered, including an order prohibiting Settlement Class Members from further pursuing claims released in the Settlement Agreement;

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

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

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

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

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

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

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

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

Class List Sent to Administrator: 1/17/23

Notice to be completed by: 1/24/23

Objection Deadline: 2/17/23

Exclusion Request Deadline: 2/17/23
Final Approval Motion Due: 4/18/23
Final Approval Hearing: April 25, 2023, at 1:30 p.m.

IT IS SO ORDERED.

ENTERED:

/s/ Michael T. Mullen
Judge Mullen

1-3-2023
Date

Judge Michael T. Mullen
JAN 03 2023
Circuit Court - 2084

Calendar 8's Contact Information
Zoom ID: 966 9558 1801
Password: 160424
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