

SETTLEMENT AGREEMENT AND RELEASE

I. PREAMBLE

1. This Settlement Agreement is made and entered into as of the dates of Execution set forth below, by and among (1) Plaintiff Porchia Heidelberg, individually and on behalf of the Settlement Class, (2) Settlement Class Members, and (3) Forman Mills, Inc.

II. DEFINITIONS

2. “*Action*” means the pending action styled *Heidelberg, individually and on behalf of all others similarly situated, v. Forman Mills, Inc.*, in the Circuit Court of Cook County, Chancery Division, Case No. 2020-CH-0479.

3. “*Agreement*” means this Settlement Agreement and Release.

4. “*Attorneys’ Fees and Litigation Expenses*” means the attorneys’ fees and litigation expenses to be requested by Class Counsel subject to Court approval in accordance with this Agreement to be paid out of the "Settlement Funds."

5. “*Claimant*” means any Settlement Class Member who does not timely opt out of the Settlement.

6. “*Class Counsel*” means Keith J. Keogh and Gregg M. Barbakoff of Keogh Law, Ltd.

7. “*Class List*” means the list of approximately 3,435 Settlement Class Members, which Defendant shall produce to the Settlement Administrator within seven (7) days of the entry of the Preliminary Approval Order, along with the Settlement Class Members’ full names, last known U.S. mailing address, and social security number (if known) in order to provide 1099s to the class members.

8. “*Class Period*” means the period from May 5, 2015 through September 1, 2020.

9. “*Court*” means the Circuit Court of Cook County.

10. “*Defendant*” means Forman Mills, Inc.

11. “*Execution*” means the signing of this Agreement by all signatories hereto.

12. “*Final Approval Hearing*” means the hearing during which the Court considers the Parties’ request to enter the Final Approval Order granting final approval of the Settlement and to determine the amount of Attorneys’ Fees and Litigation Expenses awarded to Class Counsel and the amount of any Settlement Class Representative Incentive Payment.

13. “*Final Approval Order*” means the final judgment and order of dismissal approving the Settlement and dismissing the Action with prejudice, which the Parties agree to propose in the form attached hereto as Exhibit 1. “Final Approval” occurs on the date that the Court enters the Final Approval Order.

14. “**Notice**” means the notices of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for Preliminary Approval of the Settlement, substantially in the form attached hereto as Exhibit 2.

15. “**Notice and Administration Costs**” means any and all costs associated with Claims administration and administering the Settlement by the Settlement Administrator, including, but not limited to, mailing costs, printing costs, taxes, and tax-related expenses incurred by or in connection with handling the Settlement Funds, all costs of providing notice to the Settlement Class, costs for creating the Notice, Website Notice, and any different or additional notice that might be ordered by the Court and any other costs associated with administering the Settlement.

16. “**Notice Deadline**” means the date the Court sets for Notice to be provided to the Settlement Class in accordance with the Agreement. The Parties agree to propose that the Notice Deadline will be 14 days following the entry of the Preliminary Approval Order, unless extended by the Court.

17. “**Opt-Out Request**” means a request by a Settlement Class Member to exclude himself or herself from the Settlement Class using the procedures set forth in this Agreement.

18. “**Opt-Out/Objection Period**” means the period that begins the day after the earliest date on which the Notice is first sent, and ends 60 days after mailing of the Notices to putative class members, or such other date as the Court determines. The deadline for the Opt-Out Period and Objection Period will be specified in the Notice.

19. “**Parties**” means Porchia Heidelberg and Forman Mills Inc.

20. “**Plaintiff**” means Porchia Heidelberg.

21. “**Preliminary Approval Order**” means the order certifying the Settlement Class and preliminarily approving the Settlement, which the Parties agreed to propose in the form attached as Exhibit 3. “Preliminary Approval” occurs on the date the Court enters the Preliminary Approval Order.

22. “**Release**” means the release contained in this Agreement.

23. “**Released Claims**” means all claims to be released as set forth in the Release.

24. “**Released Parties**” means and refers to Forman Mills Inc. and its past, present and future, investors, owners, parents, subsidiaries, affiliates, divisions, officers, directors, shareholders, agents, employees, attorneys, insurers, reinsurers, predecessors, successors, managers, administrators, executors, and trustees.

Released Parties shall not include any entity that manufactured, sold, or otherwise provided Forman Mills Inc. with any finger-scan or hand-scan technology, or any portion thereof, even if such an entity would fall within this definition.

25. “**Releasing Settlement Class Members**” means Plaintiff and all Settlement Class Members, other than those who submit timely and proper Out-Out Requests, and each of their respective

executors, representatives, heirs, spouse, partners, predecessors, assigns, beneficiaries, successors, bankruptcy trustees, agents, attorneys, and all those who claim through them or on their behalf.

26. “**Settlement**” means the compromise and settlement of the Action as contemplated by this Agreement.

27. “**Settlement Administrator**” means Kroll, subject to approval by the Court. The Settlement Administrator shall be responsible for providing the class Notice as well as the services related to the administration of the Settlement that are addressed and defined herein.

28. “**Settlement Award**” means a cash payment that may be available to eligible Settlement Class Members who do not timely opt out of the Settlement.

29. “**Settlement Class**” means the individuals defined and identified as follows:

The approximately 3,435 individuals employed by Defendant Forman Mills Inc. in the State of Illinois who logged onto, interfaced with, or used any software, systems, or devices that used the individual’s finger, hand, or any biometric identifier of any type (“Biometric Systems”) at a Forman Mills location in Illinois between May 5, 2015 and September 1, 2020.

The following are excluded from the Settlement Class: (1) the judge presiding over this case; (2) the judges of the Illinois Appellate Court; (3) the immediate families of the preceding person(s); (4) any Released Party; and (5) any Settlement Class Member who timely opts out of this Action.

30. “**Settlement Class Members**” means the Settlement Class Representative and all members of the Settlement Class.

31. “**Settlement Class Representative**” means Porchia Heidelberg, who is the Plaintiff in the Action, and who is also the person who Class Counsel shall request to be appointed by the Court as Class Representative for purposes of the Settlement Class. Plaintiff is also a member of the Settlement Class.

32. “**Settlement Class Representative Incentive Payment**” means the additional amount Plaintiff may request he be paid as Class Representative under this Agreement.

33. “**Settlement Effective Date**” means the business day after the earlier of following occurrences:

A. Expiration of the date to appeal entry of the Final Approval Order with no appeal or other judicial review having been taken or sought unless there are no objectors in which case the Settlement Effective date will be 7 business days after the Final Approval Order is entered; or

B. If an appeal or other judicial review has been taken or sought on this Action, the latest of: (i) the date the Final Approval Order is finally affirmed by an appellate court with no possibility of subsequent appeal or other judicial review; or (ii) the date the appeal(s) or other judicial review therefrom are finally dismissed with no possibility of subsequent appeal or other judicial review; or (iii) if remanded to the Circuit Court or to a lower

appellate court following an appeal or other review, the date the Final Approval Order is entered by the Circuit Court after remand and the time to appeal or seek other judicial review of the entry of that Final Approval Order has expired with no further appeal or other judicial review having been taken or sought. If further appeal is sought after a remand, the time periods in this Sub-Section shall apply.

34. “**Settlement Costs**” means all costs incurred by Plaintiff, Class Counsel, and the Settlement Administrator in connection with the Action, including but not limited to (i) the Attorneys’ Fees and Litigation Expenses approved by the Court; (ii) any Settlement Class Representative Incentive Payment approved by the Court; (iii) Notice and Administration Costs; and (iv) the fees, expenses, and all other costs of the Settlement Administrator.

35. “**Settlement Funds**” means the \$2,387,325.00 to be provided by Defendant pursuant to this Agreement, for purposes of paying Approved Claims and Settlement Costs, as the foregoing are defined herein.

36. “**Settlement Website**” means the website created and managed by the Settlement Administrator which will provide Settlement Class Members with access to the Notice, the online Claim Form, and other information regarding the Settlement. The Parties agree that the following URL will be used Formansettlement.com.

37. “**Website Notice**” means the long form notice provided pursuant to this Agreement, substantially in the form attached hereto as Exhibit 4. The Website Notice will be posted on the “Settlement Website.”

Capitalized terms used in this Agreement but not defined above shall have the meaning ascribed to them in this Agreement, including the attached exhibits.

III. RECITALS

38. On May 5, 2020, Plaintiff filed the Action on behalf of herself and on behalf of the putative class alleging that Defendant violated the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.*

39. On January 25, 2023, following fact discovery as to the merits and the class, third-party discovery, and arms’-lengths negotiations before Judge Thomas Allen (Ret.) during an all day in person mediation, the Parties were able to reach a settlement in principle.

40. Plaintiff and Class Counsel believe this Action is meritorious. Class Counsel thoroughly investigated the case and diligently pursued Plaintiff’s and the Settlement Class Members’ claims against Defendant. Based on their full, independent investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class Members in light of all known facts and circumstances, including the risk of significant delay, the defenses raised by Defendant, class certification risk, summary judgment risk, the risk associated with potential changes in the applicable law, trial risk and appellate risk.

41. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged, asserts its actions comply with all applicable provisions of federal and state law, and

maintains it is not liable for any of the claims asserted. Defendant also continues to assert the Action fails to meet the prerequisites necessary for class action treatment under applicable law but, despite this belief, it will not oppose certification of the Settlement Class contemplated by this Agreement solely for purposes of effectuating this Settlement. Other than for purposes of this Settlement, Defendant does not waive its objections to certification of the Settlement Class.

42. The Parties contemplate that entry of the Final Approval Order shall dismiss with prejudice Plaintiff's and the Settlement Class Members' claims against Defendant and the Released Parties, with the exception of claims of Settlement Class Members who properly exclude themselves from the Settlement, if any, in accordance with the Opt-Out Process described in Section VIII of this Agreement. Defendant shall retain any existing defenses to such excluded claims. The Parties agree to cooperate in good faith and take all steps reasonable and appropriate to obtain preliminary and final approval of this Settlement, and to effectuate its terms.

43. Each of these Recitals is incorporated into this Agreement as if fully set forth herein.

IV. CERTIFICATION OF THE SETTLEMENT CLASS

44. The Settlement contemplates Plaintiff will move for an order granting certification of the Settlement Class. The Parties agree certification of the Settlement Class is conditional and for settlement purposes only. This Settlement further contemplates, and all counsel, Parties and Released Parties agree that none of the Released Parties are admitting that class certification is appropriate, or that any violation of any state, federal or local statute or common law occurred, or that any damages were suffered by Plaintiff or any putative class member. The Released Parties retain their rights to object to certification of this Action, or any other class action, should the Settlement ultimately not receive final approval.

45. If the Court does not grant final approval of the Settlement, or if final approval is granted but ultimately reversed on appeal, or if the Settlement Effective Date does not occur, the certification of the Settlement Class for settlement purposes shall be deemed null and void, and each Party, and Released Party, shall retain all of their respective rights as they existed prior to Execution of this Agreement, and neither this Settlement Agreement, nor any of its accompanying exhibits or any orders entered by the Court in connection with this Settlement Agreement, may be admissible or used for any purpose in this Action, or any other action against any of the Released Parties. Certification of the Settlement Class for settlement purposes is in no way an admission by the Released Parties that class certification is proper.

V. TERMS OF SETTLEMENT

46. **Settlement Fund.** Subject to the other terms and conditions of this Agreement, and subject to Court approval, within seven business days (7) days of the entry of a Final Approval Order and receipt of Settlement Administrator instructions and a Form W-9 for the Settlement Administrator, Defendant agrees to pay total Settlement Funds of up to TWO MILLION THREE HUNDRED EIGHTLY SEVEN THOUSAND THREE HUNDRED TWENTY FIVE DOLLARS (\$2,387,325.00 minus any funds previously advanced for Notice and Administration Costs. These Settlement Funds will be used to pay Settlement Class Members, Settlement Costs, and Attorney Fees and Litigation Expenses as described in this Agreement. Settlement Class Members who do

not opt out will be eligible for a pro rata share of the balance of the Settlement Fund after Court approved Settlement Costs, and Attorney Fees and Litigation Expenses are paid. The Settlement contemplates the Settlement Funds shall be used to pay Approved Claims and Settlement Costs, except as provided below. The Settlement Funds will be used to satisfy all claims of Plaintiff and the Settlement Class Members in exchange for the comprehensive release and the covenants set forth in this Agreement, including, without limitation, a full, fair, and complete release of all Released Parties from Released Claims, and dismissal of the Action with prejudice.

47. **Notice and Administration Costs.** Notice and Administration Costs shall be advanced by Defendants within seven (7) days after Preliminary Approval is entered and credited against the total amount required to create the Settlement Fund. The Parties shall be jointly responsible for supervising the Settlement Administrator.

48. **Attorneys' Fees and Litigation Expenses.** Attorneys' Fees and Litigation Expenses approved by the Court shall be paid from the Settlement Funds, and from no other source. Class Counsel shall apply to the Court for an award of reasonable Attorneys' Fees and Litigation Expenses. The Settlement Administrator shall pay to Class Counsel the amount of the Attorneys' Fees and Litigation Expenses awarded by the Court, as directed by Class Counsel. In the event the Court does not approve the award of Attorneys' Fees and Litigation Expenses requested by Class Counsel, or the Court awards Attorneys' Fees and Litigation Expenses in an amount less than that requested by Class Counsel, such decision shall not affect the validity and enforceability of the Settlement. Plaintiff and Class Counsel retain their right to appeal any decision by the Court regarding the award of Attorneys' Fees and Litigation Expenses.

49. **Settlement Class Representative Incentive Payment.** Any Settlement Class Representative Incentive Payment shall be paid from the Settlement Funds, and from no other source. Plaintiff may apply to the Court for a Settlement Class Representative Incentive Payment for the Settlement Class Representative (in addition to any *pro rata* distribution he may receive under this Agreement). The Settlement Administrator shall pay Plaintiff, c/o Class Counsel, the amount of incentive payment awarded by the Court. The denial by the Court of any such application shall not affect the validity and enforceability of the Settlement. Plaintiff retains his right to appeal any decision by the Court regarding the application.

50. **Settlement Award to Settlement Class Members.** The Settlement Administrator will manage the notice process in cooperation with Class Counsel and Defendant, and in accordance with this Agreement. All Settlement Class Members who do not opt-out shall be paid by check a *pro rata* share of the Settlement Funds after Settlement Costs are deducted.

VI. NOTICE TO THE CLASS

51. Within seven (7) days of the Court's entry of the Preliminary Approval Order, Defendant shall produce the Class List to the Settlement Administrator.

52. The Settlement Administrator shall implement the notice program, as set forth in this Section and directed by the Court. The Settlement Administrator shall, by the Notice Deadline, provide:

A. **Notice.** The Class Administrator shall provide direct notice via U.S. First Class Mail to each Settlement Class Member. Notice shall be by way of a postcard and shall contain a claim ID and shall direct recipients to the Settlement Website. Prior to mailing the Notice, the Settlement Administrator shall search for updated addresses via the USPS national change of address database. The Settlement Administrator shall re-mail any Notice returned as undeliverable and for which an alternative address can be located, and undertake reasonable means to locate alternative addresses for returned notices.

B. **Website Notice.** The Settlement Administrator will establish and maintain a Settlement Website dedicated to the Settlement, on which will be posted the Website Notice, a copy of this Agreement, the Preliminary Approval Motion and Order, and the operative Complaint, the Motion for an award of Attorneys' Fees and Expenses. These documents shall be available on the Settlement Website promptly following entry of the Preliminary Approval Order and remain until after the stale date of the Settlement Awards. The Settlement Website shall allow Settlement Class Members to update their contact information. The Settlement Administrator shall secure the URL Formansettlement.com for the Settlement Website, or, if unavailable, shall secure another URL mutually agreed upon by the Parties or determined by the Court.

VII. OPT-OUT PROCESS

53. A Settlement Class Member who wishes to exclude himself or herself from this Settlement, and from the Release pursuant to this Settlement, shall submit a written Opt-Out Request to the Settlement Administrator at the address designated in the Notice no later than the Claim Filing/Objection Deadline. Opt-Out Requests must: (i) be timely submitted by the Claim Filing/Objection Deadline; (ii) be signed by the person in the Settlement Class who is requesting to be excluded from the Settlement Class; (iii) include the name and address of the person in the Settlement Class requesting exclusion; and (iv) include a statement or words to the effect of the following: "I request to be excluded from the settlement in the Heidelberg v. Forman Mills, Inc. action, and understand that by doing so I will not be entitled to receive any of the benefits from the settlement." No person in the Settlement Class, or any person acting on behalf of or in concert or participation with that person in the Settlement Class, may exclude any other person in the Settlement Class from the Settlement Class.

54. The Settlement Administrator shall maintain a list of persons who have submitted Opt-Out Requests and shall provide such list to the Parties upon written request.

VIII. OBJECTION PROCESS

55. A Settlement Class Member who wishes to object to any matter concerning the Settlement must notify the Court and the Parties' counsel of his or her objection, in writing, on or before the Claim Filing/Objection Deadline, or other deadline set by the Court.

56. To state a valid objection to the Settlement, an objecting Settlement Class Member must personally sign the objection and provide the following information with it: (i) full name, current address, and current telephone number; (ii) documentation sufficient to establish membership in the Settlement Class; (iii) a statement of reasons for the objection, including the factual and legal

grounds for the objector's position; and (iv) copies of any other documents the objecting Settlement Class Member wishes to submit in support of his/her/its position.

57. Subject to approval of the Court, an objecting Settlement Class Member may, but does not need to, appear in person or by counsel at the Final Approval Hearing. To do so, the objecting Settlement Class Member must file with the Court, and serve on all counsel designated in the Notice, a notice of intention to appear by the Claim Filing/Objection Deadline, or other deadline set by the Court. The notice of intention to appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member (or his/her/its counsel) will present to the Court in connection with the Final Approval Hearing. Unless otherwise ordered by the Court, any Settlement Class Member who does not timely provide a notice of intention to appear in conformance with the requirements set out in the Notice and Website Notice, and who has not timely filed an objection in accordance with the requirements set out in the Notice and Website Notice, will be deemed to have waived any objection to the Settlement and can be barred from presenting any views at the Final Approval Hearing.

IX. DISTRIBUTION PROCESS

58. The timing of Defendant's payment of the Settlement Funds is:

A. Within 7 days after the Court enters the Preliminary Approval Order, Defendant shall transfer the Notice and Administration Costs to the Settlement Administrator. In the event that the Settlement Effective Date does not occur, any amounts actually used by the Settlement Administrator for notice and administration shall not be refundable to Defendant. If, however, Defendant has paid monies for Notice and Administration Costs which have not been used by the Settlement Administrator, those amounts not used by the Settlement Administrator shall be refunded to Defendant.

B. Within 7 days after the Settlement Effective Date, Defendant shall pay the remainder of the Settlement Funds to the Settlement Administrator. Class Counsel shall instruct the Settlement Administrator as to whom the Attorneys' Fees and Litigation Expenses and any Settlement Class Representative Incentive Payment should be distributed. Defendant shall not, under any circumstances or for any reason, be obligated to pay any amounts in addition to the Settlement Funds in connection with the Settlement.

59. ***Settlement Award Payments.*** Settlement Awards shall be paid by check. Within thirty (30) days after the Settlement Effective Date, the Settlement Administrator shall send the Settlement Award along with an applicable Form 1099 if required to each eligible Settlement Class Member. The Settlement Administrator shall undertake reasonable means to locate current addresses for all returned checks. Checks will be valid for one-hundred twenty (120) days from the date on the check. The amount remaining in the Settlement Fund, including the amounts of any checks that remain uncashed more than one-hundred twenty (120) days after the date on the check, shall be returned to Defendant's insured after any open administrator fees are paid.

X. RELEASE

60. Subject to the Court's final approval of the Settlement, and for good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, all Settlement Class Members who do not timely opt-out of the Settlement Agreement, and all their respective heirs, assigns, executors, administrators, and agents, past or present, fully and without limitation release and discharge each and every Released Party from any and all claims, rights, demands, liabilities, and/or causes of action of every nature and description, whether known or unknown, which relate in any way to information that is or could be protected under the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 et seq., or any other similar state, local, or federal law, regulation, or ordinance, or common law, regarding the use, collection, capture, receipt, maintenance, storage, transmission, or disclosure of biometric identifiers that Settlement Class Members claim, might claim, or could have claimed in any court or administrative proceeding. This Release includes, without limitation, statutory, constitutional, contractual, and/or common law claims for damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs and interest, restitution, or equitable relief to the extent permitted by applicable law for all periods up to and including the date of Final Approval (the "Released Claims").

61. Releasing Settlement Class Members understand and agree that the release of the Released Claims is a full and final release. Releasing Settlement Class Members acknowledge the facts could be different than they now know or suspect to be the case, but they are nonetheless releasing all Released Claims.

62. Subject to the Court's final approval of the Settlement, and for good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, as discussed above, Plaintiff releases and discharges each and every Released Party from any and all claims, rights, demands, liabilities, and/or causes of action of every nature and description, whether known or unknown arising for all periods through the date of the Court's Final Approval Order.

(i) Notwithstanding any other provision of this Settlement Agreement, this release does not (i) waive or release any claim for breach or enforcement of this Settlement Agreement; (ii) waive or release any right or claim that may not be waived or released by applicable law; or (iii) prevent Plaintiff from pursuing any administrative claim for unemployment compensation or workers' compensation benefits. Nothing in this Settlement Agreement precludes Plaintiff from (i) reporting to, responding to an inquiry from, filing a charge or complaint with, communicating with or providing information to, contacting, or cooperating with an investigation conducted by, the Equal Employment Opportunity Commission, the Department of Labor, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission, or any other federal, state, or local governmental agency, commission, or regulatory body, but Plaintiff hereby waives any right to monetary compensation from the Defendants for such actions of filings; (ii) providing information about this Settlement Agreement to her spouse, attorney, accountant, tax advisor (if any) and applicable state and federal taxing authorities; (iii) making disclosures or giving truthful testimony as required by law or valid legal process (such as by a subpoena or administrative order); or (iv) engaging in any concerted or other legally-protected activities.

63. The Parties acknowledge that this Settlement, including the releases provided in this Section, reflects a compromise of disputed claims.

64. The Final Approval Order shall dismiss the Action with prejudice and shall incorporate the terms of this release.

XI. DUTIES OF THE PARTIES WITH RESPECT TO OBTAINING PRELIMINARY APPROVAL

65. Class Counsel shall apply to the Court for the entry of an order requesting the following relief:

- A. Preliminarily approving the Settlement;
- B. Conditionally certifying the Settlement Class for settlement purposes in accordance with applicable legal standards and this Agreement;
- C. Approving the form and content the proposed Notice, and plan for its distribution;
- D. Scheduling a fairness hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate;
- E. Formally appointing Class Counsel as class counsel;
- F. Approving Plaintiff as Settlement Class Representative;
- G. Approving the Settlement Administrator; and
- I. Setting the Notice Deadline, Objection Deadline, and Opt Out Period.

XII. DUTIES OF PARTIES FOLLOWING PRELIMINARY COURT APPROVAL

66. Following Preliminary Approval of the Settlement, and no later than the filing of the motion for final approval, Class Counsel will submit a proposed Final Approval Order in substantially the form attached hereto as Exhibit 2, except as otherwise required by the Court.

XIII. MUTUAL FULL COOPERATION

67. The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement, including but not limited to execution of all necessary documents, and to take such other action as may be needed to implement the terms of this Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court or otherwise, to effectuate the terms of this Settlement. As soon as practicable after Execution of this Settlement, Class Counsel shall, with the reasonable assistance and cooperation of Defendant and its counsel, take all reasonable and necessary steps to secure the Court's Final Approval Order.

XIV. CONDITIONS FOR TERMINATING THE AGREEMENT

68. In the event that this Settlement is not approved, or if for any reason the Settlement Effective Date does not occur, the Settlement Agreement shall be deemed null, void, and unenforceable and shall not be used nor shall it be admissible in any subsequent proceedings either in this Court or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, and the Parties shall return to their respective positions prior to the Court's consideration of this Settlement. However, the Parties may agree to seek approval of an amended version of the Settlement.

69. In the event that the Court does not approve the Attorneys' Fees and Litigation Expenses in the amount requested by Class Counsel, or in the event that the Attorneys' Fees and Litigation Expenses requested by Class Counsel is reduced, that finding shall not be a basis for rendering the entire Settlement Agreement null, void, or unenforceable. Class Counsel retains their right to appeal any decision by the Court regarding the Attorneys' Fees and Litigation Expenses.

XV. SIGNATORIES' AUTHORITY

70. The respective signatories to this Agreement each represent that they are fully authorized to enter into this Settlement on behalf of the respective Parties for submission to the Court for preliminary and final approval.

XVI. NO PRIOR ASSIGNMENTS

71. The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

XVII. NOTICES

72. Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given: (i) on the date given, if given by hand delivery; (ii) within one (1) business day, if sent by overnight delivery services such as Federal Express or similar courier; (iii) on the third business day after mailing by United States registered or certified mail, return receipt requested, or (iv) on the day received for delivery by e-mail. All notices given under this Agreement shall be addressed as follows:

A. To the Class:

Keith J. Keogh
Gregg M. Barbakoff
Keogh Law, LTD.
55 W. Monroe St., Ste. 3390
Chicago, IL 60603
keith@keoghlaw.com
gbarbakoff@keoghlaw.com

B. To Defendant:

J. Hayes Ryan
Gordon Rees Scully Mansukhani, LLP
1 N. Franklin St., Ste. 800
Chicago, IL 60606
hayesryan@grsm.com

XVIII. MISCELLANEOUS PROVISIONS

73. **Construction.** The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties and that this agreement shall not be construed in favor of or against any party by reason of the extent to which any party or his or its counsel participated in the drafting it.

74. **Captions and Interpretations.** Paragraph titles or captions contained in this Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision of this Agreement. Each term of this Agreement is contractual and not merely a recital.

75. **Modification.** This Agreement may not be changed, altered, or modified, except in a writing signed by the Parties. Any such modification is subject to Court approval.

76. **Integration Clause.** This Agreement, the exhibits hereto, and any other documents delivered pursuant hereto contain the entire agreement between the Parties relating to the resolution of the Action, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged in this Agreement. No rights under this Settlement may be waived except in writing and signed by the Party against whom such waiver is to be enforced.

77. **Binding on Assigns.** This Settlement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.


78. **Counterparts.** This Agreement may be executed by facsimile signature and in any number of counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one and the same Agreement, which shall be binding upon and effective as to all Parties.

79. **Disagreements.** The Parties agree the Court shall resolve any disagreements over the meaning or implementation of this Agreement or the Settlement.

80. **Applicable Law.** This Agreement shall be governed by Illinois law without regard to its choice of law or conflicts of law principles or provisions.

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ACCEPTED AND AGREED:


Porchia Heidelberg (Mar 7, 2023 17:11 CST)

Porchia Heidelberg

Mar 7, 2023

Date

APPROVED AS TO FORM:



Counsel for Plaintiff and the Class
Keith J. Keogh
KEOGH LAW, LTD.

Mar 7, 2023

Date

ACCEPTED AND AGREED:



Forman Mills Inc.

By: Mike Kvitko

Title: President & CEO

March 8, 2023

Date

APPROVED AS TO FORM:



Counsel for Defendant

J. Hayes Ryan

Gordon Rees Scully Mansukhani, LLP

March 9, 2023

Date