

**JOSE CARBAJAL**, individually and on behalf of all others similarly situated,  
Plaintiff,  
v.  
**FUCHS LUBRICANTS, CO.**,  
Defendant.

This Class Action Settlement Agreement (“Settlement” or “Agreement”) is made in the above-captioned matter (“Action”) by Jose Carbajal (“Plaintiff”), individually and on behalf of the Settlement Class as defined below, and Defendant Fuchs Lubricants, Co. (“Defendant”) (Plaintiff and Defendant are referred to individually as a “Party” and collectively as the “Parties”). This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge and settle the Released Claims upon and subject to the terms and conditions of this Agreement.

A. On December 22, 2022, former Plaintiff John Phillips filed this class action lawsuit in the Circuit Court of Cook County, Chancery Division on behalf of himself and similarly situated individuals, alleging Defendant disregarded their statutorily protected privacy rights by unlawfully collecting, storing, using and disseminating their biometric data in direct violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.* (“BIPA”). Plaintiff Phillips alleged a claim for damages and an injunction under BIPA.

B. On March 2, 2023, Defendant filed a motion to dismiss the Class Action Complaint, asserting that prior to the filing of the lawsuit, Plaintiff Phillips released all of his claims against Defendant, including but not limited to any alleged BIPA claims against Defendant.

C. On April 10, 2023, Plaintiff Jose Carbajal filed an Amended Complaint in this matter asserting claims and seeking relief under BIPA and dismissing Plaintiff Phillips as a plaintiff in this Class Action Complaint and the Amended Complaint.

D. Defendant filed its Answer to Plaintiff's Amended Complaint and Notice of Affirmative Defenses on May 22, 2023. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged by the Plaintiff in the Action. Plaintiff filed his Answer to Defendant's Affirmative Defenses on June 6, 2023.

E. The Parties began written discovery. Both Parties propounded interrogatories and document requests, and Plaintiff served his responses to Defendant's discovery requests on July 18, 2023.

F. In approximately August 2023, the Parties began discussing the possibility of a resolution of this matter. The Parties engaged in informal discovery relating to the number of potential putative class members, Defendant's biometric policies and consent forms, and a timeline on the implementation of same.

G. Following arm's length negotiations, in approximately November 2023, the Parties reached a resolution of Plaintiff's claims, and agreed upon a Term Sheet. The terms of the Parties' agreement are fully memorialized in this Settlement Agreement.

H. Plaintiff believes that each claim asserted in the Action has merit, that he ultimately would have succeeded in obtaining certification of the proposed Settlement Class, and that he would have prevailed on the merits. Defendant believes that it has factual and legal defenses in the Action as to Plaintiff's substantive and class certification claims, and Defendant believes that it would have prevailed on the merits. Plaintiff and Class Counsel nevertheless recognize that Defendant has raised factual and legal defenses in the Action that present a risk that Plaintiff may

not prevail, that a Class might not be certified for trial, or that Plaintiff would not be able to bring an action on behalf of others. Plaintiff, Defendant and their respective counsel have taken into account the uncertain outcome and risks of any litigation, especially in complex actions, as well as the difficulty and delay inherent in such litigation. Without admitting liability of any kind, the Parties have ultimately reached an agreement in principle on the terms of a class action settlement to settle the claims alleged in the Action as to Plaintiff and the putative class members. This Agreement is contingent upon court approval and is entered into voluntarily by the Parties.

## **II. Settlement Class**

As part of this Settlement, the Parties will ask the Court to certify the following class, for settlement purposes only:

All individuals whose biometrics were captured, collected, stored, used or disseminated by or on behalf of Defendant within the state of Illinois at any time during the period of December 22, 2017 through the date of Preliminary Approval without providing a prior written consent.

(the “Settlement Class”). Members of the Settlement Class shall be referred to herein as the “Class Members.” Defendant represents that the total number of putative Class Members is 108.

In Plaintiff’s Motion for Preliminary Approval of the Parties’ Class Action Settlement (“Motion for Preliminary Approval”), Plaintiff will ask the Court to certify the Settlement Class pursuant to 735 ILCS 5/2-801 for settlement purposes only. While Defendant denies that this Action is appropriate for class action certification, in the interest of avoiding further litigation, and in order to fully and finally settle all actual or potential claims by the Plaintiff and the Class Members, Defendant will not oppose certification of the Settlement Class solely for purposes of obtaining the Court’s approval of this Settlement. Defendant expressly reserves the right to oppose class action certification in this Action in the event this Settlement is not approved or a final order dismissing this Action with prejudice is not entered. The Parties acknowledge and agree that this

Agreement or the Court's entry of the Final Order of Approval is in no way an admission by Defendant that class certification is proper in this Action, or any other litigation against Defendant.

### **III. Benefits of Settlement to Class Members**

Plaintiff recognizes the expense and length of the proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff also has taken into account the uncertainty and risk of the outcome of further litigation, the defenses raised by Defendant, and the difficulties and delays inherent in litigation. In addition, this Agreement will provide a substantial monetary settlement for the Class Members. Based on the foregoing, Plaintiff has determined that the Settlement set forth in this Agreement is a fair, adequate and reasonable settlement, and is in the best interests of the Class Members.

### **IV. Defendant's Reasons for Settlement**

Defendant has concluded that the defense of this litigation would be protracted and expensive for all parties. Absent Settlement, Defendant will be required to devote substantial amounts of time, energy and resources to the defense of the claims Plaintiff asserted, for which Defendant maintains it has at all times acted properly and lawfully. Defendant, therefore, has agreed to settle the matter upon the terms set forth in this Agreement to put to rest the claims as set forth in the Action.

### **V. Settlement Terms**

NOW, THEREFORE, IT IS HEREBY STIPULATED, by and among Plaintiff and the putative Settlement Class on the one hand, and Defendant on the other hand, and subject to the approval of the Court, that the Action hereby be compromised and settled pursuant to the terms and conditions set forth in this Agreement and that upon Final Approval (as defined below) the Action shall be dismissed with prejudice, subject to the recitals set forth herein above, which by

this reference become an integral part of this Agreement and subject to the following terms and conditions:

**1. Effective Date.**

As used in this Agreement, “Effective Date” means the date by which this Settlement is approved as provided in this Agreement and the Court enters a Final Order of Approval of this Agreement in substantial form as presented by the Parties and a Dismissal with Prejudice (“Final Approval”). The Effective Date means the date on which the Court’s Judgment finally approving this Agreement is no longer appealable, or if an appeal is filed, the date on which such appeal is final and no further action is required by the Court. Notwithstanding the foregoing, Plaintiff and Defendant agree to waive all rights to appeal on entry of Final Approval.

**2. Released Parties.**

As used in this Agreement, “Released Parties” shall mean Defendant and its past or present parent companies, affiliates, subsidiaries, partners, employees, joint venturers, predecessors, attorney(s), shareholders, officers, directors, members, agents, insurers, reinsurers, third-party administrators, successors and assigns.

**3. Class Release.**

As of the Effective Date, Class Members who do not exclude themselves pursuant to the terms of this Agreement will be deemed to have forever discharged and released, on behalf of themselves and each of their heirs, representatives, successors, assigns, agents and attorneys, the Released Parties from any and all claims alleged in the Action arising out of, related to, or connected with the alleged capture, collection, storage, possession, transmission, conversion, and/or other use of biometric identifiers and/or biometric information in connection with the biometric timekeeping system used by Defendant’s employees, including but not limited to claims brought under 740 ILCS § 14/10 *et seq.* (“BIPA”), that accrued on any date through the date of

Preliminary Approval. Notwithstanding the foregoing and notwithstanding any terms or provisions to the contrary in this Agreement, the Class Members do not release or waive any claims that may not be released or waived unless otherwise allowed by applicable state and/or federal law.

**4. Named Plaintiff's Release.**

As of the Effective Date, Named Plaintiff Jose Carbajal will be deemed to have forever discharged and released the Released Parties from any and all claims, known and unknown, asserted or unasserted, which he has or may have against the Released Parties as of the Effective Date, including, but not limited to, all claims released as described in Paragraph V.3; any claims against the Released Parties arising from or relating in any way to his employment with Defendant; and any alleged violation of: Title VII of the Civil Rights Act of 1964; Sections 1981 through 1988 of Title 42 of the United States Code; the Employee Retirement Income Security Act of 1974 (except for any vested benefits under any tax qualified benefit plan); the Immigration Reform and Control Act; the Americans with Disabilities Act of 1990; the Fair Credit Reporting Act; the Family and Medical Leave Act; the Equal Pay Act; the Fair Labor Standards Act; the Illinois Minimum Wage Law; the Illinois Wage Payment and Collection Act; the Illinois Human Rights Act; the Illinois Equal Pay Act; any other federal, state or local law, rule, regulation, or ordinance; any public policy, contract, tort, or common law; and any basis for recovering costs, fees, or other expenses including attorneys' fees incurred in these matters.

Notwithstanding the foregoing and notwithstanding any terms or provision to the contrary in this Agreement, Plaintiff does not release any claim that cannot be released or waived unless otherwise allowed by applicable state and/or federal law.

**5. Non-Admission of Liability.**

In entering into this Agreement, Defendant does not admit, and specifically denies, that it has violated any federal, state or local law, or engaged in any unlawful, improper or wrongful conduct with respect to the Settlement Class. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable laws. The Parties agree that this Agreement does not constitute an adjudication on the merits of the Action, that none of them have prevailed on the merits, and that this Agreement shall not serve or be construed as evidence that any party has prevailed or that Defendant has engaged in any wrongdoing.

**6. Settlement Fund.**

The term “Settlement Fund” shall refer to all of the funds that will be available for distribution to the Plaintiff, the Class Members, Class Counsel and the Claims Administrator in accordance with this Agreement. The Settlement Fund shall consist of \$203,700.00, from which the following payments shall be made: (i) payment to each person who submits a valid and timely claim form (a “Claimant”); (ii) an Incentive Award (as defined by Paragraph V.11(c)) to the named Plaintiff; (iii) Class Counsel’s attorneys’ fees and costs; and (iv) all fees and costs of settlement administration. The Settlement Fund shall be all that Defendant or Released Parties shall pay to settle the Action; provided, however, that in the event there are more than 108 putative Class Members, then the gross settlement fund shall increase by \$2,100.00 for each additional putative Class Member. No amount of the Settlement Fund shall revert to Defendant.

**7. Claims Administration.**

The Parties have selected Analytics Consulting, LLC to administer this class action settlement (“Claims Administrator”). Payment shall be made to the Claims Administrator from

the Settlement Fund in an amount not to exceed \$11,000.00, which includes all administrative fees, costs and expenses. The Parties, through counsel, are authorized to communicate directly with the Claims Administrator as needed to expedite the Settlement administration process. The Claims Administrator shall complete the following tasks: (1) prepare and mail the Notice Packets (as defined in Paragraph V.13(c)); (2) receive and maintain all Claim Forms; (3) receive and file Requests for Exclusion and Objections; (4) setting up and maintaining a website that provides relevant information and documents to the Class Members and allows them to submit a Claim Form; (5) issuing a reminder postcard thirty (30) days after the initial mailing of the Notice Packet to Class Members that have not yet filed a Claim Form; (6) in the event that the Settlement is finally approved, Defendant will provide the Claims Administrator with the full amount of the Settlement Fund in accordance with the timeline set forth in Paragraph V.8 of this Agreement, and the Claims Administrator shall be responsible for distributing the Settlement Payments pursuant to the terms of this Agreement, including preparing and mailing settlement checks to Claimants; (7) seek additional information from Class Counsel or Defense Counsel when appropriate and necessary; (8) prepare affidavits as necessary for the filing of the preliminary and final approval motions; (9) issue 1099 Forms for all amounts paid to Class Counsel, Plaintiff and Claimants, as appropriate, and otherwise comply with all applicable reporting obligations; (10) promptly apprise counsel for the Parties of the activities of the Claims Administrator; (11) maintain adequate records of its activities, including the date of the mailing of the Notice Packets and receipt of Claim Forms, Requests for Exclusion, Objections, returned mail and other communications and attempted communications with Class Members; and (12) perform any other duties necessary to carry out its responsibilities as set forth in this Agreement.



## **8. Timeline of Settlement Events.**

The Parties contemplate the following timelines for settlement events listed. The date the Court grants Plaintiff's Motion for Preliminary Approval of the Settlement ("Preliminary Approval Date") is the base timeline for all actions. The Parties agree to immediately stay the action and not to litigate any discovery issues.

- Plaintiff will file his Motion for Preliminary Approval with the Court on or before April 15, 2024.
- Within fourteen (14) calendar days after the Preliminary Approval Date, Defendant will provide the Claims Administrator with the last known mailing address for each of the Class Members.
- Within seven (7) days of receipt of the last known addresses for the Class Members, the Claims Administrator will mail the Class Notice to the members of the Class.
- Within sixty (60) days after the mailing of the Class Notices, all Claim Forms from Class Members who wish to participate in the Settlement must be postmarked and mailed, or submitted electronically, to the Claims Administrator; all objections from members of the Class who wish to object to the Settlement ("Objections") must be postmarked and mailed to the Claims Administrator; and all Requests for Exclusion from members of the Class who wish to be excluded from the Settlement must be postmarked and mailed to the Claims Administrator ("Claim Deadline").
- Within seven (7) days after the Claim Deadline, the Claims Administrator will provide the Parties with a list of the names of: (i) all Class Members who have submitted timely and valid Claim Forms ("Claimants"); (ii) all Class Members who have submitted

timely and valid Objections; and (iii) all Class Members who have submitted timely and valid Requests for Exclusion.

- Within fourteen (14) days after the Claim Deadline, Plaintiff will file his Motion for Final Approval with the Court and request the Court to grant Final Approval of the Settlement.

- Within seven (7) days after the Effective Date, Defendant shall fund the Settlement Fund by transferring to the Claims Administrator the total sum sufficient to (i) issue checks to each Claimant; (ii) pay the Incentive Awards to the Named Plaintiff in accordance with paragraph V.11(c); (iii) pay the Attorneys' Fees and Costs Award in accordance with paragraph V.11(a); and (iv) pay costs of administration of the Agreement to the Claims Administrator, including without limitation payment of Administrative Expenses. The Settlement Fund shall not exceed \$226,800.00 unless there are more than 108 Members in the Class (see V.6.).

- Within fourteen (14) days after the Effective Date, the Claims Administrator will: (i) mail by first class mail the Settlement Payments to the Claimants' last known address; (ii) deliver the Incentive Award and Settlement Payment for the Named Plaintiff to Class Counsel; and (iii) wire Class Counsel's attorneys' fees and costs to Class Counsel. If there is an appeal filed, no payments shall be issued until and unless the Agreement is upheld on appeal. If the Agreement is upheld on appeal, all payments shall be made within ten (10) days after the entry of the Effective Date.

**9. Operation of the Settlement Fund.**

(a) The amount available from the Settlement Fund for Plaintiff and Class Members shall be the Settlement Fund minus the amounts approved by the Court to be paid to: (i)

Plaintiff as his Incentive Award, (ii) Class Counsel for attorneys' fees and costs; and (iii) the expenses of the Claims Administrator. The Parties anticipate that the net settlement fund will equal approximately One Hundred Thirty Thousand Nine Hundred Twenty Dollars (\$130,920.00). The net settlement fund shall be distributed *pro rata* to Class Members who submit valid claim forms. The Parties currently anticipate that the minimum settlement payment to Class Members would be approximately \$1,212.22.

(b) The Claims Administrator shall make all proper payments from the Settlement Fund. The Claims Administrator shall prepare and mail all Settlement Payments to the Claimants, except the Claims Administrator shall deliver any Incentive Award and payment due to the Plaintiff to Class Counsel in accordance with Paragraph V.8 above.

(c) The deadline for recipients to cash checks will be one hundred twenty (120) days from the date on the checks issued by the Claims Administrator. All Settlement Payment checks shall also be printed with a notice stating that checks not cashed within 120 days of the date on the check shall be invalid, or words to that effect. Those checks and the corresponding funds that are not cashed within one hundred twenty (120) days of the date on the check shall escheat to the State of Illinois or the applicable state of the Class Member as unclaimed property of that particular Class Member. The Claims Administrator shall be responsible for completing the escheatment process.

#### **10. Tax Treatment of Settlement Payments.**

(a) One Hundred Percent (100%) of the Class Members' Settlement Payments may be treated as and paid as non-wage, liquidated damages and will not be subject to any deductions for state and federal withholding taxes or any other applicable payroll deductions. If applicable, the Claims Administrator will issue IRS forms 1099 for the Settlement Payments to Claimants.

(b) Defendant, its counsel, and Class Counsel make no representation as to the tax treatment or legal effect of the Settlement Payments as taxable or non-taxable as called for under this Agreement, and the Class Members are not relying on any statement, representation, or calculation by Defendant, its counsel, Class Counsel or by the Claims Administrator in this regard. Plaintiff and the Class Members agree that he or she shall be responsible for his or her payment of any and all taxes and penalties assessed on his or her Settlement Payment, and each shall hold Defendant, its counsel, Class Counsel and the Claims Administrator free and harmless from and against any claims resulting from treatment of such payments as non-taxable damages.

(c) The Claims Administrator shall cause to be timely and properly filed all informational and other tax returns, if any, necessary with respect to the Settlement.

**11. Fees and Costs Award; Incentive Awards.**

(a) Class Counsel shall seek attorneys' fees not to exceed Seventy-Nine Thousand Three Hundred Eighty Dollars (\$49,380.00), and litigation costs not to exceed One Thousand Dollars (\$1,000.00). This Settlement is not conditioned upon the Court's approval of Class Counsel's petition for fees, costs and litigation expenses. In the event that the Court does not approve the attorneys' fees and/or litigation costs provided in this Settlement, this Agreement shall remain fully enforceable and Class Counsel shall receive only those attorneys' fees and litigation costs as approved by the Court. In that event, the amount of any reduction in attorneys' fees or costs shall be added to the net settlement fund and used to increase the amount of the Settlement Payments payable to the Class Members, and shall not revert to Defendant. The fees and costs award approved by the Court shall be paid by the Claims Administrator to Class Counsel from the Settlement Fund on the timetable provided in Paragraph V.8. The Claims Administrator shall report the payment of those fees, expenses and costs to Class Counsel on an IRS Form 1099.

(b) The payment of the fees and costs award to Class Counsel shall constitute full satisfaction of the obligation to pay any amounts to any person, attorney or law firm for attorneys' fees, expenses or costs in the Action incurred by any attorney on behalf of Plaintiff and the Class Members, and shall relieve Defendant, the Released Parties, the Settlement Fund and Defendant's Counsel of any other claims or liability to any other attorney or law firm for any attorneys' fees, expenses or costs to which any of them may claim to be entitled that arise out of the allegations in the Action. In exchange for such payment, Class Counsel will remise, release and forever discharge any attorneys' lien on the settlement fund.

(c) Class Counsel will move for an "Incentive Award" to the named Plaintiff in the amount of \$4,500.00 for his aid and assistance in prosecuting this Action. The Incentive Award is separate from and in addition to any Settlement Payment for which the Plaintiff qualifies as a Class Member. Plaintiff is not required to submit a claim form to receive his incentive payment or settlement amount. The Incentive Award will not be taxed as wages, and Plaintiff will receive a Form 1099 from the Claims Administrator related to the Incentive Award. Plaintiff agrees to be solely liable for all taxes on the Incentive Award. The Agreement is not conditioned upon the Court's approval of the requested Incentive Award. Any amount requested for an Incentive Award not approved by the Court shall be added to the net settlement fund and used to increase the amount of the Settlement Payments payable to the Class Members, and shall not revert to Defendant.

**12. Responsibilities of Defendant.**

Defendant shall:

- (a) Perform all duties as stated in this Agreement.

(b) Provide Class Counsel and the Claims Administrator with each of the Class Members' last known mailing address. To the extent that the Claims Administrator cannot locate a working address for a Class Member, within five (5) business days of the Claim's Administrator's request, Defendant shall also provide the Claims Administrator with the Social Security Number used by any such Class Member while working for Defendant. The Social Security Numbers provided by Defendant to the Claims Administrator shall be securely kept and not disseminated to any third party but for the purposes delineated herein. The Claims Administrator will use the social security numbers, if necessary, to ascertain the Class Members' correct address, after which time the Claims Administrator shall destroy the social security number(s).

**13. Notice/Approval of Settlement and Settlement Implementation.**

As part of this Settlement, the Parties agree to the following procedures for obtaining court approval of the Settlement, notifying Class Members, and mailing the Settlement Payments:

(a) Preliminary Approval Hearing. Plaintiff shall file his Motion for Preliminary Approval on or before April 15, 2024. In conjunction with the motion for preliminary approval, Plaintiff will submit this Agreement and its attachments for review by the Court.

(b) Settlement Administration. The Claims Administrator, with the assistance of the Parties, shall administer the Settlement on the timetable stated in Paragraph V.8 of this Agreement, and shall complete such other tasks as the Parties mutually agree to or the Court orders to be performed in the administration of the Settlement. The Claims Administrator shall provide the Parties with weekly reports regarding the Settlement Administration process, including providing the following information: the number of Class Members who have submitted valid and timely Claim Forms, the number of Class Members who have submitted valid and timely Requests

for Exclusion from the Settlement, and the number of Class Members who have submitted timely Objections to the Settlement.

(c) Notice and Payment to Class Members. On the timetables specified in Paragraph V.8 of this Agreement, the Claims Administrator shall send a copy of the applicable Notice attached hereto as Exhibit A, and the Claim Form attached hereto as Exhibit B, and a pre-stamped return envelope addressed to the Claims Administrator (collectively, a “Notice Packet”), to each Class Member via First Class regular U.S. mail. Prior to the mailing, the Claims Administrator shall run the addresses through the U.S. Postal Service’s National Change of Address database and mail the Notice Packet using the most current mailing address information. If a Notice is returned as undeliverable with a forwarding address, the Claims Administrator shall resend by first class mail the Notice to that forwarding address. If a Notice is returned as undeliverable without a forwarding address, the Claims Administrator shall perform one skip trace and resend by first class mail the Notice to those individuals for whom it obtains more recent addresses. If after this second mailing the Notice Packet is again returned as undelivered, then the notice mailing process shall end for that Class Member.

(d) Reminder Postcard. The Claims Administrator shall U.S. mail, and email where possible, a reminder postcard to the Class Members who have not yet submitted a Claim Form reminding them of the Claim Deadline thirty (30) days after the initial mailing of the Notice.

(e) Claim Deadline. Class Members who wish to participate in the Settlement and receive a Settlement Payment must submit a completed Claim Form to the Claims Administrator via U.S. mail or electronically no later than sixty (60) days after the mailing of the Notice Packet (the “Claim Deadline”). The date of the postmark on the mailing envelope or the electronic timestamp of receipt shall be the exclusive means used to determine whether a Claim

Form has been timely submitted. No later than seven (7) days after the Claim Deadline, the Claims Administrator shall furnish to the Parties' Counsel a complete list of all Class Members who have submitted valid and timely Claim Forms. If necessary, Defendant shall thereafter provide the Claims Administrator with the social security number for all Claimants for the purpose of preparing any necessary tax documents, after which time the Claims Administrator shall destroy the social security numbers.

(f) Final Approval Hearing. Plaintiff shall file his Motion for Final Approval of the Settlement within fourteen (14) days after the Claim Deadline and request the Court to grant Final Approval of the Settlement. With the Court's permission, a Final Approval Hearing shall be conducted to determine final approval of the Settlement along with the amounts payable for attorneys' fees and costs, and the Incentive Award. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties shall present a Final Approval Order to the Court for its approval.

**14. Procedure for Objecting to the Settlement or Requesting Exclusion from the Class.**

(a) Procedure for Objecting. The Notice shall provide that Class Members who do not submit a Request for Exclusion may object to the Settlement by mailing a written statement objecting to the Settlement to the Claims Administrator ("Objection"), who will file the Objection with the Clerk of the Court and provide copies to counsel for the Parties. Such written Objection must be postmarked no later than sixty (60) days after the date the Notice Packet is first mailed. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether an Objection to the Settlement has been timely submitted. Class Members who fail to submit timely written Objections in the manner specified in this Agreement shall be deemed to



have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

For an objection to be considered by the Court, an objection must (i) be signed personally by the Class Member submitting the objection (not just by an attorney submitting the objection on behalf of the Class Member); (ii) include the full name, current address, and current telephone number of the objecting Settlement Class Member; (iii) include a statement of the specific grounds for the objection; (iv) state whether the objecting Class Member intends to appear at the Final Approval Hearing and disclose the identity of all counsel who represent the objector and/or will appear at the Final Approval Hearing; and (v) enclose copies of any documents that the objector wishes to submit in support of his/her/their position. Any Class Member who fails to timely file an objection with the Claims Administrator and notice of his/her/their intent to appear at the Final Approval Hearing in accordance with the terms of this section and as detailed in the Notice of Settlement, 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/her/their objections and be forever barred from making any such objections in the Action or any other action or proceeding related to the Released Claims.

(b) Procedure for Requesting Exclusion. The Notice shall provide that members of the Class who wish to exclude themselves from the Settlement must submit a written statement requesting exclusion from the Class. Such written request for exclusion must contain the Class Member's name, address, and telephone number, the case name and number, and a clear statement that the Class Member wishes to be excluded from the Settlement Class ("Request for Exclusion"). The Request for Exclusion must be returned by mail to the Claims Administrator or

Class Counsel at a specified address, and must be postmarked no later than sixty (60) days after the date the Notice Packet is first mailed. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Class Member who opts out of the Class will not be entitled to any recovery under the Settlement and will not be bound by the Agreement or have any right to object, appeal or comment thereon.

(c) No later than seven (7) days after the Claim Deadline, the Claims Administrator shall furnish to the Parties' Counsel a complete list of all Class Members who have timely objected to or requested exclusion from the Settlement.

**15. Remainder Distribution.**

(a) The Claims Administrator will deliver the Settlement Payments to the Claimants as specified above and will forward any returned checks to any forwarding address, if available.

(b) For Class Members who claim into the settlement but fail to negotiate their settlement checks within the time period allotted because the Claims Administrator is unable to deliver a settlement check to a Claimant or for some other reason, their settlement payment shall escheat to the applicable state agency as their unclaimed property and the failure to cash the settlement check within 120 days of issuance shall have no effect on that individual's waiver and release of Released Parties pursuant to the terms of this Agreement or any Claim Form.

**16. Nullification of Agreement.**

In the event: (i) the Court does not approve the Settlement as provided herein, except as to the approval of Class Counsel's attorneys' fees and costs; (ii) the Court does not enter a Final Approval Order as substantially provided herein; or (iii) the Settlement does not become final for any other reason, then this Settlement shall be null and void, and the Parties agree to take any and

all necessary steps to address any concerns raised by the Court and resubmit a revised Agreement if possible. If the Parties cannot agree on a revised Agreement or if the Court denies the approval of a renegotiated Agreement, the Parties agree to take any and all necessary steps to have any order approving the Settlement withdrawn. In such a case, the Parties and any funds to be awarded under this Settlement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been executed, except that any fees already incurred in the administration of the settlement by the Claims Administrator shall be solely the responsibility of Defendant.

Should the Settlement not become final, nothing from the settlement process, including documents created or obtained from the settlement process and settlement administration, shall be admissible in evidence in this Action or used in any way contrary to Defendant's or Plaintiff's and the Class Members' interests. Whether or not the Agreement is finally approved, neither the Agreement nor any document, statement, proceeding, or conduct related to this Agreement, nor any reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to any party. Furthermore, neither the Agreement, any motions filed, settlement proposals exchanged by the Parties, nor Orders entered pursuant to the Agreement, shall constitute an admission, finding, or evidence that any requirement for representative litigation or class certification has been satisfied in this Action, except for the limited settlement purposes pursuant to the terms of the Agreement.

**17. Exhibits and Headings.**

Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement, nor do they alter or limit the terms of each section.

**18. Interim Stay of Proceedings.**

The Parties agree to hold all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, in abeyance pending the Final Approval Hearing to be conducted by the Court. In this regard, the Parties stipulate that until the Settlement is either approved fully or nullified under the circumstances set forth in Paragraph V.16 above, no party need serve or respond to discovery, or file responsive pleadings or motions.

**19. Amendment or Modification.**

This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors in interest.

**20. Entire Agreement.**

This Agreement and any attached Exhibits constitute the entire agreement among these Parties, and no oral or written 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.

**21. Confidentiality.**

Class Counsel and Plaintiff agree that none of the documents and information provided to them by Defendant in this litigation, including but not limited to all documents and information provided to them by Defendant in this Action and in connection with the administration of this Agreement, shall be disclosed to, discussed with, or otherwise shared with anyone or used for any purposes other than the prosecution of this Action and administration of this Agreement. The Parties and their respective counsel agree that they will keep all settlement negotiations and/or communications leading up to the execution of this Agreement strictly confidential, and will not disclose or publicize this Agreement or its terms and conditions except as required by law to secure approval of this Agreement, and provided that Plaintiff may disclose this Agreement to his

immediate family, tax preparers, financial advisors, counsel of record and/or as required by law. The Parties agree that these confidentiality provisions do not include matters relating to “unlawful employment practices,” as that term is defined by the Illinois Workplace Transparency Act.

**22. Authorization to Enter into Agreement.**

All of the Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel. Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. Class Counsel and Plaintiff represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including but not limited to, any interest in the Action, or any related action. The Parties will cooperate with each other and use their best efforts to effect the implementation of the Settlement. The persons signing this Agreement on behalf of Plaintiff and Defendant represent and warrant that they are authorized to sign this Agreement on behalf of Plaintiff and Defendant, respectively.

**23. Binding on Successors and Assigns.**

This Agreement shall be binding upon, and inure to the benefit of, the successors, assigns, executors, administrators, heirs and legal representatives of the Parties hereto, as previously defined. Class Counsel and Plaintiff represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including but not limited to any interest in the Action, or any related action.

**24. Illinois Law Governs.**

All terms of this Agreement and the Exhibits hereto shall be governed by and interpreted according to the laws of the State of Illinois.

**25. Counterparts.**

This 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, provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts. A photocopy, facsimile, or digital image of an executed counterpart shall be enforceable and admissible as an original.

**26. This Settlement Is Fair, Adequate and Reasonable.**

The Parties warrant and represent they have read this Agreement and that they believe this Settlement is a fair, adequate, and reasonable settlement of this Action and have arrived at this Agreement in arms' length negotiations, taking into account all relevant factors, present and potential. This Agreement was reached after extensive negotiations. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other oral or written representations or terms. The Parties acknowledge that they have been represented by counsel of their choice throughout all negotiations that preceded the execution of this Agreement and that this Agreement has been executed with the advice of counsel.

**27. Jurisdiction of the Court.**

The Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their respective counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

**28. Cooperation and Drafting.**

Each of the Parties has cooperated in the drafting and preparation of this Agreement. Hence, in any construction of the terms of this Agreement, the terms shall not be construed against any of the Parties.

**29. Invalidity of Any Provision.**

The Parties to this Agreement agree that each and every provision of this Agreement shall be deemed to be contractual and that they shall not be treated as mere recitals at any time or for any purpose. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to find all provisions of this Agreement valid and enforceable.

**32. Waivers, etc. to Be in Writing.**

No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification or amendment, subject to any required Court approval. Any failure by any party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

**33. Headings.**

The headings used in this Agreement are for convenient reference only, and do not alter or limit the terms of each section.

Dated: \_\_\_\_\_, 2024

**JOSE CARBAJAL**

\_\_\_\_\_  
Jose Carbajal

Dated: \_\_\_\_\_, 2024

**LAW OFFICE OF JAMES X. BORMES, P.C.**

By: \_\_\_\_\_  
James X. Bormes, Plaintiff's Attorney and  
Class Counsel

Dated: \_\_\_\_\_, 2024

**FUCHS LUBRICANTS, CO.**

By: \_\_\_\_\_  
[Name, title]