

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

THOMAS BURLINSKI and MATTHEW
MILLER on behalf of themselves and all other
persons similarly situated, known and unknown,

Plaintiffs,

v.

TOP GOLF USA INC., TOPGOLF USA SALT
CREEK, LLC, and TOPGOLF USA
NAPERVILLE, LLC,

Defendants.

Case No. 1:19-cv-06700

Judge Edmond E. Chang

Magistrate Judge Young B. Kim

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Settlement” or “Settlement Agreement”) is made by Plaintiffs Thomas Burlinski and Matthew Miller (“Plaintiffs” or “Settlement Class Representatives”), individually and on behalf of the Settlement Class Members they seek to represent (“Settlement Class” or “Settlement Class Members,” as defined below), and Top Golf USA Inc., Topgolf USA Salt Creek, LLC, and Topgolf USA Naperville, LLC (collectively “Defendants” or “Topgolf”) (Plaintiffs and Defendants are collectively referred to as the “Parties”), in the above-captioned action (“Action”).

I. PROCEDURAL HISTORY

On March 4, 2019, plaintiff Thomas Burlinski filed a Class Action Complaint in the Circuit Court of DuPage County, alleging that defendants Top Golf USA Inc. and Topgolf USA Salt Creek, LLC violated the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*, by requiring him and other employees to use a biometric timekeeping system as part of their jobs. In particular, plaintiff Burlinski alleged that defendants violated BIPA in three ways: (1) collecting biometric fingerprint identifiers and information from him and other Illinois employees

without following BIPA's informed written consent procedures; (2) possessing biometric identifiers and information without a publicly available data retention schedule and destruction policy; and (3) disclosing biometric identifiers and information from him and other employees to defendants' timekeeping vendor without consent.

On July 31, 2019, in response to Defendants' Section 2-619 Motion to Dismiss, plaintiff Burlinski received leave of court to file a First Amended Complaint. The amended pleading re-organized Burlinski's single count BIPA claim into three counts and dropped his negligence and emotional distress claims in response to defendants' argument that his lawsuit was preempted by the Illinois Workers' Compensation Act's ("IWCA") exclusive remedy provisions.

On September 11, 2019, plaintiff Burlinski filed a Second Amended Class Action Complaint to add a second proposed class representative, Matthew Miller, and a third defendant, Topgolf USA Naperville, LLC. Topgolf removed the case to federal court on October 9, 2019. Topgolf subsequently moved to dismiss on October 31, 2019, arguing that Plaintiffs' claims (1) were preempted by the IWCA, (2) accrued with the "first collection" of plaintiffs' alleged finger scan and were untimely under the one or two-year statutes of limitations, and (3) failed to adequately plead a "reckless" violation of BIPA. On November 1, 2019, Plaintiffs filed a Motion to Remand the case to state court. On December 9, 2019, Topgolf moved for leave to supplement its Motion to Dismiss to add that BIPA is unconstitutional "special legislation" in violation of Article IV, Section 13 of the Illinois Constitution. The Court denied Topgolf's motion to supplement on January 9, 2021.

On September 3, 2020, the Court issued a written opinion denying Topgolf's Motion to Dismiss. The decision did not address Topgolf's "first collection" accrual argument. The Court denied Plaintiffs' Motion to Remand as to the Section 15(b) and 15(d) claims but held there was

no Article III standing to support Plaintiffs' Section 15(a) claim for failure to provide a publicly-available retention and destruction policy and remanded the Section 15(a) claim. On October 9, 2020, defendants filed their Answer and Affirmative and Other Defenses to the Second Amended Complaint.

Defendants twice moved to stay discovery based on the financial hardship Topgolf suffered during the COVID-19 pandemic and because various interlocutory appeals were pending that were potentially case-dispositive. *See McDonald v. Symphony Bronzeville Park, LLC*, Ill. Sup. Ct. No. 126511, *In Re: White Castle System, Inc.*, No. 20-8029, and *Tims v. Black Horse Carriers, Inc.*, No. 1-20-0563. On September 28, 2020, the Court denied Topgolf's initial Motion to Stay without prejudice to its renewal and, on October 12, 2020, ordered discovery to proceed on the merits of the named Plaintiffs' claims and the propriety of class certification. Defendants renewed their Motion to Stay on November 13, 2020, and the Court directed that discovery continue until it ruled on the pending motion.

The Parties served interrogatories and requests to produce, responded to written discovery requests and produced responsive documents. Plaintiffs also served two subpoenas on Topgolf's third-party vendors. On February 4, 2021, the Court denied Defendants' Motion to Stay (Renewed), and the parties proceeded to mediation. On February 19, 2021, the Parties filed a Joint Motion to Pause discovery pending mediation, which the Court granted on February 25, 2021.

The Parties scheduled a private mediation with experienced mediator and retired federal Magistrate Judge Sidney I. Schenkier. In advance of mediation, the Parties exchanged mediation statements with the relevant legal and factual arguments for their respective positions in the case. On April 16, 2021, the Parties participated in a day-long mediation with Judge Schenkier (Ret.).

Through mediation, the Parties reached a settlement in principle. That settlement is now memorialized in this Settlement Agreement.

II. TOPGOLF DENIES LIABILITY

At all times, Topgolf has denied and continues to deny that it did anything wrong or that it violated BIPA or any law or duty alleged in this Action. Nonetheless, taking into account the uncertainty and risks inherent in any litigation and the desire to avoid the expenditure of further legal fees and costs, Topgolf has concluded it is desirable and beneficial that the Action be fully and finally settled and terminated as set forth in this Settlement Agreement to avoid further expense, inconvenience, and burden.

Neither the Settlement documents nor any other item pertaining to the Settlement contemplated herein shall be offered in any other case or proceeding for any purpose, including as evidence of any admission by Topgolf of any liability with respect to any claim for damages or other relief, or of any admission by Plaintiffs that they would not have prevailed on liability on any of their claims. Any stipulation or admission by Topgolf or Plaintiffs contained in any document pertaining to the Settlement is made for settlement purposes only and shall not be construed as, offered or admitted into evidence, or be deemed to be evidence for any purpose adverse to Topgolf or any Party released under this Agreement, except for purposes of settling this Action or enforcing settlement of this Action. Except for the sole purposes of seeking and obtaining approval of the settlement in this Action, nothing contained herein shall be construed as a waiver by or estoppel against Topgolf of its contention that class certification is not appropriate or is contrary to law in this Action or any other case or proceeding, or by Plaintiffs of their contention that class certification is appropriate in this case or any other case or proceeding.

III. CERTIFICATION OF THE SETTLEMENT CLASS

Settlement Class Counsel shall request that the Court enter a certification order and certify for settlement purposes only the following settlement class, defined as:

All Illinois employees who used a biometric fingerprint or finger scanner at Topgolf venues in Illinois during the Class Period without first signing a biometric consent form, and do not timely exclude themselves from the settlement (“the Settlement Class” or “Settlement Class Members”).

The “Class Period” is March 4, 2014 to the date of preliminary approval. Defendant estimates there are 2,660 Settlement Class Members.

IV. SETTLEMENT TERMS

1. Final Approval; Waiver of Appeal; Settlement Date

The term “Final Approval” means the date on which the Court enters an order granting final approval of the Settlement. Plaintiffs, individually, and Topgolf waive their right to appeal entry of Final Approval, provided it is consistent with all the terms of this Agreement.

The “Effective Date” for purposes of this Agreement means one business day following the later of: (i) the date upon which the time period expires for filing or noticing any appeal of the Final Approval; or (ii) if there is an appeal or appeals, the day after all appeals are resolved in favor of Final Approval and no further appeals are possible.

2. Gross Fund; Net Fund; and Allocation to Settlement Class Participants

The term “Gross Fund” means the \$2,633,400 that Topgolf will pay to settle the claims of Settlement Class Members in the Action. The Gross Fund is the maximum amount that Topgolf shall be obligated to pay under this Settlement, unless the number of the Settlement Class Members increases by more than 3% over the current estimate of 2,660, in which case the Gross Fund shall be increased on a pro rata basis (i.e., \$990 per person added over the current estimate of 2,660). The Gross Fund shall be decreased on a pro rata basis for each Settlement Class Member that

timely and validly requests to be excluded from the Settlement Class (i.e., \$990 less for each Settlement Class Member that timely and validly requests to be excluded from the settlement). Other than any reductions in the Gross Fund based on timely and valid requests for exclusion, none of the Gross Fund shall revert back to Topgolf.

The term “Net Fund” is the Gross Fund minus the following deductions, which are subject to Court approval: Settlement Class Counsel’s attorney fees and costs; the Settlement Administrator’s costs; and the Settlement Class Representatives’ Service Awards.

The Net Fund shall be distributed pro rata to Settlement Class Members who do not timely and validly exclude themselves (“Settlement Class Participants”). Class Members are not required to submit a claim form to receive payment. Because of this method of allocation to Settlement Class Participants, there will be no unclaimed funds in the Settlement.

3. Release of Claims

a. Definitions

The term “Released Parties” means Topgolf and each of Topgolf’s affiliates, parents, subsidiaries, divisions, assigns, predecessors and successors and the past and present officers, directors, shareholders, members, employees, agents, insurers and attorneys of these entities, their employee benefit plans and the sponsors, fiduciaries or administrators of said employee benefit plans (hereafter referred to collectively as the “Released Parties”). Secret POS Systems, Inc. d/b/a Focus POS Systems, Inc. and Alpha POS Services, Inc. are expressly excluded from this release.

b. Release for Settlement Class Members

Subject to final approval by the Court of the Settlement, Settlement Class Members who do not timely and validly exclude themselves from the Settlement forever waive and release any and all claims which they have or may have against the Released Parties under the Biometric Information Privacy Act, and other related federal, state, and local laws and common law

including, but not limited to, claims for statutory or liquidated damages, actual damages, penalties, declaratory or injunctive relief, attorneys' fees, costs, expenses and interest.

c. General Release for Plaintiffs/Settlement Class Representatives

In exchange for their Service Awards, Thomas Burlinski and Matthew Miller forever waive and release any and all claims which they have or may have against the Released Parties arising out of their employment with defendants, the termination of their employment with defendants, the Biometric Information Privacy Act and other related federal, state, and local laws and common law, claims for statutory or liquidated damages, actual damages, penalties, declaratory or injunctive relief, attorneys' fees, costs, expenses and interest; any violation of any law, constitution, statute, regulation, city or local ordinance including, but not limited to, any common law claim (e.g., wrongful discharge, defamation, invasion of privacy, infliction of emotional distress, negligence, breach of any contractual obligations, representations or warranties, interference with contractual or business relations or any other tort or breach of contract claim); any right to continued employment or reemployment with the Company; and any claim for additional compensation beyond what the Company offered in the Settlement Agreement.

4. Settlement Administration

The Plaintiffs have selected Analytics Consulting LLC ("Settlement Administrator") to issue notice and administer this Settlement. The Settlement Administrator's costs, capped at \$30,000, shall be paid from the Gross Fund. The Parties agree to cooperate in the Settlement administration process and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the Settlement.

5. Timeline of Settlement Events

The Parties contemplate the following timeline for settlement events:

- a. Within twenty-eight (28) days after the Court grants preliminary approval of the Settlement, Topgolf will provide the Settlement Administrator and Settlement Class Counsel with a “Class List” in Microsoft Excel spreadsheet format that shall contain Settlement Class Members’ contact information, including names, addresses, dates of employment, social security numbers, cell phone numbers (if available), and personal email addresses (if available). Topgolf will provide a declaration from Topgolf’s employee who compiled the class list. The Parties will discuss representations that need to be in the declaration.
- b. Within twenty-eight (28) days after the Court grants preliminary approval of the Settlement, or within twenty-eight (28) days after Topgolf receives the information from the Settlement Administrator needed to transfer such funds to the Qualified Settlement Fund, whichever is later, Topgolf shall fund the \$30,000 available for notice and settlement administration to the Qualified Settlement Fund established by the Settlement Administrator.
- c. Before the deadline to distribute class notice, the Settlement Administrator shall establish a Settlement website where Settlement Class Members can access settlement documents, read answers to frequently asked questions, and see settlement deadlines. The website address will be www.TGfingerscansettlement.com or another website address agreed to by the parties. The Settlement website shall include a brief description of the claims asserted in the Action, the Notice of Class Action Settlement (“Notice”), the Settlement Agreement, the Preliminary Approval Order, the Motion for Attorney Fees, Costs, and Settlement Class Representatives’ Service Awards (once

available), the Motion for Final Approval (once available), and the Final Approval Order (once available). The Settlement website shall identify the contact information for the Settlement Administrator, Settlement Class Counsel, and describe how Settlement Class Members may obtain more information about the Settlement and will include information on how to object to or request exclusion from the Settlement. The Parties will agree upon and approve the language to be contained on the website, consistent with the representations above. The website will be taken down within five business days following the expiration of the check cashing deadline.

- d. The Settlement Administrator will mail a Notice to everyone on the Class List in accordance with Section IV.10(b)(1) of this Settlement Agreement within fourteen (14) days after receiving the Class List. The same day, the Settlement Administrator shall send the notice communication described in Section IV.10.(b)(3)-(4) to Settlement Class Members to their personal email addresses (if that form of contact information exists for Settlement Class Members).
- e. Settlement Class Counsel shall file a motion for attorney fees, litigation costs, settlement administration costs, and the Settlement Class Representatives' Service Awards within thirty (30) days from the date of the mailing of the notice to Settlement Class Members. Settlement Class Counsel shall provide this motion to the Settlement Administrator to be posted on the Settlement website so that Settlement Class Members may obtain a copy during the objection/exclusion period as described in the notice.

- f. All requests for exclusion from the Settlement must be postmarked or returned to the Settlement Administrator within sixty (60) days from the date of the initial distribution of the Notice to Settlement Class Members.
- g. All objections to the Settlement must be postmarked or returned to the Settlement Administrator within sixty (60) days from the date of the initial distribution of the notice to Settlement Class Members. Within three days of receiving an objection, the Settlement Administrator shall provide the objection, and any supporting materials, to counsel for the Parties. Within one business day of receiving an objection from the Settlement Administrator, Settlement Class Counsel shall file the objection with the Court.
- h. Settlement Class Counsel will file a motion for final approval of this Settlement within seven (7) days before the Final Approval Hearing or such other date as set by the Court. Settlement Class Counsel shall provide that motion in advance to Topgolf's counsel for review and approval, which shall not be unreasonably withheld.
- i. No later than fourteen (14) days after the Effective Date, Topgolf will transfer the remainder of the Gross Fund, less the amount already transferred for Settlement Administration (pursuant to Section IV.4 above) and less any opt-outs (pursuant to Section IV.2), to the Qualified Settlement Fund account established by the Settlement Administrator.
- j. Within twenty-eight (28) days of the Effective Date, the Settlement Administrator will mail or deliver the following payments: (1) Settlement award payments to Settlement Class Participants; (2) the Settlement Class Representatives' Service

Awards; and (3) Settlement Class Counsel's award of attorney fees and litigation costs (by wire transfer).

- k. The deadline for Settlement Class Participants to cash checks will be one hundred and fifty (150) days from the date the checks are issued by the Settlement Administrator.
- l. Within twenty-one (21) days after the deadline for Settlement Class Participants to cash checks, the Settlement Administrator shall distribute funds from uncashed checks in accordance with Section IV.9 of this Agreement and the Court's order(s).

6. Tax Treatment of Settlement Awards

For income tax purposes, the Parties agree that, if required by law, Settlement Class Participant settlement awards shall be allocated as non-wage income and shall not be subject to required withholdings and deductions. The Settlement Class Representatives' Service Awards shall be allocated as non-wage income and shall not be subject to required withholdings and deductions and shall be reported as non-wage income as required by law. If required by IRS regulations, the Settlement Administrator shall issue to each Settlement Class Participant an IRS Form 1099. Other than the reporting requirements herein, Settlement Class Participants shall be solely responsible for the reporting and payment of their share of any federal, state and/or local income or other taxes on payments received pursuant to this Settlement Agreement.

7. Settlement Class Counsel's Attorney Fees and Costs

- a. Settlement Class Counsel may request that the Court award them up to one-third of the Gross Fund as attorney fees plus their litigation expenses.
- b. The award of attorney fees and litigation expenses approved by the Court shall be paid to Settlement Class Counsel from the Gross Fund.

c. In the event that the Court does not approve the award of attorney fees and litigation expenses requested by Settlement Class Counsel, or the Court awards attorney fees and litigation expenses in an amount less than that requested by Settlement Class Counsel, such decision shall not affect the validity and enforceability of the Settlement and shall not be a basis for rendering the entire Settlement null, void, or unenforceable.

d. Settlement Class Counsel may appeal the award of attorney fees and litigation expenses should the sum awarded by the Court fall below the amount requested by Settlement Class Counsel, provided that the request Settlement Class Counsel makes is consistent with the Settlement Agreement. If Settlement Class Counsel elects not to appeal or if the appeals court affirms the decision, only the reduced amounts will be deemed to be Settlement Class Counsel's attorney fees and litigation expenses for purposes of this Settlement Agreement. Any amounts for Settlement Class Counsel's attorney fees and litigation expenses not awarded shall be added to the Net Fund available for distribution to Settlement Class Participants as settlement awards.

e. The payment of the award of attorney fees and litigation expenses to Settlement Class Counsel shall constitute full satisfaction of the obligation to pay any amounts to any person, attorney or law firm for attorney fees or litigation expenses in the Action incurred by any attorney on behalf of the Settlement Class Representatives and the Settlement Class Members, and shall relieve Topgolf, the Released Parties, the Settlement Administrator, and Topgolf's Counsel of any other claims or liability to any other attorney or law firm for any attorney fees, expenses and/or costs to which any of them may claim to be entitled on behalf of the Settlement Class Representatives and the Settlement Class Members. In exchange for such payment, Settlement Class Counsel will release and forever discharge any attorneys' lien on the Gross Fund.

8. Service Awards

Settlement Class Counsel will apply for “Service Awards” of up to \$7,500 for each of the Settlement Class Representatives in exchange for a general release of all claims against the Released Parties, to be paid for their time and effort spent conferring with Settlement Class Counsel, pursuing the Action in their own names, answering written discovery, and recovering compensation on behalf of all Settlement Class Members. Topgolf agrees not to oppose such application, so long as it is consistent with the provisions of this Settlement Agreement. Subject to Court approval, the Service Awards shall be paid from the Gross Fund, in addition to the Settlement Class Representatives’ settlement awards. Any amount of the Service Awards not awarded shall be added to the Net Fund available for distribution to Settlement Class Participants.

9. Uncashed Checks

Any checks that remain uncashed after one hundred and fifty (150) days from the date they are issued by the Settlement Administrator shall be deemed void. The Parties agree that the Settlement Administrator will distribute funds from each of these uncashed checks to the Unclaimed Property Division of the Illinois Treasurer’s Office and shall identify each individual Settlement Class Participant who did not cash his or her check.

10. Approval of Settlement; Notice; Settlement Implementation

As part of this Settlement, the Parties agree to the following procedures for obtaining preliminary Court approval of the Settlement, notifying Settlement Class Members, obtaining final Court approval of the Settlement, and processing the settlement awards:

a. Preliminary Approval Hearing. The Settlement Class Representatives shall file a motion for preliminary approval of the Settlement as soon as is reasonably possible. With the motion for preliminary approval, the Settlement Class Representatives will submit this Agreement and accompanying attachment(s).

b. Notice to Settlement Class Members. Notice of the Settlement shall be provided to Settlement Class Members, and Settlement Class Members shall submit any objections to the Settlement, and/or requests for exclusion from the Class, using the following procedures:

(1) Mailed Notice to Settlement Class Members. On the timetable specified in Section IV.5 of this Settlement Agreement, the Settlement Administrator shall send a copy of the Notice of Class Action Settlement, attached hereto as Attachment A, to Settlement Class Members via First Class regular U.S. mail. The Notice will be mailed using the most current mailing address information for Settlement Class Members, which the Settlement Administrator shall obtain by running each Settlement Class Member's name and address through the National Change of Address (NCOA) database or comparable databases. The front of the envelopes containing the Notice will be marked with words identifying the contents as important documents authorized by the Court and time sensitive. For Settlement Class Members whose notices are returned as undeliverable without a forwarding address, the Settlement Administrator shall promptly run a search in Experian or similar database search to locate an updated address and shall promptly mail the Notice to the updated address. If after this second mailing, the Notice is again returned as undelivered, the notice mailing process shall end for that Settlement Class Member (except as provided in Section 10.b.(2), below)

(2) Updated Contact Information

Settlement Class Members should contact the Settlement Administrator to update their mailing addresses as necessary. Settlement Class Counsel will forward any updated contact information they receive from Settlement Class Members to the Settlement Administrator. The Settlement Administrator will reissue the Notice to any Settlement Class Members who provide updated contact information prior to the "Exclusion Deadline Date," as defined in Section IV.11.

(3) Email Notice

On the timetable specified in Section IV.5 of this Settlement Agreement, and for Settlement Class Members for whom the Settlement Administrator is provided or obtains a personal email address, the Settlement Administrator shall email notice as described in this Section. The subject of this email shall state: “Legal Notice: Topgolf Finger Scan Lawsuit Settlement.” The body of the email shall state as follows:

“Top Golf USA Inc., Topgolf USA Salt Creek, LLC, and Topgolf USA Naperville, LLC (“Topgolf”) have settled a class action lawsuit that claims Topgolf violated Illinois law by collecting fingerprint scan data from Illinois employees through a biometric timekeeping system without written notice and consent. While Topgolf has denied any legal violation occurred, the parties have reached a compromise to end this litigation, and avoid the related time, expense and uncertainty of further litigation. The Settlement includes all Illinois employees who used a biometric fingerprint or finger scanner at Topgolf venues in Illinois from March 4, 2014 to [insert the date of preliminary approval] without first signing a biometric consent form. To learn about the settlement and your rights in it, please review the Notice of Class Action Settlement available at the settlement website: www.TGfingerscansettlement.com or another website address agreed to by the parties. As further explained in the Notice of Class Action Settlement, if you do not exclude yourself from the settlement and the Court grants final approval, a settlement check will be mailed to you at the same address where you received the mailed Notice. If you did not receive the Notice in the mail you will need to update your address. To update your address, please call or email the Settlement Administrator at [insert name, phone number, and email address].”

11. Procedure for Objecting, or Requesting Exclusion from Class Action Settlement

a. Procedure for Objecting. The Notice shall provide that Settlement Class Members who wish to submit written objections to the Settlement must mail or email them to the Settlement Administrator on or before 60 days from Notice distribution. To state a valid objection to the Settlement, an objecting Settlement Class Member must sign the objection and provide: (i) full name, current address, current telephone number, and the last four digits of his or her Social Security Number; (ii) a statement of the position or objection the objector wishes to assert, including the grounds for the position and objection; (iii) copies of any other documents that the objector wishes to submit in support of his/her/its position; and (iv) a statement of whether the objection applies only to the objector, a specific subset of the class, or to the entire class. No later than three (3) days after receiving an objection, the Settlement Administrator shall furnish Settlement Class Counsel and Topgolf's Counsel a copy of the objection. No later than one business day after receiving an objection from the Settlement Administrator, Settlement Class Counsel shall file the objection with the Court. Subject to approval of the Court, any objecting Settlement Class Member may appear in person or by counsel at the final approval hearing held by the Court to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate, or to object to any petitions for attorney fees, reimbursement of reasonable litigation costs and expenses, and service awards.

b. Procedure for Requesting Exclusion. The Notice shall provide that Settlement Class Members who wish to exclude themselves from the Class must submit a written statement requesting exclusion from the Class by mail or email to the Settlement Administrator on or before the 60 days from Notice distribution ("Exclusion Deadline Date"). Such written request for exclusion must contain the Class Member's full name, address, telephone number, and the last

four digits of his or her social security number, a statement that the Settlement Class Member wishes to be excluded from the Settlement and must be signed by the Settlement Class Member. The date of the postmark on the return mailing envelope or the timestamp on the electronic submission shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Any Settlement Class Member who excludes himself or herself from the Settlement will not be entitled to any recovery under the Settlement and will not be bound by the Settlement. No later than three (3) days after receiving a request for exclusion the Settlement Administrator shall furnish to Settlement Class Counsel and Topgolf's Counsel a copy of that request for exclusion. Settlement Class Counsel shall file the requests for exclusion with the motion for final approval of the settlement.

If twenty percent (20%) or more of the Settlement Class Members submit valid requests for exclusion from the Settlement (i.e., opt-out), Topgolf may elect to either withdraw from and not be bound by the terms of this Agreement or reduce the Gross Fund.

12. Qualified Settlement Fund

As required under this Agreement, Topgolf shall transfer the required portions of the Gross Fund to a Qualified Settlement Fund ("QSF"), to be held as a separate trust as described in Treasury Regulation §1.468B-1, 26 C.F.R. §1.468B-1. Settlement Class Counsel and Topgolf jointly shall take such steps as shall be necessary to qualify the QSF under §468B of the Internal Revenue Code, 26 U.S.C. §468B, and the regulations promulgated pursuant thereto, with Settlement Class Counsel taking the lead in identifying any necessary steps. Topgolf shall be considered the "transferor" within the meaning of Treasury Regulation §1.468B-1(d)(1). The Settlement Administrator shall be the "administrator" within the meaning of Treasury Regulation §1.468B-2(k)(3). The Parties shall cooperate in securing an order of the Court to establish the QSF in accordance with the terms hereof in conjunction with its preliminary approval of the Settlement

and Notice as described in the Agreement. The Court shall retain jurisdiction over the administration of the QSF. Topgolf shall supply to the Settlement Administrator and to the Internal Revenue Service the statement described in Treasury Regulation §1.468B-3(e)(2) no later than February 15th of the year following each calendar year in which Topgolf makes a transfer to the QSF. It is intended that the transfers to the QSF will satisfy the “all events test” and the “economic performance” requirement of §461(h)(1) of the Internal Revenue Code, and Treasury Regulation §1.461-1(a)(2). Accordingly, Topgolf shall not include the income of the QSF in its income. Rather, the QSF shall be taxed on its modified gross income, excluding the sums transferred to it, and shall make payment of resulting taxes from its own funds. In computing the QSF’s modified gross income, deductions shall be allowed for its administrative costs and other deductible expenses incurred in connection with the operation of the QSF, including, without limitation, state and local taxes and legal, accounting, and other fees relating to the operation of the QSF.

Upon establishment of the QSF, the Settlement Administrator shall apply for an employer identification number for the QSF utilizing Internal Revenue Service Form SS-4 and in accordance with Treasury Regulation §1.468B-2(k)(4).

If requested by either Topgolf or the Settlement Administrator, the Settlement Administrator and Topgolf shall fully cooperate in filing a relation-back election under Treasury Regulation §1.468B-1(j)(2) to treat the QSF as coming into existence as a settlement fund as of the earliest possible date.

Following its deposits as described in this Agreement, Topgolf shall have no responsibility, financial obligation, or liability whatsoever with respect to the notifications to the Settlement Class required hereunder, the processing of exclusion requests, payments to Settlement Class Counsel, investment of QSF funds, payment of federal, state, and local income, employment,

unemployment, excise, and other taxes imposed on the QSF or its disbursements, or payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the QSF, since it is agreed that such deposits shall fully discharge Topgolf's obligations to Settlement Class Participants and Settlement Class Counsel and for expenses of administration in respect to the disposition of the Settlement funds hereunder. Rather, the Settlement Administrator shall have sole authority and responsibility for the administration of such funds and income thereon, disbursement to Settlement Class Participants and Settlement Class Counsel, and payment of taxes and administrative costs in accordance with the provisions hereof, subject only to the rights of Topgolf or Settlement Class Counsel to seek redress for any breach of the terms hereof.

The Settlement Administrator shall cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns and tax withholdings statements in accordance with the provisions of Treasury Regulation §1.468B-2(k)(1) and Treasury Regulation §1.468B-2(l)(2)(ii). The Settlement Administrator may, at the expense of the QSF, retain legal counsel and an independent, certified public accountant to consult with and advise the Settlement Administrator with respect to the preparation and filing of such materials and the federal, state and local tax compliance of the QSF.

Based on the Settlement Administrator's recommendation and approval by the Parties, the QSF may be invested in United States Treasury bills, money market funds primarily invested in the same, or certificates of deposit (CDs), provided that such portions of the QSF as may reasonably be required to pay current QSF administrative expenses, taxes or disbursements to Settlement Class Participants or Settlement Class Counsel may be deposited in bank accounts which are federally insured to the greatest extent practicable. All federal, state, and local taxes imposed with respect to income earned by, or property of, the QSF, shall be paid from the QSF.

The Settlement Administrator may amend, either in whole or in part, any administrative provision of this Section or the trust instrument through which the QSF is established to maintain the qualification of the QSF pursuant to the above-described authorities provided that the rights and liabilities of the Parties hereto and the Settlement Class are not altered thereby in any material respect.

13. No Solicitation of Settlement Objections or Exclusions

The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall either Party or their counsel seek to solicit or otherwise encourage Settlement Class Members to submit written objections to the Settlement or requests for exclusion from the Class, or appeal from the Court's Final Judgment.

14. Final Settlement Approval Hearing

In its preliminary approval order or a related order, the Court shall schedule a final approval hearing to determine whether to grant final approval of the Settlement Agreement along with the amount payable for (i) an award to Settlement Class Counsel for attorney fees and litigation expenses; (ii) the Settlement Administrator's expenses; and (iii) the Settlement Class Representatives' Service Awards. Plaintiffs shall present a Final Approval order to the Court for its approval. The Final Approval order Plaintiffs present to the Court shall provide that the matter will be dismissed with prejudice seven (7) days after Plaintiffs file a declaration with the Court from the Settlement Administrator confirming that Topgolf has fully funded the Gross Fund. Named Plaintiffs will dismiss the DuPage County lawsuit (*Burlinski v. Top Golf USA Inc. et al.*, 2019 L 000263) with prejudice upon final approval of a class-wide settlement in the federal case and after the Effective Date.

15. Topgolf's Representations Regarding Biometric Systems

Topgolf represents that since October 1, 2018, they have maintained BIPA consents and policies in Illinois. Topgolf represents that in March 2020, Topgolf stopped using the HID Digital Persona 4500 scanner due to the COVID-19 pandemic and deleted finger scan data previously collected and stored for those employees. Topgolf further represents that at no time did they disclose or transfer finger scan data for Illinois employees to any third parties.

16. Venue of Approval

The Parties will seek approval of this Settlement in the United States District Court for the Northern District of Illinois, Eastern Division, with their assigned Judge in the Action, currently Judge Chang.

17. Topgolf's Legal Fees

All of Topgolf's own legal fees, costs and expenses incurred in this Action shall be borne by Topgolf.

18. Certification of Distribution of Settlement Checks

The Settlement Administrator shall provide Settlement Class Counsel and Topgolf Counsel with an accounting of the proceeds disbursed, upon request by Settlement Class Counsel or Topgolf Counsel. Should either party request such an accounting, the Settlement Administrator will provide a copy of the accounting to the other party's counsel.

19. Attachment(s) and Headings

The terms of this Settlement Agreement include the terms set forth in the attached Attachment(s), which are incorporated by this reference as though fully set forth herein. Any Attachment(s) to this Settlement 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 Settlement Agreement.

20. Amendment or Modification

This Settlement Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors in interest. Notwithstanding the foregoing, the Parties agree that any dates contained in this Settlement Agreement may be modified by agreement of the Parties without Court approval if the Parties agree and cause exists for such modification. However, the Parties cannot modify deadlines set by the Court without Court approval.

21. Entire Agreement

Upon execution, this Settlement Agreement and any Attachment(s) constitute the entire agreement among these Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Attachment(s) other than the representations, warranties and covenants contained and memorialized in such documents.

22. Good Faith Negotiation if the Court Does Not Grant Approval

If the Court does not grant preliminary or final approval of the Settlement or the Court grants preliminary or final approval by making material modifications to the terms of the Settlement Agreement, the Parties will work together in good faith to address the concerns raised in denying or modifying preliminary or final approval. If the Parties are unable to jointly agree on solutions to address the court's concerns, then the Parties shall request the assistance of Judge Schenkier or another mediator agreed to by the Parties, unless the parties agree not to use a mediator. Similarly, if the parties are unable to reach agreement on the terms of the settlement documents, then the Parties shall request the assistance of Judge Schenkier or another mediator, unless the Parties agree not to use a mediator. However, to the extent that the Court decides to make material modifications to the terms of the Settlement Agreement, then this Agreement becomes null and void unless the Parties agree in writing to modify this Agreement and the Court approves the modified Agreement.

23. Authorization to Enter into Settlement Agreement

Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement.

24. Binding on Successors and Assigns

This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

25. Illinois Law Governs; Change in Law Will Not Invalidate Settlement

All terms of this Settlement Agreement and the Attachment(s) hereto shall be governed by and interpreted according to the laws of the State of Illinois. An intervening change in law or court decision shall not invalidate this Settlement Agreement.

26. Counterparts

This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Electronic signatures compliant with the ESIGN Act and signatures transmitted by fax or .pdf shall have the same effect as an original ink signature.

27. This Settlement is Fair, Adequate and Reasonable

The Parties warrant and represent they have conducted a thorough investigation of the facts and allegations in the Action. The Parties further represent and warrant that they believe this Settlement Agreement represents a fair, adequate and reasonable Settlement of this action and that

they have arrived at this Settlement Agreement through extensive arms-length negotiations, taking into account all relevant factors, present and potential.

28. Jurisdiction of the Court

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

29. Cooperation and Drafting

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

30. Invalidity of Any Provision

Before declaring any provision of this Settlement Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

31. Circular 230 Disclaimer

Each Party to this Settlement Agreement acknowledges and agrees that (1) no provision of this Settlement Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers regarding this Settlement Agreement, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) each Party (A) has relied exclusively upon his, her or its own, independent legal and tax advisers for advice (including tax advice) in connection with this

Settlement Agreement, (B) has not entered into this Settlement Agreement based upon the recommendation of any Party or any attorney or advisor to any other Party, and (C) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other Party to avoid any tax penalty that may be imposed on that Party; and (3) no attorney or advisor to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement Agreement.

DATED: 6-1-21

Thomas Burlinski and Matthew Miller

David Fish Digitally signed by David Fish
DN: cn=David Fish, o=The Fish Law Firm
PC, ou, email=dfish@schlawfirm.com, c=US
Date: 2021.06.01 16:33:12 -05'00'

By Their Legal Counsel

DATED: 5/28/2021

Top Golf USA Inc.

By: DocuSigned by:
William Davenport
8081C0B56621B439

Its: Chief Financial Officer

DATED: 5/28/2021

Topgolf USA Salt Creek, LLC

By: DocuSigned by:
William Davenport
8081C0B56621B439

Its: Manager

DATED: 5/28/2021

Topgolf USA Naperville LLC

By: DocuSigned by:
William Davenport
8081C0B56621B439

Its: Manager

Attachment A

NOTICE OF CLASS ACTION SETTLEMENT

Burlinski, et al. v. Top Golf USA Inc., et al., Case No. 1:19-cv-06700 (N.D. Ill.)

1. Introduction

A federal court in Chicago preliminarily approved a class action settlement in the lawsuit *Burlinski, et al. v. Top Golf USA Inc., et al.*, Case No. 1:19-cv-06700 (the “Lawsuit”).

The Court has approved this Notice to inform you of your rights in the settlement. As described in more detail below, you may:

- (1) do nothing, receive a settlement payment and give up certain legal claims you have;
- (2) exclude yourself from the settlement, not receive a settlement payment and not give up any legal claims; or
- (3) object to the settlement.

Before any money is paid, the Court will decide whether to grant final approval of the settlement.

2. What Is this Lawsuit About?

This Lawsuit is about whether Top Golf USA Inc., Topgolf USA Salt Creek, LLC, and Topgolf USA Naperville, LLC (collectively “Topgolf”) violated the Illinois Biometric Information Privacy Act (“BIPA”). BIPA prohibits private companies from capturing, obtaining, storing, transferring, and/or using an individual’s biometric identifiers and/or biometric information, including a fingerprint or identifying information based on a fingerprint, without first providing an individual with certain written disclosures and obtaining written consent. The Lawsuit alleges that Topgolf violated BIPA by collecting fingerprint data from its employees in Illinois through its biometric timekeeping system without first providing written notice or obtaining written consent. The Lawsuit also alleges that Topgolf did not timely destroy fingerprint data for employees after they stopped working for Topgolf. Finally, the Lawsuit alleges that Topgolf disclosed fingerprint data to its timekeeping vendor without consent.

Topgolf denies the allegations in the Lawsuit, denies that it did anything wrong, and denies that class certification is warranted or appropriate. Topgolf has asserted at all relevant times that its actions complied with BIPA and any other applicable law. The Court did not resolve any claims or defenses, and both sides have agreed to settle the dispute solely to avoid the cost and uncertainty of continued litigation.

You can learn more about the Lawsuit by contacting the settlement administrator, Analytics Consulting LLC, at 1-xxx-xxx-xxxx, or Settlement Class Counsel, Werman Salas P.C., at (312) 419-1008, or The Fish Law Firm, P.C. at (630) 355-7590. You may also review the Settlement Agreement and related case documents at the settlement website: www.TGfingerscansettlement.com.

3. Who Is Included in the Settlement?

The settlement includes all Illinois employees who used a biometric fingerprint or finger scanner at Topgolf venues in Illinois between March 4, 2014 and [insert date of preliminary approval]

without first signing a biometric consent form, and do not timely exclude themselves from the settlement. (“Settlement Class” or “Settlement Class Members”).

4. What does the Settlement Provide?

The class action settlement provides for a total payment of \$2,633,400 that Topgolf has agreed to pay to settle the claims of Settlement Class Members. Subject to Court approval, the gross settlement fund shall be reduced by the following: (1) an award of up to one third of the total settlement for Settlement Class Counsel’s attorney fees (estimated to be \$877,799.00) and litigation costs (not to exceed \$37,500); (2) Service Awards of \$7,500 each to the Settlement Class Representatives; and (3) the Settlement Administrator’s costs of up to \$30,000. Following these reductions, the remaining amount shall be the net settlement fund which shall be distributed equally to Settlement Class Members. The Parties estimate you will receive a payment in the approximate amount of approximately **\$630**.

Unless you exclude yourself from the settlement as explained below, you will give up any and all Biometric Information Privacy Act claims against Topgolf, their employees, and their related entities, including all other related federal, state, and local law claims, including under the common law, as well as related claims for liquidated damages, penalties, attorneys’ fees and costs, expenses, and interest. The full release of claims is set forth in the Settlement Agreement, which you can review at the settlement website.

5. What Are Your Options?

(1) **Receive a settlement payment.** If you want to receive a settlement payment, you do not need to do anything. If you do nothing and the court grants final approval of the settlement, you will be mailed your settlement payment and be bound by the Settlement Agreement, including the release of claims. If required by law, you may also be sent a 1099 tax reporting form.

(2) **Exclude yourself from the settlement and receive no money.** If you do not want to be legally bound by the settlement, you must exclude yourself from the settlement by **Insert date 60 days from Notice distribution**. If you do this, you will NOT get a settlement payment. To do so, you must mail or email your written request for exclusion to the Settlement Administrator (contact information below). Your written request for exclusion must include your full name, address, telephone number, the last four digits of your Social Security Number, a statement that you wish to be excluded from the settlement, and it must be signed by you. If you exclude yourself, you will not receive money from this settlement, but you will keep your legal rights regarding any claims that you may have against Topgolf and the other Released Parties.

(3) **Object to the Settlement.** You may object to the settlement by **Insert date 60 days from Notice distribution**. If you want to object to the settlement, you must mail or email a written objection to the Settlement Administrator (contact information below), which includes your full name, address, telephone number, the last four digits of your Social Security Number, the grounds for the objection, a statement whether the objection applies to just yourself or others, and copies of any other documents that you wish to submit in support your objection. Any objection must also be personally signed by you. If you exclude yourself from the settlement, you cannot file an objection.

6. How do I update my Contact Information?

You must notify the Settlement Administrator of any changes in your mailing address so that your settlement award will be sent to the correct address. To update your address, contact the Settlement Administrator, listed below.

7. Who Are the Attorneys Representing the Class and How Will They Be Paid?

The Court has appointed Settlement Class Counsel, identified below, to represent Settlement Class Members in this settlement. Settlement Class Counsel will request up to one-third of the total settlement amount as attorney fees plus reimbursement of their costs. On or after [insert date 30 days from Notice mailing], you may review Settlement Class Counsel’s request for attorney fees and costs at the settlement website, www.TGfingerscansettlement.com. You will not have to pay Settlement Class Counsel from your settlement award or otherwise. You also have the right to hire your own attorney at your own expense.

<p>Douglas M. Werman Zachary C. Flowerree Werman Salas P.C. 77 West Washington Street Suite 1402 Chicago, IL 60602 (312) 419-1008 TopgolfSettlement@flsalaw.com</p>	<p>David Fish Mara Baltabols The Fish Law Firm, P.C. 200 East Fifth Ave. Suite 123 Naperville, IL 60563 (630) 355-7590 admin@fishlawfirm.com</p>
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8. When is the Final Approval Hearing?

The Court will hold a hearing in this case on **Insert date and time from preliminary approval order**, to consider, among other things, (1) whether to finally approve the settlement; (2) a request by the lawyers representing Settlement Class Members for an award of up to one-third of the settlement as attorney fees plus litigation costs; and (3) a request for Service Awards of \$7,500 each for Settlement Class Representatives Thomas Burlinski and Matthew Miller; and (4) a request for up to **\$30,000** to the Settlement Administrator. You may appear at the hearing, but you are not required to do so.

Seven days before the final approval hearing, the Settlement Administrator will post on the Settlement website whether the final approval hearing will be held by telephone or in person (and will provide phone number or courtroom information).

If you have any questions or for more information, contact the Settlement Administrator or Settlement Class Counsel at:

<p><u>Settlement Administrator</u> Name Address Line 1 Address Line 2</p>	<p><u>Settlement Class Counsel</u> Douglas M. Werman Zachary C. Flowerree Werman Salas P.C.</p>
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Telephone Number Email address	77 West Washington Street, Ste. 1402 Chicago, IL 60602 (312) 419-1008 TopgolfSettlement@flsalaw.com David Fish Mara Baltabols The Fish Law Firm, P.C. 200 East Fifth Ave. Suite 123 Naperville, IL 60563 (630) 355-7590 admin@fishlawfirm.com
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PLEASE DO NOT CONTACT THE COURT OR TOPGOLF ABOUT THIS SETTLEMENT.

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