

SETTLEMENT AGREEMENT AND RELEASE

Vahle, et al v. Ackercamps.com LLC; 3:22-cv-02256-DWD
U.S. District Court, Southern District of Illinois

This class action settlement agreement and release (“Agreement” or “Settlement Agreement”) is entered into by and between Defendant Ackercamps.com LLC (“Defendant”) and Lynae Vahle (“Vahle”), individually, and “K.V.,” a minor, by and through her Guardian, Lynae Vahle, (together, “Plaintiffs”) (collectively, the “Parties” and each, individually, a “Party”), in the case styled *K.V., a minor by and through her Guardian, Lynae Vahle, and Lynae Vahle, individually, and on behalf of all others similarly situated v. Ackercamps.com LLC*, No. 22-cv-02256 (S.D. Illinois), formerly *K.V., a minor by and through her Guardian, Lynae Vahle, and Lynae Vahle, individually, and on behalf of all others similarly situated v. Ackercamps.com LLC*, Case No. 2022-LA-108 (Ill. Cir. Ct., Williamson County) (the “Litigation”) with the following terms and conditions:

OVERVIEW OF SETTLEMENT TERMS

For reference, a general overview of the Settlement Terms are:

Class Definition:

“All persons in Illinois whose scans of facial geometry and/or biometric information were captured, possessed, used, or otherwise obtained at any time prior to the date of Preliminary Approval by Defendant or its agents or vendors.”

Estimated Number of Class Members: 11,867

Settlement Fund Created: \$2,900,000.00

Settlement Administrator: Kroll or another mutually agreed upon settlement administrator

Time to Tender Class List: 7 Days after entry of Preliminary Approval Order

Time to Effectuate Notice: 14 Days after entry of Preliminary Approval Order

Time to Submit Required Documents (Claims, Objections or Exclusions): 42 days after Notice

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Time for Final Approval Papers: 7 days prior to Final Approval Hearing

Time for Final Hearing Date: approximately 90 days after Preliminary Approval Hearing

I. FACTUAL BACKGROUND AND RECITALS

1. On August 29, 2022, Plaintiffs filed a Class Action Complaint against Defendant in the Circuit Court for the First Judicial Circuit, Williamson County, Illinois, No. 2022LA000108, alleging violations of the Illinois Biometric Information Privacy Act (“BIPA”) 740 ILCS 14/1 *et seq.* Plaintiffs seek to represent a putative class of similarly situated individuals and recover statutory damages, injunctive and equitable relief as well as attorney’s fees, costs expenses for Defendant’s alleged violations of BIPA.
2. On September 30, 2022, Defendant filed its Notice of Removal from the Circuit Court for the First Judicial Circuit, Williamson County, Illinois to the U.S. District Court for the Southern District of Illinois, under Case No. 3:22-cv-02256-DWD.

On December 1, 2022, Defendant filed an Answer and Affirmative Defense to Plaintiff’s Class Action Complaint, denying that it violated the Illinois Biometric Privacy Act or any other law and raising defenses to Plaintiffs’ claims, including that BIPA did not regulate the alleged conduct and that Plaintiffs’ claims were barred by the extraterritoriality doctrine.

3. Following extensive arms-length negotiations over the course of several months, the Parties negotiated a settlement by which the Parties agree to resolve all matters pertaining to, arising from, or associated with the Litigation, and as set forth herein, all claims Plaintiffs and members of the Class they seeks to represent for purposes of the Settlement, have or may have had against the Defendant, its respective direct or indirect parents and subsidiaries, brands, owners, shareholders, directors, officers, agents, vendors, managers, employees, assignors, representatives, insurers, reinsurers, and all related and affiliated parent or subsidiary companies and divisions, in any matter related to, or in any matter connected in any way with the Released Claims through the date on which the Parties sign this Agreement. Defendant represent that an estimated 11,867 individuals in Illinois utilized the alleged facial recognition software, and that this representation, within a five percent (5%) fluctuation, is a material term of this Settlement Agreement.
4. The Parties have agreed to settle the Litigation on the terms and conditions set forth herein in recognition that the outcome of the Litigation is uncertain and that achieving a final result through litigation would require substantial additional risk, discovery, time, and expense.
5. Defendant denies each and every allegation and all charges of wrongdoing or liability of any kind whatsoever that Plaintiffs or members of the Settlement Class presently have asserted in this Litigation or may in the future assert. Despite Defendant’s belief that it is not liable for and has good defenses to the claims alleged in the Litigation, Defendant desires to settle the Litigation and thus avoid the expense, risk, exposure, inconvenience, and distraction of continued litigation

of any action or proceeding relating to the matters being fully settled and finally put to rest in this Settlement Agreement. Neither this Settlement Agreement, nor any negotiation or discussion thereof, is or may be deemed to be or may be used as an admission of or evidence of any wrongdoing or liability.

6. The Parties now seek to enter into this Settlement Agreement. Plaintiffs and Class Counsel have conducted an investigation into the facts and the law regarding the litigation and have concluded that a settlement according to the terms set forth below is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiffs and the Settlement Class, recognizing (a) the existence of complex and contested issues of law and fact; (b) the risks inherent in litigation; (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) the Plaintiffs' determination that the Settlement is fair, reasonable, adequate, and will substantially benefit the Settlement Class Members.
7. 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.
8. 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 Litigation be settled and compromised, and that the Releasors release the Defendant and the Releasees of the Released Claims, without costs as to Defendant, Releasees, Plaintiffs, Class Counsel, or the Settlement Class, except as explicitly provided for in this Agreement, subject to the approval of the Court, on the following terms and conditions.

II. DEFINITIONS

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

9. "Administrative Expenses" shall mean expenses incurred by the Settlement Administrator, including but not limited to costs in providing notice, communicating with the Settlement Class Members, and disbursing payments to the proposed Settlement Class Members. Defendant shall be responsible for paying all Administrative Expenses, which shall be paid from the gross Settlement Payment.
10. "Approved Claim" shall mean a Claim Form submitted by a Settlement Class Member that (a) is submitted timely and in accordance with the directions on the

Claim Form and the provisions of the Settlement Agreement; (b) is fully and truthfully completed by a Settlement Class Member with all of the information requested in the Claim Form; (c) is personally signed (either via wet signature or electronic signature) by the Settlement Class Member; and (d) is approved by the Settlement Administrator in accordance with the terms of this Settlement Agreement.

11. “Facial Recognition Software” shall mean identity verification technology used by Defendant in Illinois at any time from August 29, 2017 to the date of preliminary approval in this matter, which, for verification purposes, utilized a scan of photographs containing images of Plaintiffs’ and the other Settlement Class Members’ faces. Facial Recognition Software specifically includes the AWS Rekognition service utilized by Defendant for its photo tagging feature.
12. “Claim Form” shall mean the form required to be fully and properly completed and timely submitted to the Settlement Administrator to be eligible to receive a Class Member Payment, in substantially the form attached as Exhibit A as approved by the Court.
13. “Claim Form Deadline” shall mean the deadline for submitting a Claim Form to the Settlement Administrator.
14. “Class,” “Settlement Class,” “Class Member,” or “Settlement Class Member” shall mean each member of the Settlement Class, as defined in Section III of this Agreement and in Paragraph 40, individually and/or collectively, who does not timely elect to be excluded from the Settlement Class and includes, but is not limited to, Plaintiffs.
15. “Class Counsel” shall mean Diane E. Wise of Wise Law LLC.
16. “Counsel” or “Counsel for the Parties” means both Class Counsel and Defendant’s Counsel.
17. “Class Member Payment” shall mean the portion of the Settlement Payment to be paid to a Class Member in accordance with Paragraph 49.
18. “Court” shall mean the Circuit Court of the First Judicial Circuit, Williamson County, Illinois, and any judge assigned or presiding over the Litigation or who is sitting in her or his stead.
19. “Defendant” shall mean Ackercamps.com LLC.
20. “Defendant’s Counsel” shall mean Mary A. Smigielski and Michael J. Roman of Lewis Brisbois Bisgaard & Smith LLP.

21. “Effective Date” shall mean the date when the Settlement Agreement becomes Final.
22. “Fee and Expense Petition” shall mean the motion to be filed by Class Counsel, in which they seek approval of an award of attorneys’ fees, costs, and expenses.
23. “Fee Award” means the amount of attorneys’ fees and reimbursement of costs and expenses awarded by the Court to Class Counsel.
24. “Final” means the Final Approval Order has been entered on the docket, or, if a timely objection has been submitted (a) the time to appeal from such order has expired and no appeal has been timely filed; (b) if such an appeal has been filed, it has been finally resolved and has resulted in an affirmation of the Final Approval Order; or (c) the Court, following the resolution of the appeal, enters a further order or orders approving the settlement on the material terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s).
25. “Final Approval Hearing” means the hearing before the Court where the Plaintiffs will request a judgment to be entered by the Court approving the Settlement Agreement, approving the Fee Award, and approving an Incentive Award to the Class Representatives. The date for the Final Approval Hearing shall be within approximately 90 days after entry of the Preliminary Approval Order.
26. “Final Approval Order” shall mean an order entered by the Court that:
 - a. Certifies the Settlement Class pursuant to 735 ILCS 5/2-801;
 - b. Finds that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of this Agreement;
 - c. Dismisses the Plaintiffs’ claims pending before it with prejudice and without costs as to Defendant, except as explicitly provided for in this Agreement;
 - d. Approves the Release provided in Section VII and orders that, as of the Effective Date, the Released Claims will be released as to the Releasees; and
 - e. Finds that, pursuant to 735 ILCS 5/2-1301, there is no just reason for delay of entry of final judgment with respect to the foregoing.
27. “Incentive Awards” shall have the meaning ascribed to it as set forth in Section XV of this Agreement.

28. "Litigation" shall mean the action currently pending in the U.S. District Court for the Southern District of Illinois, captioned *Vahle et al v. Ackercamps.com LLC*; Case No. 3:22-cv-02256-DWD and any predecessor or successor case numbers assigned to the action. Additionally, the parties agree to dismiss the current action due to contested standing issues and agree to proceed with the litigation in the Circuit Court of the First Judicial Circuit, Williamson County, Illinois.
29. "Maximum Gross Settlement Amount" equals \$2,900,000 in full settlement of the claims brought or that could have been brought in the Litigation, and includes all Class Member Payments, Administrative Expenses, Fee Award, and Incentive Awards. No additional sums above the Maximum Gross Settlement Amount shall be sought from Defendant, Releasees or Releasers.
30. "Net Settlement Amount" shall mean the Settlement Payment, less Administrative Expenses, the Fee Award, and the Incentive Awards.
31. "Notice" means the direct notice of this proposed Settlement, which is to be provided substantially in the manner set forth in this Agreement and Exhibit A and is consistent with the requirements of Due Process.
32. "Objection/Exclusion Deadline" shall mean the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a person within the Settlement Class must be postmarked and/or filed with the Court, which shall be designated as a date approximately 60 days after the date on which Preliminary Approval is granted, or such other date as ordered by the Court.
33. "Parties" shall mean Plaintiffs and Defendant, collectively.
34. "Plaintiff" or "Plaintiffs" or "Class Representative" or "Class Representatives" shall mean, individually or collectively, the named class representatives, Lynae Vahle, individually, and K.V., a minor, by and through her Guardian, Lynae Vahle.
35. "Preliminary Approval Order" shall mean the Court's Order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing Notice of the Settlement to the Settlement Class substantially in the form of the Notices set forth in this Agreement.
36. "Released Claims" shall be broadly interpreted to mean any and all known claims and unknown claims against Releasees whatsoever arising out of, or related to the alleged, (1) possession, collection, capture, use, purchase, receipt through trade, obtaining, sale, lease, trade, profit from, disclosure, redisclosure, dissemination, storage, transmittal, and/or protection from disclosure of allegedly biometric information, including, but not limited to, claims arising out of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.*, ("BIPA") or any other federal, state, or local statute, regulation, or common law, (2) any claims arising under BIPA related to Defendant, and (3) any claims which were or could have

been brought in the Litigation related to BIPA or any other biometric law, including, but not limited to, any tort or privacy claims.

37. "Releasees" shall refer, jointly and severally, and individually and collectively, to Defendant and each of their past, present, or future, direct or indirect, agents, vendors, subsidiaries, parents, and affiliates, and their respective managers, employees, divisions, benefit plans, trustees, associates, corporations, companies, investors, shareholders, officers, directors, partners, members, owners, heirs, executors, predecessors, successors, assigns, insurers, reinsurers, agents, and attorneys.
38. "Releasers" shall refer, jointly and severally, and individually and collectively, to Plaintiffs, the Settlement Class Members, and to each of their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, through, or on behalf of them.
39. "Settlement Administrator" means, subject to Court approval, Kroll or another mutually agreed upon settlement administrator.
40. "Settlement Class" means, assuming court approval: "All persons in Illinois whose alleged scans of facial geometry and/or biometric information were collected, captured, possessed, used, or otherwise obtained at any time prior to the date of Preliminary Approval by Defendant or its agents or vendors."
41. "Settlement Class Members" means those individuals who fall within the definition of the Settlement Class and do not timely and properly opt out of the class by the Objection/Exclusion Deadline.
42. "Settlement Payment" means a payment of funds by Defendant or its representative(s) to satisfy any amount owed for the Class Member Payments, Administrative Expenses, Fee Award, or Incentive Awards.

III. SETTLEMENT CLASS CERTIFICATION

43. For the purposes of the Settlement only, the Parties stipulate and agree that (a) the Class shall be certified in accordance with the definition contained in Paragraph 43, below; (b) Plaintiffs shall represent the Class for settlement purposes and shall be the Class Representatives; and (c) Plaintiffs' Counsel shall be appointed as Class Counsel.
44. Defendant does not consent to certification of the Class for any purpose other than to effectuate the Settlement. If the Court does not enter Final Approval of the Settlement Agreement, or if for any other reason Final Approval of the Settlement Agreement does not occur, is successfully objected to, or challenged on appeal, any certification of any Class will be vacated and the Parties will be returned to their

positions with respect to the Litigation as if the Agreement had not been entered into.

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

“All persons in Illinois whose alleged scans of facial geometry and/or biometric information were collected, captured, possessed, used, or otherwise obtained at any time prior to the date of Preliminary Approval by Defendant or its agents or vendors.”

46. Excluded from the Settlement Class are all persons who elect to exclude themselves from the Settlement Class, the (i) Court and staff to whom this case is assigned, and (ii) any member of the Court’s or staff’s immediate family, (iii) the legal representatives, successors or assigns of any excluded Persons; (vi) Defendant’s officer and directors; and (vii) counsel for the Plaintiffs.
47. If for any reason 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 in any request for class certification in the Litigation or any other proceeding.

IV. SETTLEMENT OF LITIGATION AND ALL CLAIMS AGAINST RELEASEES

48. Final Approval of this Settlement Agreement will settle and resolve with finality on behalf of the Plaintiffs and the Settlement Class, the Litigation and the Released Claims and any other claims that have been brought, could have been brought, or could be brought now or at any time in the future against the Releasees by the Releasers in the Litigation or in any other proceeding arising out of, in any matter related to, or in any matter connected in any way with the Released Claims.

V. SETTLEMENT PAYMENT ALLOCATION

49. Settlement Payments.

- a. The Settlement Payment shall be used to pay Settlement Class Members who make timely, valid claims by completing and submitting a Claim Form, the Fee Award, the Incentive Awards to the Class Representatives, and the Administration Expenses to the Settlement Administrator. Each Settlement Class Member who timely submits a valid Claim Form will receive payment from the Net Settlement Amount in the form of a check.
- b. Within fourteen (14) days after the entry of the Final Approval Order and receipt of payee instructions and a Form W-9 for the payee, Defendant or its representative(s) shall pay to the Settlement Administrator the Settlement Payment [Fee Award + Incentive Award(s) + Administrative

Expenses] + [(Net Settlement Amount / 11,867) * (the total Approved Claims)] to fund the sum needed to distribute the Class Member Payments and other payments under this Agreement. Provided that Final Approval of this Agreement is granted by the Court without material change, material amendment, or material modification, the Settlement Payment in this subsection will be used to satisfy payments to Settlement Class Members from the Net Settlement Amount in exchange for a full, fair, and complete release of all Releasees from Released Claims, and dismissal of the Litigation with prejudice.

- c. The funds provided by Defendant to the Settlement Administrator will be maintained by an escrow agent as a Court-approved Qualified Settlement Payment pursuant to Section 1.468B-1, *et seq.*, of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended, and shall be deposited in an interest-bearing account.
 - d. The Settlement Payment represents the total extent of Defendant's and Releasees' monetary obligations under the Settlement Agreement. Defendant's contributions to the Settlement Payment shall be fixed under this Section and final. Defendant and the other Releasees shall have no obligation to make further payments into the Settlement Payment and shall have no financial responsibility or obligation relating to the Settlement beyond the Settlement Payment.
 - e. 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 Payment.
50. Settlement Class Members shall have until the Claim Form Deadline to submit a Claim Form for approval by the Settlement Administrator as an Approved Claim. Each Settlement Class Member who submits an Approved Claim is entitled to a payment of 1/11,867 of the Net Settlement Amount to pay to each Settlement Class Member who submits an Approved Claim, each Settlement Class Member who submits an Approved Claim shall receive such a share of the Net Settlement Amount. Such payments shall be made from the Net Settlement Amount in the form of a check, issued and mailed by the Settlement Administrator.
51. Any checks disbursed to Settlement Class Members from the Settlement Payment that are uncashed for any reason within ninety (90) days after their date of issuance shall be deemed void and will not be re-issued for any reason. Any uncashed check funds shall revert to Defendant.
52. Any and all amounts from the Settlement Payment that are not used to pay Approved Claims, Administrative Expenses, the Incentive Award to the Class

Representatives, the Fee Award to Class Counsel, and any other costs, fees or expenses ordered by the Court and remaining sixty (60) days after entry of the Final Approval Order and the Claim Form Deadline shall revert back to Defendant within the next seven (7) days. All Settlement Funds not used for payments to the Settlement Class Members, an award of Class Counsel fees and costs, an award to the Class Representative(s), or spent on administration, including any uncashed checks, shall revert back to the Defendant. Settlement checks will be void ninety (90) days after issuance.

53. Procedure for Approving Settlement.

- a. Plaintiffs will file an unopposed motion for an order conditionally certifying the Class, giving Preliminary Approval to the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the “Unopposed Motion for Preliminary Approval”).
- b. At the hearing on the Unopposed Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the Unopposed Motion for Preliminary Approval, and submit a proposed order granting conditional certification of the Class and preliminary approval of the Settlement Agreement; appointing the Class Representatives and Class Counsel; approving the form of Notice to the Class of the Settlement; and setting the Final Approval Hearing.
- c. For the purposes of the Settlement and the proceedings contemplated herein only, the Parties stipulate and agree that the Class shall be conditionally certified in accordance with the definition and on the terms contained above, that Plaintiffs shall be conditionally appointed Class Representatives, and that Plaintiffs’ Counsel shall be conditionally appointed as Class Counsel. Should the Court decline to preliminarily approve any aspect of the Settlement Agreement, the Parties will attempt to renegotiate those aspects of the Settlement Agreement in good faith, with the mutual goal of attempting to reach an agreement as close to this Settlement Agreement as possible, and will then submit the renegotiated settlement agreement to the Court for preliminary approval. If and only if the Parties are unable to obtain preliminary approval of a settlement agreement after submitting at least two renegotiated settlements to the Court, the Settlement Agreement will be null and void, and the Parties will have no further obligations under it, and the Parties will revert to their prior positions in the Litigation as if the Settlement had not occurred.

VI. PROSPECTIVE RELIEF

54. Without admitting any liability or that they were or are required by law to do so, Defendant acknowledges that it has implemented procedures to comply with BIPA.

VII. RELEASE

55. In addition to the effect of any final judgment entered in accordance with this Agreement, upon final approval of this Agreement, and for other valuable consideration as described herein, Releasees shall be completely released, acquitted, and forever discharged from any and all Released Claims.
56. 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 Releasees. As of the Effective Date, all Releasors will be forever barred and enjoined from prosecuting any action against the Releasees asserting any and/or all Released Claims.
57. Each Releasor 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 contained in this Agreement.

VIII. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER

58. This Settlement Agreement shall be subject to approval of the Court. As set forth in Section XIV, Defendant shall have the right to withdraw from the Settlement Agreement if the Court does not approve the material aspects of the Agreement.
59. Plaintiffs, through Class Counsel, shall submit this Agreement, together with its exhibits, to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement, certification of the Settlement Class, appointment of Class Counsel and the Class Representatives, and entry of the Preliminary Approval Order, substantially in the form of Exhibit B, which order shall seek a Final Approval Hearing date and approve the Notice for dissemination in accordance with the Notice Plan.
60. At the time of the submission of this Settlement Agreement to the Court as described above, the Parties shall request that, after Notice is given, the Court hold a Final Approval Hearing within approximately ninety (90) days of entry of the Preliminary Approval Order and approve the settlement of the Litigation as set forth herein.
61. At least seven (7) days prior to the Final Approval Hearing, or by some other date if so directed by the Court, Plaintiffs will move for: (a) final approval of the Settlement Agreement; (b) final appointment of the Class Representatives and Class Counsel; and (c) final certification of the Settlement Class, including for the entry of a Final Order and Judgment, and file a memorandum in support of the motion for final approval.

IX. NOTICE TO PROPOSED SETTLEMENT CLASS MEMBERS

62. Class List

- a. Defendant shall create and submit a Class List to the Settlement Administrator based on readily available information already within its possession (“Class List”).
- b. The Class List shall include the names, phone numbers, email addresses, and last known mailing addresses of potential Settlement Class Members, to the extent such information is available. Defendant shall provide the Class List within seven (7) days after entry of the Preliminary Approval Order.
- c. In the event Defendant is unable to include names and corresponding mailing addresses or email addresses for at least 70% of the Settlement Class Members on the Class List due to Defendant’s clients not voluntarily providing such information, Defendant and Class Counsel agree to work together to subpoena such customers, and to the extent the Notice Date set forth in the Court’s Preliminary Approval Order is not feasible because of the need for subpoenas, the Parties agree to cooperate in requesting a later Notice Date and related deadlines, if necessary, without delay.

63. Type of Notice Required

- a. The Notice, which shall be substantially in the form of Exhibit A attached hereto, shall be used for the purpose of informing proposed Settlement Class Members, prior to the Final Approval Hearing, that there is a pending settlement, and to further inform Settlement Class Members how they may: (i) protect their rights regarding the settlement; (ii) request exclusion from the Settlement Class and the proposed settlement, if desired; (iii) object to any aspect of the proposed settlement, if desired; and (iv) participate in the Final Approval Hearing, if desired. The Notice shall make clear the binding effect of the settlement on all persons who do not timely request exclusion from the Settlement Class.
- b. Dissemination of the Notice shall be the responsibility of the Settlement Administrator. The text of the Notice shall be agreed upon by the Parties and shall be substantially in the form attached as Exhibit A hereto.
- c. Within seven (7) days of receipt of the Class List, the Settlement Administrator shall send individual notice via first class U.S. Mail and through known email addresses (Defendant anticipates it will be in possession of sufficient mailing and/or email addresses for known Settlement Class Members such that the direct notice campaign will reach approximately 70% or more of known Settlement Class Members) (substantially in the form of Exhibit A). Prior to the mailing, the Settlement Administrator shall run the Class Members’ addresses through the U.S.

Postal Service's National Change of Address database and mail the Notice using the most current mailing address information. If a Notice is returned as undeliverable with a forwarding address, the Settlement Administrator shall resend by first class mail the Notice to that forwarding address. If a mailing address is not available or if a Notice is returned as undeliverable without a forwarding address, the Settlement Administrator shall send the Notice via email or other electronic means, if available. If Notice to a forwarding address is undeliverable and the email Notice is returned as undelivered or unavailable, the Settlement Administrator shall use a "skip-trace" or similar search to attempt to locate a current address for the Settlement Class Member and send the Notice to the address so found.

- d. Additionally, Defendant shall work with the Settlement Administrator to engage in a public notice campaign via Defendant's website and web application (in-app notice) during the duration of the notice period and targeted to users located in Illinois.

X. EXCLUSIONS

64. Exclusion Period

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

65. Exclusion Process

- a. A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked on or before the Objection/Exclusion Deadline.
- b. In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his/her name, address, and telephone number; the name and number of this case; if represented by counsel, the name and telephone number of his/her counsel; a statement that he/she wishes to be excluded from the Settlement Class; and a personal signature. A request to be excluded that is sent to an address other than that designated in the Class Notice, or that is not postmarked within the time specified, shall be invalid and the person serving such a request shall be considered a member of the

Settlement Class and shall be bound as Settlement Class Members by the Agreement, if approved.

- c. Any member of the Settlement Class who elects to be excluded shall not: (i) be bound by any order or the Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement. A member of the Settlement Class who requests to be excluded from the Settlement Class also cannot object to the Settlement Agreement.
- d. The request for exclusion must be personally signed by the person requesting exclusion. So-called “mass” or “class” exclusion requests shall not be allowed.
- e. Within three (3) business days after the Objection/Exclusion Deadline, the Settlement Administrator shall provide Class Counsel and Defendant’s Counsel a written list reflecting all timely and valid exclusions from the Settlement Class. Counsel will have a period of time no less than thirty (30) days to object to claims submitted for reasons including but not limited to: late submissions, insufficient information, or attestation by claimants, and indicia of fraud.
- f. A list reflecting all individuals who timely and validly excluded themselves from the settlement shall also be filed with the Court at the time of the motion for Final Approval of the Settlement.

XI. OBJECTIONS

- 66. The Notices shall advise Settlement Class Members of their rights, including the right to be excluded from or object to the Settlement Agreement and its terms. The Notices shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing, only if, on or before the Objection/Exclusion Deadline approved by the Court, the person making an objection shall file notice of his/her intention to do so and at the same time: (a) file copies of such papers he/she proposed to submit at the Final Approval Hearing with the Clerk of the Court; and (b) send copies of such papers via United States mail, hand delivery, or overnight delivery to both Class Counsel and Defendant’s Counsel. A copy of the objection must also be mailed to the Settlement Administrator at the address that the Settlement Administrator will establish to receive requests for exclusion or objections, and any other communication relating to this settlement.
- 67. Any Settlement Class Member who intends to object to this Settlement Agreement must include in any such objection: (a) his/her full name, address, and current telephone number; (b) the case name and number of this Litigation; (c) the name of individual in the photograph and the location where the photograph was taken; (d)

all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (e) the identification of any other objections he/she has filed, or has had filed on his/her behalf, in any other class action cases in the last five years; and (f) the objector's personal signature. If represented by counsel, the objecting Settlement Class Member must also provide the name and telephone number of his/her counsel. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he/she must state as such in the written objection, and must also identify any witnesses he/she may call to testify at the Final Approval Hearing and all exhibits he/she intends to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection.

68. Any Settlement Class Member who fails to timely file and serve a written objection and notice of intent to appear at the Final Approval Hearing pursuant to this Settlement Agreement, shall not be permitted to object to the approval of the Agreement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Agreement or its terms by appeal or other means.
69. Settlement Class Members cannot both object to and exclude themselves from this Settlement Agreement. Any Settlement Class member who attempts to both object to and exclude himself or herself from the Settlement Agreement will forfeit the right to object to this Settlement Agreement or any of its terms.

XII. FINAL APPROVAL HEARING

70. The Parties will jointly request that the Court hold a Final Approval Hearing within approximately ninety (90) days after the Preliminary Approval Order is entered. At the Final Approval Hearing, the Parties will request that the Court consider whether the Settlement Class should be certified as a class pursuant to 735 ILCS § 5/2-801 for settlement and, if so, (a) consider any properly-filed objections; (b) determine whether the Settlement Agreement is fair, reasonable and adequate, was entered into in good faith and without collusion, and should be approved, and shall provide findings in connection therewith; and (c) enter the Final Approval Order, including final approval of the Settlement Class and the Settlement Agreement, and a Fee Award.

XIII. FINAL APPROVAL ORDER

71. The Parties shall jointly seek entry of a Final Approval Order, the text of which the Parties shall agree upon. The dismissal orders, motions, or stipulation to implement this Section shall, among other things, seek or provide for a dismissal with prejudice and waiving any rights of appeal.
72. The Parties shall jointly submit to the Court a proposed order, substantially in the form attached hereto as Exhibit C, that without limitation:

- a. Approves finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of 735 ILCS 5/2-801 and directing its consummation according to its terms; and
 - b. Dismisses, with prejudice, all claims of the Settlement Class against Defendant in the Litigation, without costs and fees except as explicitly provided for in this Agreement.
73. Class Counsel shall use their best efforts to assist Defendant in obtaining dismissal with prejudice of the Litigation and take all steps necessary and appropriate to otherwise effectuate all aspects of this Agreement.

XIV. TERMINATION OF THE SETTLEMENT

74. The settlement is conditioned upon preliminary and final approval of the Parties' written Settlement Agreement, and all terms and conditions thereof without material change, material amendments, or material modifications by the Court (except to the extent such changes, amendments, or modifications are agreed to in writing between the Parties). All Exhibits attached hereto are incorporated into this Settlement Agreement. Accordingly, any Party may elect to terminate and cancel this Settlement Agreement within ten (10) days of any of the following events:
- a. A material alteration by the Court of any of the terms of this Settlement Agreement to which the Parties have not agreed in writing;
 - b. The Court refuses to grant Preliminary Approval of this Agreement even after the renegotiation process described in Paragraph 51(c) of this Agreement;
 - c. The reversal or substantial modification of the Court's order granting preliminary or final approval;
 - d. The Court refuses to grant final approval of this Agreement in any material respect; or
 - e. The Court refuses to enter a final judgment in the Litigation in any material respect.

XV. ATTORNEYS' FEES, COSTS, AND EXPENSES AND INCENTIVE AWARD

75. No later than seven (7) days prior to the date of the Final Approval Hearing, Class Counsel will move the Court for an award of attorneys' fees not to exceed 40% of the Settlement Payment, or \$1,160,000.00, in addition to Class Counsel's costs and expenses incurred on behalf of the Plaintiffs and the Class. Defendant will not oppose such a request, and Plaintiffs' Counsel will not seek/accept a higher fee

award, and will accept any lower award ordered by the Court. Class Counsel shall move, in the same papers, for reimbursement of the costs of litigation.

76. Subject to other terms in this Agreement, the Court's consideration of the Fee Award is to be conducted separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement Agreement, and any award made by the Court with respect to Class Counsel's attorneys' fees or expenses, or any proceedings incident thereto, including any appeal thereof, shall not operate to terminate or cancel this Agreement or be deemed material thereto.
77. Class Counsel shall provide the Settlement Administrator with its completed W-9 before the payment of the Fee Award is due. Within three (3) business days after the Effective Date and funding of the Settlement described in Paragraph 47(b), the Settlement Administrator shall pay to Class Counsel from the Settlement Payment the amount awarded by the Court in the Fee Award. Any payment of the Fee Award shall be paid via electronic wire transfer to an account designated by Class Counsel.
78. Prior to or at the same time as Plaintiff(s) seeks final approval of the Settlement Agreement, Class Counsel shall move the Court for an Incentive Award not to exceed \$20,000.00 for Class Representative(s). The Incentive Award(s) shall be paid solely from the Settlement Payment by check or electronic means by the Settlement Administrator within ten (10) days of the Effective Date and funding of the Settlement described in Paragraph 47(b), and delivered to the Class Representative(s) as directed by Class Counsel.
79. In no event will Defendant's liability for attorneys' fees, expenses, and costs, Administrative Expenses, and/or an Incentive Award exceed the funding obligations set out in this Agreement. Defendant shall have no financial responsibility for this Settlement Agreement outside of the Settlement Payment. Defendant shall have no further obligation for attorneys' fees or expenses to any counsel representing or working on behalf of either one or more individual Settlement Class Members or the Settlement Class. Defendant will have no responsibility, obligation, or liability for allocation of fees and expenses among Class Counsel.

XVI. MISCELLANEOUS REPRESENTATIONS

80. The Parties agree that the Settlement Agreement provides fair, equitable, and just compensation, and a fair, equitable, and just process for determining eligibility for compensation for any given Settlement Class Member related to the Released Claims.
81. The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement, and (b) agree, subject to their fiduciary and other legal obligations, to cooperate in good faith to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their

reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement. Class Counsel and Defendant's Counsel agree to cooperate with each other in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, and the Final Approval Order, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement Agreement.

82. 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 Plaintiffs and the Settlement Class, and each or any of them, on the one hand, against the Releasees, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Litigation was brought by Plaintiffs or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.
83. 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.
84. Any headings used herein are used for the purpose of convenience only and are not meant to have legal effect.
85. The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any prior or subsequent breach of this Agreement.
86. This Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements, and undertakings with respect to the matters set forth herein. No representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.
87. This Agreement may not be amended, modified, altered, or otherwise changed in any material manner except by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.
88. The Parties agree that Exhibits A through C to this Settlement Agreement are material and integral parts thereof and are fully incorporated herein by this reference.
89. The Parties may agree, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of the Agreement.
90. Except as otherwise provided herein, each Party shall bear its own costs.

91. Plaintiffs represent and warrant that they have not assigned any claim or right or interest therein as against the Releasees to any other person or party.
92. The Parties represent that they have obtained the requisite authority to enter this Settlement Agreement in a manner that binds all Parties to its terms.
93. The Parties specifically acknowledge, agree, and admit that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders, or other documents shall be considered a compromise within the meaning of Illinois Rule of Evidence 408, and any other equivalent or similar rule of evidence, and shall not, except in accordance with Paragraph 84 of this Agreement, (a) constitute, be construed, be offered, or received into evidence as an admission of the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Litigation or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, or (b) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue.
94. The Parties also agree that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders or other documents entered in furtherance of this Settlement Agreement, and any acts in the performance of this Settlement Agreement, are not intended to establish grounds for certification of any class involving any Settlement Class Member other than for certification of the Settlement Class for settlement purposes.
95. This Settlement Agreement, whether approved or not approved, revoked, or made ineffective for any reason, and any proceedings related to this Settlement Agreement and any discussions relating thereto shall be inadmissible as evidence of any liability or wrongdoing whatsoever and shall not be offered as evidence of any liability or wrongdoing in any court or other tribunal in any state, territory, or jurisdiction, or in any manner whatsoever. Further, neither this Settlement Agreement, the settlement contemplated by it, nor any proceedings taken under it, will be construed or offered or received into evidence as an admission, concession, or presumption that class certification is appropriate, except to the extent necessary to consummate this Agreement and the binding effect of the Final Order and Judgment.
96. The provisions of this Settlement Agreement, and any orders, pleadings, or other documents entered in furtherance of this Settlement Agreement, may be offered or received in evidence solely (a) to enforce the terms and provisions hereof or thereof, (b) as may be specifically authorized by a court of competent jurisdiction after an adversary hearing upon application of a Party hereto, (c) in order to establish payment, or an affirmative defense of preclusion or bar in a subsequent case, (d) in connection with any motion to enjoin, stay, or dismiss any other action, or (e) to obtain Court approval of the Settlement Agreement.

97. This Agreement may be executed (electronically or wet signature) in one or more counterparts exchanged by hand, messenger, or PDF as an electronic mail attachment, and any such signature exchanged shall be deemed an original signature for purposes of this Settlement Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument, provided that counsel for the Parties to this Agreement all exchange signed counterparts.
98. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Releasees.
99. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.
100. This Agreement is deemed to have been prepared by counsel for all Parties as a result of arms-length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Agreement and its Exhibits, it shall not be construed more strictly against one Party than another.
101. Unless otherwise stated herein, any notice required or provided for under this Agreement shall be in writing and shall be sent by electronic mail or hand delivery, postage prepaid, as follows:

If to Class Counsel:

Diana E. Wise
Wise Law LLC
637 W Highway 50 #601
O'Fallon, IL 62269
217-556-8036
dwise@wiseconsumerlaw.com

If to Defendant's Counsel:

Mary A. Smigielski
Michael J. Roman
Lewis Brisbois Bisgaard & Smith LLP
550 W. Adams, Suite 300
Chicago, Illinois 60661
312.345.1718
mary.smigielski@lewisbrisbois.com
michael.roman@lewisbrisbois.com

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

[The remainder of this page is intentionally left blank.]

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

Dated: 09 / 27 / 2023, 2023

CLASS REPRESENTATIVE

Lynae M. Vahle

Plaintiff K.V.

By: Lynae Vahle

Her: Legal Guardian and Next Friend

Dated: 09 / 27 / 2023, 2023

CLASS REPRESENTATIVE

Lynae M. Vahle

Plaintiff Lynae Vahle

Dated: 09 / 26 / 2023, 2023

WISE LAW LLC

Diana E. Wise

By: Diana E. Wise, Attorney for Plaintiffs and the Class

Dated: 9/28/2023, ~~2022~~ ^{XXXXX}

ACKERCAMPS.COM, LLC

DocuSigned by:

Damon Schramm

18BE2C65A068497...

By: Damon Schramm

Its: Authorized Representative

Dated: 9/28/2023, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

DocuSigned by:







Mary Smigielski

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By: Mary A. Smigielski, Attorney for Defendant

Title	Ackercamps.com LLC (dba Bunk1) - Settlement Agreement
File name	2023.09.26 - Vahl...Signed by Def.pdf
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