

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

ANTHONY D. KOLTON, S. DAVID	)	
GOLDBERG and JEFFREY S. SCULLEY,	)	
individually and on behalf of a class of all others	)	
similarly situated,	)	
	)	
Plaintiffs,	)	
v.	)	No. 16-cv-3792
	)	
MICHAEL W. FRERICHS,	)	
Treasurer of the State of Illinois,	)	
Defendant.	)	

**PLAINTIFFS' MOTION FOR PRELIMINARY  
APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT**

Plaintiffs, on behalf of themselves and the Rule 23(b)(2) Class they represent and proposed Plaintiff Henry C. Krasnow, on behalf of the putative Rule 23(b)(3) Settlement Class he seeks to represent, move this Court for an order (a) preliminarily approving the proposed class action settlement of the Plaintiffs' claims against Defendant, Michael Frerichs, Treasurer of the State of Illinois, (b) finding that the Rule 23(b)(3) Settlement Class is likely to be certified at final approval, and (c) setting a Fairness Hearing for final approval of the Settlement. Plaintiffs are also filing contemporaneously their unopposed Motion for Leave to file their Second Amended and Supplemental Complaint adding Henry C. Krasnow as named Plaintiff on behalf of the Rule 23(b)(3) Settlement Class.

The Agreement of Settlement was entered into after five years of litigation and arms-length negotiations, and is fair, reasonable, adequate, and likely to warrant final approval under the Seventh Circuit's long-standing class settlement fairness factors and the requirements of Fed. R. Civ. P. 23(e)(2). Moreover, the proposed Rule 23(b)(3) Settlement Class satisfies, and is certifiable under, Fed. R. Civ. P. 23(a) and (b)(3). A copy of the Agreement of Settlement

(Exhibit 1), including the Exhibits to the Agreement, Proposed Preliminary Approval Order (Exhibit A), Rule 23(b)(3) Settlement Class Notice (Exhibit A-1), Summary Notice (Exhibit A-2) and Final Judgment (Exhibit B) are attached to this Motion. The Declarations of Class Representatives Anthony Kolton, S. David Goldberg and Jeffrey Sculley, and the Declaration of proposed Rule 23(b)(3) Settlement Class Representative, Henry C. Krasnow are attached as Exhibits 2, 3, 4 and 5. In further support of this Motion, Plaintiffs submit Plaintiffs' Memorandum of Law in Support of Motion for Preliminary Approval of Proposed Class Action Settlement.

For the above reasons, as well as those set forth in the supporting materials submitted herewith, Plaintiffs' Motion should be granted, and the Court should enter an order in the form proposed preliminarily approving the settlement.

Respectfully submitted,

/s/ Terry Rose Saunders

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*Counsel for Plaintiffs and the Rule 23(b)(2)  
Class and the Rule 23(b)(3) Settlement Class*

Dated: July 13, 2021

# **Exhibit 1**

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

ANTHONY D. KOLTON, S. DAVID	)	
GOLDBERG, JEFFREY S. SCULLEY, and	)	
HENRY C. KRASNOW, individually and on	)	
behalf of classes of all others similarly situated,	)	
	)	
Plaintiffs,	)	
v.	)	No. 16-cv-3792
	)	Hon. Charles P. Kocoras
	)	
MICHAEL W. FRERICHs,	)	
Treasurer of the State of Illinois,	)	
	)	
Defendant.	)	

**AGREEMENT OF SETTLEMENT**

This Agreement of Settlement (“Settlement Agreement”) is entered into by and between Plaintiffs in this Action for themselves and on behalf of the F. R. Civ. P. Rule 23(b)(2) Class they represent and the putative Rule 23(b)(3) Settlement Class they seek to represent, on the one hand, and Defendant Michael W. Frerichs, Treasurer of the State of Illinois, on the other.

**WHEREAS**, on March 29, 2016, Plaintiffs Anthony Kolton and David Goldberg commenced the Action under 42 U.S.C § 1983 as a putative class action against Defendant alleging that the Illinois Uniform Disposition of Unclaimed Property Act violated the Fifth and Fourteenth Amendments to the United States Constitution because it denied just compensation for the taking of Plaintiffs’ unclaimed property; and

**WHEREAS**, on June 20, 2016, Defendant moved for an order dismissing the Complaint in the Action for lack of subject matter jurisdiction, which motion the Court granted on September 16, 2016; and

**WHEREAS**, Plaintiffs appealed the District Court's order to the United States Court of Appeals for the Seventh Circuit, which reversed the District Court in part, holding that Plaintiffs were entitled to seek prospective relief in federal court on their claim that the refusal to pay owners of unclaimed property the benefit of the property's earnings while in state custody was an unconstitutional taking, and remanded the Action for further proceedings on that claim, and affirmed the dismissal of the claim for damages on behalf of those whose property had been returned on the ground that the claim was against the State and the State was not a person that could be sued under § 1983, *Kolton v. Frerichs*, 869 F.3d 532 (7th Cir. 2017); and

**WHEREAS**, on October 10, 2017, the Court granted Plaintiffs Kolton, Goldberg, and Jeffrey Sculley leave to file an Amended and Supplemental Complaint seeking equitable relief on behalf of a F.R. Civ. P. Rule 23(b)(2) class; and

**WHEREAS**, on February 1, 2018, Plaintiffs moved for certification of a F.R. Civ. P. Rule 23(b)(2) class of all persons who are owners of property in the Illinois unclaimed property program in the form of money; and

**WHEREAS**, Defendant opposed the motion for class certification as overbroad because it included persons whose money had not been held in an interest-bearing account before delivery to the State; and

**WHEREAS**, on March 28, 2018, the District Court denied Plaintiffs' motion for class certification because the proposed class did not satisfy the commonality requirement, and Plaintiff Goldberg, whose property was not earning interest before delivery to the State, had no claim for just compensation; and

**WHEREAS**, based on this ruling, Plaintiff Goldberg filed a motion for entry of a F.R. Civ. P. Rule 54(b) final judgment on his claim, which the District Court granted on June 20, 2018 and entered final judgment dismissing Plaintiff Goldberg's claims; and

**WHEREAS**, Plaintiff Goldberg appealed the entry of judgment dismissing his claim to the United States Court of Appeals for the Seventh Circuit, and the Seventh Circuit reversed the District Court's dismissal of Plaintiff Goldberg's claim, holding that the owner of unclaimed property is entitled to income that the property earns while in state custody regardless of whether the property had been earning income in the owner's hands, *Goldberg v. Frerichs*, 912 F.3d 1009 (7th Cir. 2019); and

**WHEREAS**, on April 22, 2019, Plaintiffs renewed their motion for class certification, and on June 20, 2019, the District Court granted this motion and certified a F. R. Civ. P. Rule 23(b)(2) class of "all persons who are owners of property in the Illinois unclaimed property program that is in the form of money"; and

**WHEREAS**, during June, July and August, 2019, the parties engaged in informal discovery, including conferences and the exchange of written questions and answers, relating to the Treasurer's investment of unclaimed property held in state custody, including earnings on the property in the Unclaimed Property Trust Fund, the number and amount of claims made by owners of unclaimed property annually and the length of time unclaimed property was held in the Unclaimed Property Trust Fund before being claimed. In addition, Plaintiffs' counsel consulted with an expert economist on what might be a reasonable return on unclaimed property in the form of money held by the Treasurer; and

**WHEREAS**, Plaintiffs presented a settlement demand to the Treasurer on August 19, 2019, and the Treasurer made a counter-proposal on October 10, 2019. Thereafter, counsel for the parties met and conferred on several occasions, and the Treasurer provided additional information in response to follow up questions from Plaintiffs; and

**WHEREAS**, after extensive arms-length negotiations and Plaintiffs' counsel's consultation with their expert economist, the Parties reached an agreement in principle to settle the Action on January 22, 2020, and after further arms-length negotiations over certain terms, memorialized their agreement in a Memorandum of Understanding dated March 11, 2020; and

**WHEREAS**, Plaintiffs and Defendant desire to document fully their agreement in principle and resolve and settle the claims of the Plaintiffs and the Rule 23(b)(2) Class and the Rule 23(b)(3) Settlement Class against Defendant as set forth herein;

**NOW, THEREFORE**, it is hereby stipulated and agreed, by and among the Parties, by and through their duly authorized counsel, and subject to approval by the Court, that the Action shall be settled and compromised and dismissed with prejudice and the Released Claims shall be released, upon and subject to the following terms and conditions:

**1. Definitions.**

As used in this Settlement Agreement, capitalized terms and phrases not otherwise defined have the meanings provided below:

1.1 "Action" shall mean the lawsuit captioned *Kolton v. Frerichs*, Case No. 16-cv-3792, which was filed and remains pending and unresolved in the United States District Court for the Northern District of Illinois, Eastern Division and has been assigned to the Honorable Charles P. Kocoras.

1.2 “Attorneys’ Fees Award” means the amount awarded to Plaintiffs’ Counsel to compensate them for their fees, costs, and expenses in connection with investigating, prosecuting, and settling the Action, as provided for in Section 3.2.5 below.

1.3 “Rule 23(b)(2) Class” shall mean all persons who are owners of Unclaimed Property held in the form of money by the Treasurer as of the date of entry of the Preliminary Approval Order.

1.4 “Rule 23(b)(3) Settlement Class” shall mean all owners of Unclaimed Property whose Unclaimed Property claims were paid or approved for payment from August 22, 2017 through the date of entry of the Preliminary Approval Order.

1.5 “Class List” shall mean a complete list in electronically readable form reasonably satisfactory to Plaintiffs’ Counsel of all Rule 23(b)(3) Settlement Class Members, including any account/claim number(s) or other identifying designation made by the Treasurer, the date or dates on which their Unclaimed Property was delivered to the Treasurer, if applicable the date on which their Unclaimed Property was converted to money, and the date(s) and amount of all claims paid or, if not paid, approved for payment on or after August 22, 2017.

1.6 “Class Members” shall mean Persons who are members of the Rule 23(b)(2) Class or the Rule 23(b)(3) Settlement Class.

1.7 “Court” shall mean the United States District Court for the Northern District of Illinois, Eastern Division.

1.8 “Defendant” shall mean Michael Frerichs, Treasurer of the State of Illinois, or any predecessor or successor in office.

1.9 “Defendant’s Press Release” shall mean a press release about the Settlement to be published by Defendant and provided to Plaintiffs prior to execution of this Settlement



Agreement with reasonable opportunity for comment and consent, which consent shall not be unreasonably withheld.

1.10 “Treasurer” shall mean the Treasurer of the State of Illinois, or any successor to the Treasurer’s current duties regarding Unclaimed Property.

1.11 “Fairness Hearing” shall mean the hearing to be held by the Court to determine, pursuant to Rule 23 of the Federal Rules of Civil Procedure, whether this Settlement Agreement is fair, reasonable, and adequate.

1.12 “Final,” when used in connection with any court order or judgment, shall mean (i) if no appeal is taken, the date on which the time to appeal has expired, and (ii) if any appeal is taken, the date on which all appeals have been finally disposed of in a manner resulting in the affirmance of the Judgment.

1.13 “Final Judgment” shall mean the order and the judgment to be entered by the Court, pursuant to the Federal Rules of Civil Procedure, approving this Settlement Agreement and dismissing the Action as to the Released Parties on the merits and with prejudice, in the form attached hereto as Exhibit B.

1.14 “Future Claimants” shall mean all persons who become owners of Unclaimed Property held by the Treasurer in the form of money after the date of the entry of the Preliminary Approval Order and either file a valid claim for that property or are otherwise paid their property.

1.15 “Rule 23(b)(3) Settlement Class Notice” shall mean the Notice pursuant to F. R. Civ. P. 23(e) to be sent by Defendant to the last known email address, or if not available, to the last known mailing address of each member of the Rule 23(b)(3) Settlement Class, in substantially the form attached hereto as Exhibit A-1, or as otherwise approved by the Court.

1.16 “Notice Program” shall mean the actions specified by the Court in the Preliminary Approval Order to publicize and notify Class Members regarding the Settlement and their rights in connection with the Settlement and shall include the Summary Notice as set forth in Sections 3.2.1. and 3.2.2 of this Agreement, the Rule 23(b)(3) Settlement Class Notice, as set forth in Section 3.2.3 of this Agreement and the information to be displayed on the homepage and FAQ section of the Treasurer’s website, as set forth in Section 3.2.2 of this Agreement.

1.17 “Parties” shall mean Plaintiffs and Defendant.

1.18 “Person” shall mean an individual, committee, partnership, corporation, governmental entity, or any other form of entity or organization.

1.19 “Plaintiffs” shall mean Anthony D. Kolton, S. David Goldberg, Jeffrey Sculley and Henry C. Krasnow, individually and on behalf of Members of the Classes they respectively represent.

1.20 “Plaintiffs’ Compensation” shall mean a separate monetary amount Plaintiffs’ Counsel shall ask the Court to award or that the Court actually awards to Plaintiffs in recognition of the effort and assistance they provided in the prosecution of this Action, over and above any amounts they may otherwise receive under Section 2.3 of the Settlement Agreement. The amount Plaintiffs’ Counsel request for any Plaintiff shall not exceed \$2,500.

1.21 “Plaintiffs’ Counsel” shall mean Terry Rose Saunders and Arthur T. Susman.

1.22 “Plaintiffs’ Press Release” shall mean a press release about the Settlement to be published by Plaintiffs and provided to Defendant prior to execution of this Settlement Agreement with reasonable opportunity for comment and consent, which consent shall not be unreasonably withheld.

1.23 “Released Plaintiff Parties” shall mean Plaintiffs, Class Members, and Plaintiffs’ Counsel.

1.24 “Plan of Distribution” shall mean the method of distributing compensation to Rule 23(b)(3) Settlement Class Members, and those Rule 23(b)(2) Class Members whose claims are paid or approved prior to the date the Final Judgment becomes Final, as set forth in Sections 2.8 through 2.10 or otherwise ordered by the Court.

1.25 “Preliminary Approval Order” shall mean an order in the form attached hereto as Exhibit A.

1.26 “Summary Notice” shall mean text in the form attached hereto as Exhibit A-2.

1.27 “Released Claims” shall have the meaning set forth in Section 5.2.

1.28 “Released Parties” shall mean Michael Frerichs, Treasurer of the State of Illinois and his representatives and successors in office, and the State of Illinois including every department, agency, instrumentality, or division of the State of Illinois and their Representatives.

1.29 “Releases” shall mean the releases set forth in Section 5.

1.30 “Representatives” shall mean representatives, attorneys, agents, directors, officers, or employees.

1.31 “Settlement” shall mean the settlement to be consummated under this Settlement Agreement.

1.32 “Settlement Agreement” means this Agreement of Settlement and any accompanying Exhibits, any subsequent amendments and Exhibits to such amendments.

1.33 “Settlement Just Compensation Measure” shall mean the interest rate used by the Treasurer to calculate interest due to the Rule 23(b)(2) Class Members, the Rule 23(b)(3) Settlement Class Members and Future Claimants as set forth in Section 2.3.

1.34 “Start Date” shall mean the latest of August 22, 2017, the date Unclaimed Property is delivered to the Treasurer, or the date that the Treasurer converts unclaimed property that is not in the form of money to Unclaimed Property as defined in Section 1.36 below.

1.35 “Successor” shall mean a Person’s estate, legal representatives, heirs, successors, or assigns, including successors or assigns that result from corporate mergers or other structural changes.

1.36 “Unclaimed Property” shall mean property in the form of money held by Defendant pursuant to the Illinois Uniform Disposition of Unclaimed Property Act, the Illinois Revised Uniform Unclaimed Property Act (“Amended Act”) or any subsequently enacted Illinois statute governing Unclaimed Property.

1.37 “Unclaimed Property Trust Fund” shall mean a designated State Trust Fund in which Unclaimed Property is held by the Treasurer for a period of time and invested by the Treasurer along with other monies in the Illinois State Treasury.

## **2. Terms of the Settlement.**

### **2.1 Certification of a Rule 23(b)(3) Settlement Class.**

2.1.1. The Parties will request that the Court certify a Rule 23(b)(3) Settlement Class, solely for purposes of the Settlement Agreement and this Settlement, comprised of all owners of Unclaimed Property whose claims were paid or approved for payment during the period beginning August 22, 2017 and continuing through the date of the entry of the Preliminary Approval Order. Owners of Unclaimed Property as of the date of the entry of the Preliminary Approval Order whose claims are approved for payment after the date of entry of the Preliminary Approval Order shall be included in, and become members of, the Rule 23(b)(2) Class.

2.1.2 Defendant agrees to the certification of the Rule 23(b)(3) Settlement Class only for the purposes of effectuating the Settlement Agreement. Defendant continues to maintain that a Rule 23(b)(3) class could not qualify for class certification in a contested class certification context, particularly given the Seventh Circuit's ruling that Plaintiffs could not pursue a claim for damages against the State under 42 U.S.C. § 1983, *see Kolton v. Frerichs*, 869 F.3d 532 (7th Cir. 2017). Defendant reserves all rights to object to the propriety of certification of a Rule 23(b)(3) class in this Action in all other contested contexts and for all other purposes.

2.2 The Parties will provide Notice in accordance with Federal Rules of Civil Procedure 23(c)(2)(A), 23(c)(2)(B), and 23(e)(1) to all members of the Rule 23(b)(2) Class and Rule 23(b)(3) Settlement Class. The Treasurer may pay the expenses associated with providing such Notice from the Unclaimed Property Trust Fund or from other funds appropriated to the Treasurer, provided that: (a) such payments will not reduce the amount of just compensation due or paid to any Class Member or Future Claimant, and (b) the Treasurer shall at all times maintain sufficient funds in the Unclaimed Property Trust Fund to make prompt payment of claims and just compensation on claims of Class Members and Future Claimants.

2.3 The Settlement Just Compensation Measure for the Rule 23(b)(2) Class and the Rule 23(b)(3) Settlement Class shall be an interest rate, calculated monthly and compounded monthly, that is the greater of the actual rate of return the Treasurer has earned on the Unclaimed Property Trust Fund or the percentage increase, if any, in the Consumer Price Index for all Urban Consumers (CPI-U), for all items published by the United States Department of Labor. When calculating interest for the month in which a claim is paid, the Treasurer shall use the most recent rate of return earned by the Treasurer and CPI-U data available at the time the claim is approved. The Settlement Just Compensation Measure shall be applied to the total gross amount of each

claim. The Treasurer will continue to use the Settlement Just Compensation Measure to calculate and pay compensation to Future Claimants until such time as the General Assembly passes any statute providing for a different method of calculating compensation.

2.4 Time Period for Calculation of Just Compensation.

2.4.1 Members of the Rule 23(b)(2) Class shall be entitled to just compensation from the Start Date and ending on the earlier of (a) the expiration of 10 years after the Start Date or (b) the date on which payment is made to the owner. The Treasurer will continue to calculate and pay just compensation to Future Claimants on this basis until such time as the General Assembly passes any statute providing for a different method of calculating compensation.

2.4.2 Members of the Rule 23(b)(3) Settlement Class shall be entitled to just compensation from the Start Date to the date their Unclaimed Property claim has been or is paid.

2.5 The Treasurer shall make just compensation payments to the Rule 23(b)(2) Class, the Rule 23(b)(3) Class, and Future Claimants from funds held in the Unclaimed Property Trust Fund, provided that: (a) such payments will not reduce the amount of just compensation due or paid to any Class Member or Future Claimant, and (b) the Treasurer shall at all times maintain sufficient funds in the Unclaimed Property Trust Fund to make prompt payment of claims and just compensation on claims of Class Members and Future Claimants.

2.6 The Treasurer may assess a one-time administrative fee of up to \$5.00, deductible only from interest due on Unclaimed Property, for each claimed property paid to any member of the Rule 23(b)(2) Class, Rule 23(b)(3) Settlement Class, and all Future Claimants. This administrative fee may only be charged so long as no other administrative fee is imposed on principal or interest earned on Unclaimed Property while in the State's custody, whether such other fee is imposed by statute, administrative regulation or otherwise. This provision shall not

be interpreted to prevent the General Assembly from increasing the administrative fee charged to Future Claimants, or from imposing a different or alternative fee on payments to Future Claimants.

2.7 The Settlement of this Action will not deprive anyone entitled to interest under the Revised Uniform Unclaimed Property Act (“Amended Act”), 765 ILCS 1026/15-607, of their rights under that Act. Class Members entitled to interest under the Amended Act shall be entitled to receive any greater amount due under this Settlement.

2.8 Defendant will distribute just compensation payments to the members of the Rule 23(b)(3) Settlement Class, and to those members of the Rule 23(b)(2) Class whose claims are paid or approved before the date the Final Judgment becomes Final, without requiring those Class Members to file a claim.

2.9 Defendant may require the Rule 23(b)(3) Settlement Class Members, and those Rule 23(b)(2) Class Members whose claims are paid or approved before the date the Final Judgment becomes Final, whose current mailing address cannot be verified through Defendant’s reasonable efforts to confirm that their address is correct before sending interest payments to them. If a Class Member whose mailing address cannot be verified does not confirm that his or her address is correct within 120 days of the date that Defendant requests confirmation of the Class Member’s address (the “Confirmation Request Date”), the Class Member will continue to have a right to receive the interest payment for a period of two years following the Confirmation Request Date, subject to Section 2.10. Defendant will promptly identify to Plaintiffs’ Counsel those Class Members in the Class List whose mailing address is not confirmed; however, Plaintiffs’ Counsel agrees that they will not seek attorneys’ fees for any efforts to contact these class members.

2.10 A Rule 23(b)(3) Settlement Class Member, or a Rule 23(b)(2) Class Member whose claim is paid or approved before the date the Final Judgment becomes Final, who fails to confirm his or her address within 120 days of the Confirmation Request Date may be required to submit a request for the interest payment and to verify his or her address before interest will be paid. Any such request must be made within two years following the Confirmation Request Date.

2.11 This Settlement relates only to the measure and payment of just compensation and nothing in this Settlement Agreement affects the rights of persons who claim to be owners of Unclaimed Property to challenge the Treasurer's approval or disapproval of their claim for return of their principal or the amount of that claim.

2.12 Plaintiffs and Class Members agree that the Released Parties shall have no responsibility whatsoever to any federal, state, or local taxing authority for the tax liability or consequences, if any, arising from the payment of the consideration recited herein, and that all such responsibility is exclusively that of the Plaintiffs and Class Members. Nothing herein shall constitute an admission or representation that any such taxes will or will not be due.

2.13 Notwithstanding any other provision of this Agreement, nothing in this Agreement should be interpreted to prevent the General Assembly from changing the measure of just compensation paid, the method of calculating such compensation, the period for which such compensation must be paid, any administrative fees that may be assessed, or any other matter related to Unclaimed Property. If the General Assembly changes the measure of just compensation paid, the method of calculating such compensation, the period for which such compensation must be paid, or the administrative fees that may be assessed, the Treasurer shall adhere to the terms of this Settlement Agreement for all Class Members whenever the terms of this Settlement Agreement are more favorable (*i.e.*, would result in a greater net amount paid to



the Class Member), but shall follow the statute(s) enacted by the General Assembly rather than this Agreement, and may propose additional legislation and/or regulations that may not be consistent with this Agreement, for all Future Claimants. Nothing in this Agreement would bar any Future Claimant from challenging any such amended statute, whether in court or otherwise.

2.14 The Treasurer has an interstate exchange process (“Interstate Exchange”) with unclaimed property programs of other states and United States jurisdictions (“Remitting Jurisdictions”). Pursuant to the Interstate Exchange, where the holder reported and remitted properties that should have been reported and paid to the Remitting Jurisdiction (“Exchange Properties”), the Treasurer turns over the Exchange Properties to the Remitting Jurisdiction. The Parties understand and agree that the Treasurer is not required to pay just compensation for Exchange Properties that the Treasurer remits to a Remitting Jurisdiction. The Treasurer will pay the Settlement Just Compensation Measure on Exchange Properties received by the Treasurer pursuant to the Interstate Exchange, starting from the date that the property is delivered to the Treasurer from the Remitting Jurisdiction.

### **3. Certain Required Actions.**

#### **3.1 Upon Execution of the Settlement Agreement.**

3.1.1 Commencing upon execution of this Settlement Agreement and continuing thereafter, Plaintiffs’ Counsel and Defendant shall cooperate in good faith, including by taking all actions contemplated by this Settlement Agreement and any other actions which are or may become necessary by order of the Court or otherwise to carry out this Settlement Agreement and ensure that the Final Judgment becomes Final.

3.1.2 As soon as reasonably practicable upon execution of this Settlement Agreement, Defendant shall update the Rule 23(b)(3) Class List and provide the updated Class List to Plaintiffs' Counsel.

3.1.3 As soon as reasonably practicable upon execution of this Settlement Agreement, and not to exceed 15 business days of execution hereof, Plaintiffs will file the following: (a) Motion for an Order Preliminarily Approving the Settlement Agreement; (b) Motion for Leave to File Second Amended and Supplemental Complaint, which will add Henry C. Krasnow as a plaintiff and add the Rule 23(b)(3) Settlement Class; and (c) Motion to Certify a Rule 23(b)(3) Settlement Class and appoint Plaintiffs' Counsel as Counsel for the Classes.

3.1.4 Within 10 days of the filing of the Settlement Agreement with the Court, Defendant shall serve Notice of the proposed Settlement upon each appropriate state official in accordance with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715 ("CAFA Notice").

3.2 Upon Entry of the Preliminary Approval Order.

3.2.1 As soon as practicable upon the entry of the Preliminary Approval Order, the Treasurer shall include in the Notice to Claimants of the Approval of Payment of Principal to Owners of Unclaimed Property, or provide in a separate mailing or email message, the Summary Notice and reference to the homepage of its website <http://icash.illinoistreasurer.gov> and <https://illinoistreasurer.gov>, along with a request that these claimants notify the Treasurer of any change in their email or mailing address. Within 14 business days of the entry of the Preliminary Approval Order, the Treasurer will include the Summary Notice in this Notice to Claimants and will continue to include the Summary Notice for a period of one year after entry of the Preliminary Approval Order or until Final Judgment is entered by the Court, whichever is later.

3.2.2. Within 14 business days of the entry of the Preliminary Approval Order, or at such other time as specified therein, Defendant shall, at his sole cost and expense (1) cause the Summary Notice to be published once in a newspaper of national circulation and to be prominently displayed on the homepage of its website <http://icash.illinoistreasurer.gov> and <https://illinoistreasurer.gov/> in a manner and position reasonably satisfactory to Plaintiffs' Counsel; (2) cause to be added to the FAQ section of the website, <https://icash.illinoistreasurer.gov/app/faq-general> one or more FAQs and answers to same, relating to the Settlement reasonably satisfactory to Plaintiffs' Counsel; and (3) issue Defendant's Press Release, which shall appear on the Defendant's website [https://illinoistreasurer.gov/Office\\_of\\_the\\_Treasurer/Media\\_Center/Press\\_Releases](https://illinoistreasurer.gov/Office_of_the_Treasurer/Media_Center/Press_Releases), along with other Press Releases issued by the Defendant. Defendant shall thereafter cause all subsequent Court rulings to be displayed on the website. Within 14 business days after Defendant issues Defendant's Press Release, Plaintiff will issue Plaintiffs' Press Release. The Treasurer will include these notices for a period of two years after entry of the Preliminary Approval Order, or until Final Judgment is entered by the Court, whichever is later.

3.2.3 As soon as practicable upon the entry of the Preliminary Approval Order, and in any event within 20 business days of such entry, Defendant shall cause the Rule 23(b)(3) Settlement Class Notice to be sent by email to the last known email address, or if not available, to the last known mailing address of each member of the Rule 23(b)(3) Settlement Class, and to be displayed on the homepage of its website <http://icash.illinoistreasurer.gov> and <https://illinoistreasurer.gov/>, and Plaintiffs' Counsel and Defendant shall commence implementing the remaining portions of the Notice Program as they are respectively required to implement.

3.2.4 The Parties shall provide any further notice in the form of, and at the time, as directed by the Court.

3.2.5 Within 45 business days of the entry of the Preliminary Approval Order, Plaintiffs' Counsel will apply to the Court for Attorneys' Fees Award and reimbursement of expenses in accordance with F. R. Civ. P. 23(h), the federal statute, 42 U.S.C. § 1988, as applicable, and common law. Defendant retains the right to challenge the amount of, or method for calculating, Plaintiffs' Counsel's fee request as well as the right to appeal any Attorneys' Fees Award. Any award of attorneys' fees or reimbursement of expenses shall be paid from the Unclaimed Property Trust Fund. The individual Plaintiffs currently named may apply to the Court for Plaintiffs' Compensation not to exceed \$2,500 for each of them. These Plaintiffs shall be entitled to receive such payments as are awarded by the Court. Any award of Plaintiffs' Compensation shall be paid from the Unclaimed Property Trust Fund and shall not reduce the amount of just compensation due or paid to any Class Member or Future Claimant.

3.2.6 The rights of Class Members to object to the Settlement, or be heard at the Fairness Hearing, or to request exclusion from the Settlement Class shall be as set forth in the Preliminary Approval Order.

3.2.7 As soon as practicable upon entry of the Preliminary Approval Order, Defendant shall provide the Treasurer's calculations of the Settlement Just Compensation Measure with respect to the Rule 23(b)(3) Settlement Class Members and the Class List updated through the date of the Preliminary Approval Order to Plaintiffs' Counsel in a form and format and in such manner as is agreed upon between Plaintiffs' and Defendant's Counsel.

3.3 Following Entry of Final Judgment.

3.3.1 Commencing when the Final Judgment becomes Final, Defendant shall pay or cause to be paid to each Rule 23(b)(2) Class Member, in addition to the principal amount of his or her Unclaimed Property, interest equal to the Settlement Just Compensation Measure beginning on the Start Date and ending on the date the claim is paid. Interest shall be calculated and paid on principal for a period of up to ten years from the Start Date.

3.3.2 Commencing when the Final Judgment becomes Final, Defendant shall pay or cause to be paid to each Future Claimant, in addition to the principal amount of his or her Unclaimed Property, interest equal to the Settlement Just Compensation Measure beginning on the Start Date and ending on the date the claim is paid. Interest shall be calculated and paid on principal for a period of up to ten years from the Start Date. As set forth in Section 2.13, Defendant will continue to make such payments to Future Claimants unless or until the General Assembly makes any changes to the calculation of just compensation.

3.3.3 Commencing when the Final Judgment becomes Final, Defendant shall distribute interest equal to the Settlement Just Compensation Measure to the Rule 23(b)(3) Settlement Class Members, and the Rule 23(b)(2) Class Members whose claims have been paid, as set forth in Sections 2.8 through 2.10.

4. Conditions to Effectiveness of the Settlement.

This Settlement shall become effective when the Court has entered the Final Judgment and the Final Judgment has become Final.

5. Releases.

5.1 Plaintiffs' Releases of the Released Parties. When the Final Judgment becomes Final, Plaintiffs on behalf of themselves and the Class Members release and forever discharge

with prejudice the Released Parties from all Released Claims, except that the Release under this Section shall not include covenants, obligations, or other provisions, or claims relating to the covenants, obligations or other provisions, set forth in this Settlement Agreement.

5.2 Released Claims. The Released Claims shall be any and all actual or potential, suspected or unsuspected, known or unknown, asserted or unasserted claims, actions, causes of action, demands, obligations, liabilities, attorneys' fees, and costs, whether arising under local, state or federal law, whether by statute, contract, common law, or equity, whether brought in an individual, representative, or any other capacity, actual or contingent, liquidated or unliquidated, that arise from or reasonably relate to the Action or the Settlement, including the Settlement Just Compensation Measure, the Plan of Distribution or Defendant's failure to pay just compensation on Unclaimed Property held by the Illinois Treasurer prior to August 22, 2017, subject to Section 5.1. This release does not apply to any future enactments by the General Assembly regarding Unclaimed Property.

5.2.1 When the Final Judgment becomes Final, with respect to any and all Released Claims, the Plaintiffs and the Class Members hereby expressly waive the provisions, rights and benefits of California Civil Code §1542 and any provisions, rights and benefits conferred by any law of any state or territory of the United States or principle of common law which is similar, comparable or equivalent to California Civil Code §1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

5.2.2 When the Final Judgment becomes Final, Defendant releases and forever discharges with prejudice Plaintiffs, the Class Members, and Plaintiffs' Counsel (collectively, the

“Released Plaintiff Parties”) from all Released Claims, except that the release under this Section shall not include the covenants or obligations, or claims relating to the covenants or obligations, set forth in this Settlement Agreement.

**6. Representations and Warranties.**

6.1 Plaintiffs represent and warrant that they have not assigned or otherwise transferred any interest in any Released Claims against any Released Parties and agree they will not assign or otherwise transfer any interest in any Released Claims.

6.2 Each Person executing this Settlement Agreement on behalf of any other Person represents and warrants to the other Parties that he or she has the authority to execute this Settlement Agreement on behalf of, and fully bind, each principal whom such Person represents or purports to represent.

**7. Compromise of Disputed Claims.**

7.1 Subject to and without purporting to alter or modify the rulings in the decisions of the Seventh Circuit Court of Appeals in *Kolton* and *Goldberg*, the Parties agree that this Settlement Agreement embodies a compromise settlement of disputed claims and that nothing in this Settlement Agreement, including the furnishing of consideration, shall be deemed an admission or finding of wrongdoing or give rise to any inference of liability in this or any other proceeding. Neither the fact nor the terms of this Settlement Agreement shall be offered or received in evidence, in any action or proceeding between the Parties for any purpose, except in an action or proceeding arising under this Settlement Agreement or arising out of or relating to the Preliminary Approval Order or the Final Judgment.

7.2 The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Settlement Agreement and for the purpose of entering orders

providing for any Attorneys' Fees Award. Neither the entry or the failure to enter, nor the finality or lack of finality, of orders respecting Attorneys' Fees Award or Plaintiffs' Compensation affect the Final Judgment or prevent the Final Judgment from becoming Final. All Parties submit to the jurisdiction of the Court for purposes of enforcing the Settlement Agreement. Further, all Parties agree that the Court shall have jurisdiction to settle any dispute that may arise from the interpretation of this Settlement Agreement.

**8. Termination of the Settlement Agreement.**

8.1 Termination. This Settlement Agreement may not be terminated by the Parties except as provided in this Section, and in no instance may this Settlement Agreement be terminated after the Final Judgment becomes Final. This Settlement Agreement shall terminate if (a) the Court declines to approve the Settlement or declines to enter the Final Judgment; or (b) the Final Judgment entered by the Court is reversed or modified on appeal. This Settlement shall not terminate solely because a court of competent jurisdiction modifies, reverses, or fails to enter any order relating to an Attorneys' Fees Award, expenses, or Plaintiffs' Compensation.

8.2 Consequences of Termination of the Settlement Agreement. If the Settlement Agreement is terminated, the following shall occur:

8.2.1 The Action shall for all purposes with respect to the Parties revert to its status as of March 10, 2020, provided Defendant shall receive no refund, repayment, or payment of Administration and Notice Expenses previously paid or incurred.

8.2.2 The certification of the Settlement Class shall automatically be vacated, and neither this Settlement Agreement nor any order of the Court certifying the Settlement Class will be binding on any of the Settling Parties.



8.2.3 All provisions of this Settlement Agreement shall be null and void, except as otherwise provided herein.

8.3 If the General Assembly should change the measure of just compensation paid, the method of calculating such compensation, the period for which such compensation must be paid, any administrative fees that may be assessed, or any other matter related to Unclaimed Property governed by this Agreement, such change to the statutes shall not constitute termination of the agreement under this section. If the General Assembly changes the measure of just compensation paid, the method of calculating such compensation, the period for which such compensation must be paid, or the administrative fees that may be assessed, the Treasurer shall adhere to the terms of this Settlement Agreement for all Class Members whenever the terms of this Settlement Agreement are more favorable, but shall follow the statute(s) enacted by the General Assembly for Future Claimants. Nothing in this Agreement would bar any Future Claimant from challenging any such amended statute, whether in court or otherwise.

**9. Miscellaneous Provisions.**

9.1 Governing Law. This Settlement Agreement shall be governed by the laws of the State of Illinois without giving effect to the conflict of laws or choice of law provisions thereof except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

9.2. Sovereign Immunity Not Waived. This Agreement shall not be construed to constitute a waiver of sovereign immunity of the State of Illinois or the Treasurer of Illinois.

9.3 Amendment. The Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Parties and approved by the Court, except the

Signers may mutually agree to extend deadlines set forth herein as reasonably necessary to consummate this Settlement.

9.4 Waiver. The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver by any Party of any breach of this Settlement Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

9.5 Construction. None of the Parties to this Settlement Agreement shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter.

9.6 Headings. The headings of this Settlement Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Settlement Agreement.

9.7 Singular and Plural. Definitions apply to the singular and plural forms of each term defined.

9.8 References to a Person. References to a Person are also to the Person's Successors.

9.9 Further Assurances. Each of the Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that they will in good faith execute and deliver such documents and take such actions as may be necessary to consummate and effectuate the subject matter and purpose of this Settlement Agreement.

9.10 Notices. Any notice, demand, or other communication contemplated under this Settlement Agreement (other than the CAFA Notice), notices in connection with the Notice Program, or other notice given at the direction of the Court) shall be in writing and shall be

deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and delivered by both (i) email and (ii) registered or certified mail (postage prepaid) or delivered by reputable express overnight courier:

PLAINTIFFS:

Terry Rose Saunders  
THE SAUNDERS LAW FIRM  
120 North LaSalle Street, Suite 2000  
Chicago, IL 60602  
(312) 444-9656  
Email: [tsaunders@saunders-lawfirm.com](mailto:tsaunders@saunders-lawfirm.com)

Arthur Susman  
LAW OFFICES OF ARTHUR SUSMAN  
55 West Wacker Drive, Suite 1400  
Chicago, IL 60601  
(847) 800-2351  
Email: [arthur@susman-law.com](mailto:arthur@susman-law.com)

DEFENDANT:

Sarah Newman  
Office of the Illinois Attorney General  
General Law Bureau  
100 West Randolph Street, 13th Floor  
Chicago, Illinois 60601  
Tel: 312-814-6131  
Email: [snewman@atg.state.il.us](mailto:snewman@atg.state.il.us), [sarah.newman@illinois.gov](mailto:sarah.newman@illinois.gov)

Illinois State Treasurer  
Attn: Legal Department  
219 State House  
Springfield, IL 62706  
Tel.: (866) 458-7327  
Email: [lduque@illinoistreasurer.gov](mailto:lduque@illinoistreasurer.gov)

Any Party may change the address as which it is to receive notice by written notice delivered to the other Parties in the manner described above.

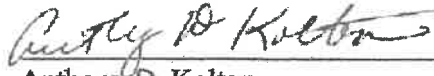
9.11 Entire Agreement. This Settlement Agreement contains the entire agreement among the Parties relating to this Settlement. It specifically supersedes any settlement terms or settlement agreements that were previously agreed upon orally or in writing.

9.12 Counterparts. This Settlement Agreement may be executed by exchange of originals or faxed or scanned and emailed executed signature pages, and any signature transmitted by facsimile or email for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

9.14 Binding Effect. This Settlement Agreement binds and inures to the benefit of the Parties hereto and the Class Members, their administrators, executors, and Successors.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the  
dates set forth below.

Dated: 6/2/2021

  
Anthony D. Kolton  
Plaintiff and Class Representative

Dated: \_\_\_\_\_

\_\_\_\_\_  
S. David Goldberg  
Plaintiff and Class Representative

Dated: \_\_\_\_\_

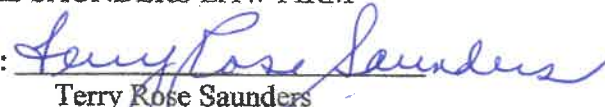
\_\_\_\_\_  
Jeffrey S. Sculley  
Plaintiff and Class Representative

Dated: \_\_\_\_\_

\_\_\_\_\_  
Henry C. Krasnow  
Plaintiff and Class Representative

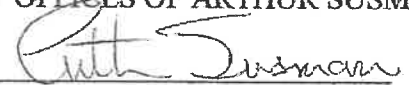
THE SAUNDERS LAW FIRM

Dated: June 8, 2021

By:   
Terry Rose Saunders  
120 North LaSalle Street, Suite 2000  
Chicago, IL 60602  
(312) 444-9656  
Email: [tsaunders@saunders-lawfirm.com](mailto:tsaunders@saunders-lawfirm.com)

LAW OFFICES OF ARTHUR SUSMAN

Dated: June 2, 2021

By:   
Arthur Susman  
55 West Wacker Drive, Suite 1400  
Chicago, IL 60601  
(847) 800-2351  
Email: [arthur@susman-law.com](mailto:arthur@susman-law.com)

*Counsel for Plaintiffs and the Classes*

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the dates set forth below.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Anthony D. Kolton  
Plaintiff and Class Representative

Dated: 6/3/2021

[Signature]  
S. David Goldberg  
Plaintiff and Class Representative

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jeffrey S. Sculley  
Plaintiff and Class Representative

Dated: \_\_\_\_\_

\_\_\_\_\_  
Henry C. Krasnow  
Plaintiff and Class Representative

Dated: June 8, 2021

THE SAUNDERS LAW FIRM  
By: [Signature]  
Terry Rose Saunders  
120 North LaSalle Street, Suite 2000  
Chicago, IL 60602  
(312) 444-9656  
Email: [tisaunders@saunders-lawfirm.com](mailto:tisaunders@saunders-lawfirm.com)

Dated: June 2, 2021

LAW OFFICES OF ARTHUR SUSMAN  
By: [Signature]  
Arthur Susman  
55 West Wacker Drive, Suite 1400  
Chicago, IL 60601  
(847) 800-2351  
Email: [arthur@susman-law.com](mailto:arthur@susman-law.com)

*Counsel for Plaintiffs and the Classes*

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the  
dates set forth below.

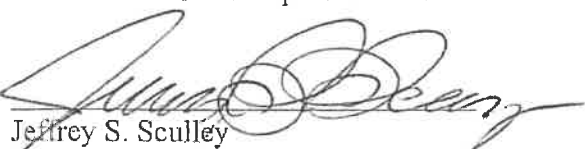
Dated: \_\_\_\_\_

\_\_\_\_\_  
Anthony D. Kolton  
Plaintiff and Class Representative

Dated: \_\_\_\_\_

\_\_\_\_\_  
S. David Goldberg  
Plaintiff and Class Representative

Dated: 6/2/21


  
Jeffrey S. Sculley  
Plaintiff and Class Representative

Dated: \_\_\_\_\_

\_\_\_\_\_  
Henry C. Krasnow  
Plaintiff and Class Representative


THE SAUNDERS LAW FIRM

Dated: June 8, 2021

By:   
Terry Rose Saunders  
120 North LaSalle Street, Suite 2000  
Chicago, IL 60602  
(312) 444-9656  
Email: [tsaunders@saunders-lawfirm.com](mailto:tsaunders@saunders-lawfirm.com)

LAW OFFICES OF ARTHUR SUSMAN

Dated: June 8, 2021

By:   
Arthur Susman  
55 West Wacker Drive, Suite 1400  
Chicago, IL 60601  
(847) 800-2351  
Email: [arthur@susman-law.com](mailto:arthur@susman-law.com)

*Counsel for Plaintiffs and the Classes*



IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the  
dates set forth below.

Dated: \_\_\_\_\_

Anthony D. Kolton  
Plaintiff and Class Representative


Dated: \_\_\_\_\_

S. David Goldberg  
Plaintiff and Class Representative

Dated: \_\_\_\_\_

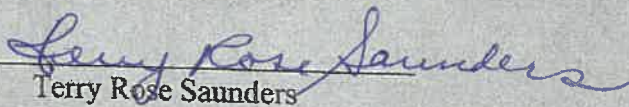
Jeffrey S. Sculley  
Plaintiff and Class Representative

Dated: June 8, 2021

  
Henry C. Krasnow  
Plaintiff and Class Representative

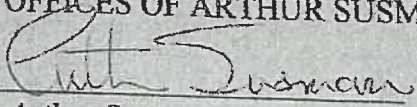
THE SAUNDERS LAW FIRM

Dated: June 8, 2021

By:   
Terry Rose Saunders  
120 North LaSalle Street, Suite 2000  
Chicago, IL 60602  
(312) 444-9656  
Email: [tsaunders@saunders-lawfirm.com](mailto:tsaunders@saunders-lawfirm.com)

LAW OFFICES OF ARTHUR SUSMAN

Dated: June 2, 2021

By:   
Arthur Susman  
55 West Wacker Drive, Suite 1400  
Chicago, IL 60601  
(847) 800-2351  
Email: [arthur@susman-law.com](mailto:arthur@susman-law.com)

*Counsel for Plaintiffs and the Classes*



KWAME RAOUL  
ATTORNEY GENERAL OF ILLINOIS

Dated: 6-8-2021

By: Sarah Newman  
Sarah Newman  
Office of the Illinois Attorney General  
General Law Bureau  
100 West Randolph Street, 13th Floor  
Chicago, Illinois 60601  
Tel: 312-814-6131  
Email: [snewman@atg.state.il.us](mailto:snewman@atg.state.il.us)  
[sarah.newman@illinois.gov](mailto:sarah.newman@illinois.gov)

*Counsel for the Defendant*

OFFICE OF THE ILLINOIS STATE TREASURER

Michael W. Frerichs  
Michael W. Frerichs  
Treasurer

Dated: 6-10-2021

By: G. Allen Mayer  
G. Allen Mayer, Chief of Staff  
Office of the Illinois State Treasurer  
219 State House  
Springfield, Illinois 62706  
217-782-2211  
Email: [amayer@illinoistreasurer.gov](mailto:amayer@illinoistreasurer.gov)

# **Exhibit A**

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

ANTHONY D. KOLTON, S. DAVID	)	
GOLDBERG, JEFFREY S. SCULLEY, and	)	
HENRY C. KRASNOW, individually and on	)	
behalf of classes of all others similarly situated,	)	
	)	
Plaintiffs,	)	
v.	)	No. 16-cv-3792
	)	Hon. Charles P. Kocoras
	)	
MICHAEL W. FRERICHs,	)	
Treasurer of the State of Illinois,	)	
	)	
Defendant.	)	

**ORDER PRELIMINARILY APPROVING  
PROPOSED SETTLEMENT, DIRECTING THE ISSUANCE  
OF NOTICE TO THE CLASSES, AND SETTING A FAIRNESS HEARING**

WHEREAS:

A. Plaintiffs, Anthony D. Kolton, S. David Goldberg, and Jeffrey S. Sculley, on behalf of themselves and on behalf of the F.R. Civ. P. 23(b)(2) Class they represent, and Plaintiff, Henry C. Krasnow, on behalf of himself and on behalf of the F.R. Civ. P. 23(b)(3) Settlement Class he represents (collectively “Plaintiffs”), and Defendant, Michael W. Frerichs, Treasurer of the State of Illinois, (“Defendant” or “Treasurer”), have entered into a Settlement of the claims asserted in the above-titled action (the “Action”), the terms of which are set forth in an Agreement of Settlement and annexed exhibits dated June 10, 2021 (collectively, the “Settlement Agreement”);

B. Plaintiffs and Defendant have moved, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the Settlement in accordance with the terms and

conditions of the Settlement Agreement and directing the issuance of notice to the Classes in accordance with the Settlement Agreement; and

C. The Court, having read and considered the Settlement Agreement, including the proposed Notice of Certification of Class Actions, Proposed Settlement of Class Actions and Hearing on the Proposed Settlement and Attorneys' Fee Petition (the "Notice"), the proposed Summary Notice of Proposed Settlement of Class Actions (the "Summary Notice"), and the proposed Judgment Approving Settlement and Dismissing Action, and having heard and considered the comments of counsel for Plaintiffs and Defendant in support of the Settlement, finds that substantial and sufficient grounds exist for entering this Order.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court, for purposes of this Order, adopts all defined terms set forth in the Settlement Agreement. Any inconsistencies between the Settlement Agreement and the Notice will be controlled by the language of the Settlement Agreement.

2. The Court preliminarily certifies the claims brought on behalf of the Rule 23(b)(3) Class (subject to review and final certification at the Settlement Fairness Hearing) pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, as a class action on behalf of all Persons who owned unclaimed property held in the form of money by the Illinois State Treasurer, and whose claim for return of their property was paid or approved in the period from August 22, 2017 through the date of this Order. Excluded from the Class are any Class Members who submit a Request for Exclusion from the Class in accordance with the Notice.

3. The Court finds for the purposes of the Settlement only, and subject to review and final certification at the Settlement Fairness Hearing, that the prerequisites for a class action

under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied for the Rule 23(b)(3) Class in that: (a) the number of Class members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of Plaintiff Krasnow are typical of the claims of the Class that Plaintiff Krasnow seeks to represent; (d) Plaintiff Krasnow fairly and adequately represents the interests of the Class; (e) the questions of law and fact common to the Class members predominate over any questions affecting only individual Class members; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. For the purposes of the Settlement only, Plaintiff Henry C. Krasnow is certified as Class Representative of the Rule 23(b)(3) Settlement Class under Rule 23 of the Federal Rules of Civil Procedure. Plaintiffs' Counsel Terry Rose Saunders and Arthur Susman are appointed Class Counsel for the Rule 23(b)(3) Settlement Class as well as the previously certified Rule 23(b)(2) Class.

5. The Court preliminarily approves the Settlement of this Action on the terms and conditions set forth in the Settlement Agreement as satisfying the requirements of Rule 23(e)(1)(B)(i)-(ii) and being sufficiently fair, reasonable, and adequate to warrant sending notice of the Action and the proposed Settlement to Class Members and holding a full hearing on the fairness of the proposed Settlement.

6. A hearing will be held on (Date), 2021 at (Time), p.m., in Courtroom 2325 of the United States District Courthouse for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois, 60604 (the "Settlement Fairness Hearing"), to determine, among other things, whether the proposed Settlement of the Action on the terms and conditions provided in the Settlement Agreement is fair, reasonable, and adequate and should be approved by the Court;

whether a Judgment as provided for in the Settlement Agreement should be entered in this Action; whether the Attorneys' Fees and Expenses Application should be granted; and whether the Request for Plaintiffs' Compensation should be granted.

7. The Court approves the form, substance, and requirements of the Notice and the Summary Notice (together, the "Notices"), and finds that the procedures established for publication, mailing, and distribution of the Notices substantially in the manner and form set forth in paragraphs 8 and 9 of this Order constitute the best notice practicable, are reasonably calculated, under the circumstances, to apprise Class Members of their right to object to the proposed Settlement, are reasonable and constitute due, adequate and sufficient notice to all persons entitled to receive notice, and meet all applicable requirements of the Federal Rules of Civil Procedure (including Rules 23(c) and (d)), the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable law. The Court further finds that the Class Action Fairness Act notices ("CAFA Notices") served on state officials pursuant to the Class Action Fairness Act, 28 U.S.C. §1715, fully comply with the applicable requirements of that Act. The CAFA Notices were timely delivered; the settlement agreement was filed in Court on \_\_\_\_\_ and the appropriate federal and state officials were served with the CAFA Notices on \_\_\_\_\_.

8. Defendant's Counsel shall, not later than twenty (20) business days after the entry of this Order, cause the Notice, substantially in the form annexed to the Settlement Agreement as Exhibit A-1, to be electronically mailed to the last known email address, or, if not available, by first class mail to the last known mailing address, of each Rule 23(b)(3) Settlement Class Member that can be identified through reasonable effort, and shall cause the Notice to be

prominently displayed on the home page of the Treasurer's website,

<http://icashillinoistreasurer.gov> and <http://illinoistreasurer.gov>.

9. Defendant's Counsel shall cause the Summary Notice, substantially in the form annexed to the Settlement Agreement as Exhibit A-2, to be published on at least one occasion in *U.S.A. Today* not later than fourteen (14) business days after the entry of this Order, and to be included in the notice to claimants of the approval of payment of principal to owners of Unclaimed Property, for a period of one year or until Final Judgment is entered by the Court, whichever is later.

10. At or before the Fairness Hearing, the Parties shall file with the Court proof of electronic mailing or first class mailing of the Notice and proof of the publication of the Summary Notice.

11. Any Rule 23(b)(3) Settlement Class Member who wishes to be excluded from the Class must mail by first-class mail or otherwise deliver a Request for Exclusion to Counsel for Plaintiffs and the Classes and Counsel for the Treasurer care of the addresses provided in the Notice, postmarked or delivered no later than (\_\_\_\_\_), or as the Court may otherwise direct. A Settlement Class Member's Request for Exclusion shall include the following information: (a) name, (b) mailing address and email address, if there is one; (c) name of original property owner; (d) name of the person who claimed the property from the Treasurer; (e) dollar amount and date the claimant was paid; and (f) claim number and property identification numbers, if known. Unless otherwise ordered by the Court, any Settlement Class Member who does not file a timely Request for Exclusion shall be bound by the Release and by all proceedings, orders, and judgments in the Action, even if he, she, or it has pending or

subsequently initiates litigation, arbitration, or any other proceeding, or has any Claim, against any or all of the Released Parties relating to any of the Released Claims.

12. Any Class Member who did not file a Request for Exclusion from the Rule 23(b)(3) Settlement Class and who wishes to object to the fairness, reasonableness, or adequacy of this Settlement, to any term of the proposed Settlement Agreement, to the request for an award of Attorneys' Fees and Expenses, or to the request for Plaintiffs' Compensation must file a written objection with the Court and serve the objection on Plaintiffs' Counsel and Defendant's Counsel by first class and electronic mail no later than \_\_\_\_\_ or as the Court may otherwise direct. A member of the Rule 23(b)(3) Settlement Class who requests to be excluded from the Class may not submit an objection.

13. The objection of the Class Member shall (a) demonstrate that the Class Member is a Class Member by including the name and mailing address of the original property owner, the name, mailing address and email address, if there is one, of the person who claims, or, if the property has been returned, claimed ownership of the property; the dollar amount of the claim, and, if paid, the date or approximate date the claim was paid, and if known, the unclaimed funds claim number and any property identification numbers; and (b) state which part of this Settlement Agreement the Class Member objects to and the specific reason(s) for each such objection made by the Class Member. The Class Member must provide the objection to each of the following:

Counsel for Plaintiffs and the Classes:

Terry Rose Saunders  
The Saunders Law Firm  
120 North LaSalle Street, Suite 2000  
Chicago, IL 60602  
Tel: (312) 444-9656  
[tsaunders@saunders-lawfirm.com](mailto:tsaunders@saunders-lawfirm.com)

Arthur Susman  
Law Offices of Arthur Susman  
55 West Wacker Drive, Suite 1400  
Chicago, IL 60601  
Tel: (847) 800-2351  
[arthur@susman-law.com](mailto:arthur@susman-law.com)



Counsel for Defendant Treasurer of the State of Illinois:

Sarah Newman  
Office of the Illinois Attorney General  
General Law Bureau  
100 West Randolph Street, 13th Floor  
Chicago, Illinois 60601  
Tel: (312) 814-6131  
[sarah.newman@illinois.gov](mailto:sarah.newman@illinois.gov)

14. Class Members may file an objection on their own or through an attorney hired at their own expense. If a Class Member hires an attorney in connection with filing an objection, the attorney must file a notice of appearance with the Court and effect service on Plaintiffs' Counsel and Defendant's Counsel no later than (DATE).

15. A Class Member who files and serves a written objection pursuant to paragraph 12 of this Order -- and only such Class Members-- may appear at the Settlement Fairness Hearing, either in person or through an attorney hired at the Class Member's own expense, to object to the fairness, reasonableness, or adequacy of the Settlement, to any term of the proposed Settlement Agreement, to the request of Plaintiffs' Counsel for an award of Attorneys' Fees and Expenses, or to the request for Plaintiffs' compensation. Class Members or their attorneys who intend to make an appearance at the Settlement Fairness Hearing must both file with the Court and serve Plaintiffs' Counsel and Defendant's Counsel with a notice of intention to appear by no later than (DATE). Any Class Member who fails to comply with any of the provisions of this paragraph shall waive and forfeit any and all rights he, she, or it may have to appear separately and/or object, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in this Action.

16. Unless the Court otherwise directs, no Class Member or other person shall be entitled to object to the Settlement, the Final Judgment to be entered herein, the request for an

award of Attorneys' Fees and Expenses, or the request for Plaintiffs' Compensation, or otherwise be heard, except by filing and serving written objections as described above. Any person who does not object in the manner prescribed above shall be deemed to have waived such objection in this or any other action or proceeding and shall be bound by all of the terms and provisions of the Settlement Agreement and by all proceedings, orders and judgments in the Action.

17. Defendant's Counsel and Plaintiffs' Counsel shall promptly furnish each other with copies of objections or requests for exclusion that come into their possession.

18. Pending final determination of whether the Settlement should be approved, the Plaintiffs, all Class members, and each of them, and anyone who acts or purports to act on their behalf, shall not commence or prosecute any action or claim that is subject to the Release and dismissal contemplated by this Settlement.

19. The Court expressly reserves the right to adjourn the Fairness Hearing from time to time without any further written notice to Class Members.

20. The administration of the proposed Settlement and the determination of all disputed questions of law and fact with respect to the validity of any claim or right of any person to receive just compensation pursuant to the Settlement shall be under the authority of this Court.

21. If the Court declines to approve the Settlement or declines to enter the Final Judgment, or if the Final Judgment entered by the Court is reversed or modified on appeal, then the Settlement shall terminate, and the Settlement Agreement, including any amendment(s) thereof, and this Order shall be null and void, of no further force or effect, and without prejudice to any party, and may not be introduced as evidence or referred to in any actions or proceedings by any person or entity, and the Parties shall be restored to their respective positions as of March

10, 2020, except that Defendant shall receive no refund, repayment, or payment of Administration and Notice Expenses previously paid or incurred.

22. This Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement.

SO ORDERED.

Dated: \_\_\_\_\_, 2021  
Chicago, Illinois

\_\_\_\_\_  
HON. CHARLES P. KOCORAS  
UNITED STATES DISTRICT JUDGE

# **Exhibit A-1**

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

ANTHONY D. KOLTON, <i>et al.</i> ,	)
	)
Plaintiffs,	)
v.	) No. 16-cv-3792
	) Hon. Charles P. Kocoras
MICHAEL W. FRERICHS,	)
Treasurer of the State of Illinois,	)
	)
Defendant.	)

**NOTICE OF CERTIFICATION OF CLASS ACTION,  
PROPOSED SETTLEMENT OF CLASS ACTION AND  
HEARING ON THE PROPOSED SETTLEMENT AND ATTORNEYS' FEE PETITION**

**To:** All persons and entities: (i) Who owned unclaimed property held in the form of money by the Illinois State Treasurer and whose claim for return of their property from the Illinois State Treasurer was paid or approved in the period from August 22, 2017 through (DATE OF PRELIMINARY APPROVAL)) or (ii) Who owned unclaimed property held in the form of money by the Illinois State Treasurer as of (DATE OF PRELIMINARY APPROVAL) (collectively, the "Classes").

PLEASE READ THIS NOTICE CAREFULLY. YOU ARE RECEIVING THIS NOTICE  
BECAUSE YOU MAY BE A MEMBER OF ONE OF THE CLASSES AND YOUR RIGHTS  
MAY BE AFFECTED BY PROCEEDINGS IN THIS CLASS ACTION.

1. On \_\_\_\_\_, 2021, the United States District Court for the Northern District of Illinois (the "Court") preliminarily approved a settlement between Plaintiffs and Defendant Michael Frerichs, Treasurer of the State of Illinois ("Defendant" or "Treasurer"). This Notice is to inform you of (i) the certification of the Classes; (ii) the Settlement of this Class Action (collectively the "Action"); (iii) the terms of the Settlement, which will affect the rights of all Class Members, and (iv) a hearing that will be held by the Court on \_\_\_\_\_ 2021, to consider the fairness, reasonableness, and adequacy of the Settlement and the application of Plaintiffs' Counsel for an award of attorneys' fees and reimbursement of expenses and the request for Plaintiffs' compensation to the named Plaintiffs in this Action. The hearing will be held in Courtroom 2325 of the United States District Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois, 60604. This Notice describes rights you may have under the Settlement and what steps you may now take in relation to the Action and the Settlement. This Notice is not an expression of an opinion by the Court as to the merits of any claim or defense asserted by any party to the Action, except to the extent that legal issues have been decided in the course of this litigation, or to the fairness, reasonableness, or adequacy of the Settlement.

If you wish to participate in the Settlement, you do not need to do anything. If you wish to object to the Settlement, the petition for attorneys' fees and reimbursement of expenses, or the

request for Plaintiffs' compensation, or, if your claim for return of your unclaimed property was paid or approved in the period from August 22, 2017 through (date), and you wish to exclude yourself from the Class, you must follow the procedures described below in this notice.

### **BACKGROUND OF THE LITIGATION**

2. On March 29, 2016, Plaintiffs Anthony Kolton and S. David Goldberg commenced the Action on behalf of themselves and other owners of unclaimed property held in the form of money by the Treasurer under the Illinois Uniform Disposition of Unclaimed Property Act (the "Act"). Under the Act, the Treasurer holds unclaimed property until it is claimed by the owner, at which time the property is returned. With certain exceptions, the Treasurer did not compensate the owner for the interest or other earnings on the property while in its custody. The Plaintiffs alleged that the Act violated the Takings Clause of the Fifth and Fourteenth Amendments to the United States Constitution because it denied just compensation for the taking of Plaintiffs' unclaimed property. Plaintiffs brought their action under 42 U.S.C. §1983 and sought prospective declaratory and injunctive relief on behalf of owners of property still in the Treasurer's custody and damages on behalf of those owners whose claims had been paid.

3. On June 20, 2016, Defendant moved for an order dismissing the Complaint, which the Court granted on September 16, 2016.

4. Plaintiffs appealed the dismissal to the United States Court of Appeals for the Seventh Circuit, which reversed the District Court's order in part, holding that Plaintiffs were entitled to seek prospective relief in federal court on their claim that the refusal to pay owners of unclaimed property the benefit of the property's earnings while in State custody was an unconstitutional taking. The Seventh Circuit remanded the Action for further proceedings on that claim and affirmed the dismissal of the claim for damages on behalf of those whose property had been returned on the ground that the claim was against the State and the State was not a person that could be sued under Section 1983. *See Kolton v. Frerichs*, 869 F.3d 532 (7th Cir. 2017). While Plaintiffs' appeal was pending, the Illinois legislature enacted legislation revising the Illinois Uniform Disposition of Unclaimed Property Act (the "Revised Act") to require the State to pay interest to owners of unclaimed property whose property had been earning interest before it was delivered to the Treasurer. The Revised Act applied only to certain money property delivered to or converted by the Treasurer after June 30, 2018 and did not apply to Plaintiffs or members of the Class they sought to represent.

5. On October 10, 2017, Plaintiffs Kolton and Goldberg and Plaintiff Jeffrey Sculley filed an Amended and Supplemental Complaint limited to claims for declaratory and injunctive relief entitling Plaintiffs to just compensation in the future. On February 1, 2018, Plaintiffs moved for certification under Federal Rule of Civil Procedure 23(b)(2) of a class of all persons who are owners of property in the Illinois unclaimed property program in the form of money. The District Court denied Plaintiffs' motion on the ground that the proposed class did not satisfy the commonality requirement and that Plaintiff Goldberg had no claim for just compensation because his property was not earning interest before delivery to the Treasurer.

6. Following this ruling, Plaintiff Goldberg filed a motion for entry of a final judgment on his claim, which the District Court granted on June 20, 2018. Plaintiff Goldberg appealed this judgment and the dismissal of his claim to the Seventh Circuit, and the Seventh Circuit reversed, holding that an owner of unclaimed property is entitled to income that the property earns while in State custody regardless of whether the property had been previously earning income in the owner's hands. *See Goldberg v. Frerichs*, 912 F.3d 1009 (7th Cir. 2019).

7. On April 22, 2019, Plaintiffs renewed their motion for class certification, and on June 20, 2019, the District Court granted this motion and certified a Rule 23(b)(2) Class of "all persons who are owners of property in the Illinois unclaimed property program that is in the form of money."

8. During June-August, 2019, the parties engaged in informal discovery, including conferences and the exchange of written questions and answers relating to the Treasurer's investment of unclaimed property held in State custody, including earnings on the property in the Unclaimed Property Trust Fund, use of unclaimed property while in State custody, the number and amount of claims made by owners of unclaimed property annually, and the length of time unclaimed property was held in the Unclaimed Property Trust Fund before being claimed. In addition, Plaintiffs' counsel consulted with an expert economist on what might be a reasonable return on unclaimed property in the form of money held by the Treasurer.

9. Plaintiffs presented a settlement demand to the Treasurer on August 19, 2019, and the Treasurer made a counter-proposal on October 10, 2019. Thereafter, counsel for the parties met and conferred on several occasions, and the Treasurer provided additional information in response to follow-up questions from Plaintiffs. After extensive arms-length negotiations and Plaintiffs' counsel's consultation with their expert economist, the Parties reached an agreement in principle to settle the Action on January 22, 2020, and after further arms-length negotiations over certain terms, memorialized their agreement in a Memorandum of Understanding dated March 11, 2020.

10. Pursuant to the terms in their agreement in principle to settle the Action, class member Henry Krasnow on \_\_\_\_\_, 2021 filed a Second Amended and Supplemental Complaint which added claims on behalf of a Settlement Class consisting of owners of Unclaimed Property that was held in the form of money by the Treasurer and whose claim for return of their property was paid or approved in the period from August 22, 2017 (the date of the reversal of the dismissal of the Complaint by the Seventh Circuit) through and including ((Preliminary Approval Date)) (the date of preliminary approval of the Settlement by the District Court).

### **THE REASONS FOR THE SETTLEMENT**

11. Plaintiffs have litigated this Action in the District Court and through two appeals in the Seventh Circuit for nearly five years. The claims presented complex issues and a novel theory which required extensive factual and legal research and investigation. Plaintiffs have reviewed documents obtained from the Treasurer and public records relating to the collection, investment, and disposition of unclaimed property and interviewed witnesses from the Treasurer's office.

12. The Settlement was entered into only after Plaintiffs succeeded on two separate appeals they took to the United States Court of Appeals for the Seventh Circuit. Although Plaintiffs prevailed in both appeals, the court of appeals limited the extent of Plaintiffs' potential recovery. First, the court held that Plaintiffs could not pursue, under 42 U.S.C. §1983, the federal civil rights statute, their claim on behalf of property owners whose unclaimed property had been returned to them by the State. Second, the court held that the State was entitled to deduct certain administrative expenses of the Unclaimed Property Trust Fund from interest owed ("net interest") to Plaintiffs and left it to the District Court to determine whether and how much net interest was due.

13. In deciding to settle the Action, Plaintiffs and Plaintiffs' Counsel weighed the potential benefits of continuing with the litigation against the certain benefits provided by the Settlement, as well as the potential risks and costs of continuing the litigation. The principal reasons for agreeing to the Settlement are: (a) the potential recovery in light of the Seventh Circuit's opinions, which left contested issues relating to the appropriate measure of just compensation and the calculation of net interest subject to further litigation; (b) the benefits of obtaining immediate relief for the Classes and the risk of losing these benefits for large numbers of Class Members through protracted legal proceedings; (c) the advantages of obtaining benefits for the Rule 23 (b)(3) Class Members whose property has been returned without interest but whose claim had been dismissed from the federal court proceeding; and (d) the risks and uncertainties of continued class action litigation of this nature.

14. Plaintiffs and Plaintiffs' Counsel believe that the proposed Settlement confers substantial benefits upon the Classes and that it is fair, reasonable, and adequate and in the best interest of the Classes. They recommend it to the Classes and to the Court for its approval. Defendant and Defendant's Counsel also recommend the Settlement to the Court for its approval.

#### **TERMS OF THE PROPOSED SETTLEMENT**

15. On \_\_\_\_\_, 2021, the Court conditionally certified a class of owners of unclaimed property whose claim for return of their property from the Treasurer was paid or approved during the period August 22, 2017 to (date of preliminary approval) (the "Rule 23(b)(3) Settlement Class"). The Court had previously certified a Class of owners of unclaimed property whose property was being held in the form of money by the Treasurer (the "Rule 23(b)(2) Class"). Under the Settlement Agreement, the Rule 23(b)(2) Class will include all persons who are owners of unclaimed property held in the form of money by the Treasurer as of (date of preliminary approval).

16. If the Court approves the Settlement, the Defendant has agreed to pay interest as just compensation to members of both the Rule 23(b)(3) Settlement Class and the Rule 23(b)(2) Class. Interest will be paid from the latest of August 22, 2017, the date the unclaimed property is delivered to the Treasurer, or the date the Treasurer converts unclaimed property that is not in the form of money to money. Just compensation shall be payable for a period not to exceed ten years or until the property is returned, whichever is earlier. The Treasurer will also pay the just compensation measure agreed to in the Settlement to owners of unclaimed property in the form of money that is delivered to the Treasurer after (the Date of Preliminary Approval) ("Future



Claimants”), subject to the General Assembly’s enacting legislation that changes the just compensation owed to Future Claimants.

17. The Settlement measure of just compensation is an interest rate calculated monthly and compounded monthly that is the greater of: (1) the actual return the Defendant earns on the Unclaimed Property Trust Fund maintained by the Defendant, or (2) the percentage increase, if any, in the Consumer Price Index for all Urban Consumers (CPI-U), for all items published by the U.S. Department of Labor. This measure will be applied to the gross amount of the Class Member’s claim for each month that the Defendant has held the class member’s property in the form of money. The Treasurer may assess an administrative fee of no more than \$5.00 for each claimed property, deductible only from interest due on each claimed property. Members of either Class entitled to interest under the Revised Act shall be entitled to receive any greater amount due under this Settlement.

18. Rule 23(b)(3) Settlement Class Members whose mailing addresses can be verified by the Treasurer will receive their interest payments without further action from the Class Member. If no current mailing address can be verified, the Class Member will be required to confirm the mailing address within 120 days of the date confirmation is requested or to file a separate request with verification of the mailing address within two years of the confirmation request.

19. The Settlement will become effective (the “Effective Date”) only after the judgment approving the Settlement entered by the Court becomes final and is not subject to appeal. Upon the Effective Date, the Treasurer will begin making interest payments to Class Members whose property has been returned or is returned in the future. The Treasurer has calculated that, as of March 31, 2021, the net interest payable to Rule 23(b)(3) Settlement Class Members is \$13,563,730.89. Net interest payable to Rule 23(b)(2) Class Members can only be estimated because those claims have not yet been made. However, based on historical averages relating to holding periods and return rates of the Unclaimed Property Trust Fund, recent interest rates, and calculations of interest payable to the Rule 23(b)(3) Class, the Treasurer has estimated that the present value of interest payable to the Rule 23(b)(2) Class will be approximately

\$30,851,391. Plaintiffs and Plaintiffs’ Counsel have been advised by an expert economist whom they have consulted that, based on historical trends of unclaimed property claims paid by the Treasurer, the interest payable to the Rule 23(b)(2) Class will likely be well above that estimate.

20. Upon the Effective Date, Plaintiffs and the Classes shall release and discharge Defendant, his representatives, and the State of Illinois, and Defendant shall release Plaintiffs, the Classes, and Plaintiffs’ Counsel, from claims related to this Action, other than their respective obligations contained in the Settlement Agreement.

21. Upon the Effective Date, Class Members will be bound by all proceedings, orders and the final judgment in this Action, whether favorable or unfavorable to them. You are not required to take any action to remain a Class Member.

22. This Notice is not intended to be a complete description of the Settlement Agreement. That document, which contains the full and complete terms of the Settlement, is on

file with the Court and is available on the Treasurer's website, <http://icashillinoistreasurer.gov> and <http://illinoistreasurer.gov>.

### **RIGHTS OF RULE 23(b)(3) CLASS MEMBERS**

23. Members of the Rule 23(b)(3) Settlement Class who do not wish to be bound by the Settlement and the Order and Final Judgment must exclude themselves from the Class by submitting a request for exclusion in writing to (i) Counsel for Plaintiffs and the Classes and (ii) Counsel for the Defendant at the addresses listed below that is post-marked or otherwise delivered no later than ( ).

24. A request for exclusion must clearly state the name, mailing address and email address, if there is one, of the person seeking exclusion, the name of the original property owner, the name of the person who claimed the property from the Treasurer, the dollar amount the claimant was paid, and the date the claim was paid. The request for exclusion should provide the claim number and property identification numbers, if known. Class Members who request exclusion from the Class will not be entitled to receive any interest payment from the Settlement.

### **SETTLEMENT FAIRNESS HEARING**

25. On \_\_\_\_\_, a hearing will be held before the Honorable Charles P. Kocoras in Courtroom 2325 at 219 South Dearborn Street, Chicago, Illinois at (time) (the "Settlement Fairness Hearing") to determine (a) whether the proposed Settlement of the Action as set forth in the Settlement is fair, reasonable, adequate, and in the best interest of the Classes; (b) whether the Court should grant final approval of the Settlement; and (c) whether a Final Judgment (as provided in the Settlement Agreement) should be entered.

### **ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES AND PLAINTIFFS' COMPENSATION**

26. At the Settlement Fairness Hearing, or at such other time as the Court may direct, Plaintiffs' Counsel intends to apply to the Court for an award of attorneys' fees and reimbursement of expenses in accordance with F. R. Civ. P. 23(h), 42 U.S.C. §1988 (as applicable), and common law in an amount not to exceed 9.5 million or 25% of the benefit to the Classes. Plaintiffs' Counsel have expended considerable time and effort in the prosecution of this litigation on a contingent fee basis and have advanced the expenses of the litigation in the expectation that if they were successful, they would be compensated. Plaintiffs' Counsel will also request that the Court award the four individual Plaintiffs 2,500 each to compensate them for their efforts in assisting Plaintiffs' Counsel in the Action.

### **OBJECTIONS TO THE SETTLEMENT**

27. A Member of the Rule 23(b)(2) Class or the Rule 23(b)(3) Settlement Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, to any term of the Settlement, to the request for an award of attorneys' fees and expenses, or to the request for Plaintiffs' compensation must file a written objection with the Court and serve the objection on Counsel for Plaintiffs and the Classes and Defendant's Counsel at the addresses listed below by first class mail and electronic mail by no later than \_\_\_\_\_. A member of the Rule 23(b)(3) Settlement Class who requests to be excluded from the Class may not submit an objection.

Counsel for Plaintiffs and the Classes:

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The Saunders Law Firm

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Tel: (312) 444-9656

[tsaunders@saunders-lawfirm.com](mailto:tsaunders@saunders-lawfirm.com)

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[arthur@susman-law.com](mailto:arthur@susman-law.com)

Counsel for Defendant:

Sarah Newman

Office of the Illinois Attorney General

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Chicago, IL 60601

Tel: (312) 814-6131

[snewman@atg.state.il.us](mailto:snewman@atg.state.il.us), [sarah.newman@illinois.gov](mailto:sarah.newman@illinois.gov)

28. An objection of a Class Member must demonstrate that the objector is a Class Member, and must include the name and mailing address of the original property owner; the name, mailing address and email address, if there is one, of the person who claims or, if the property has been returned, claimed ownership of the property; the dollar amount of the claim; and, if paid, the date or approximate date the claim was paid. An objector should provide the unclaimed funds claim number and any property identification numbers, if known. Objectors must also plainly state their individual concerns, including which part of the Settlement the Class Member objects to and the specific reasons for any objection.

29. A Class Member may file an objection on his, her, or its own, or through any attorney hired at the objector's own expense. If a Class Member hires an attorney in connection with filing an objection, the attorney must file a notice of appearance with the Court and effect service on Plaintiffs' Counsel and Defendant's Counsel no later than (DATE).

30. A Class Member who files and serves a written objection pursuant to this Section and only such Class Members<sup>1</sup> may appear at the Settlement Fairness Hearing, either in person or through an attorney retained at the Class Member's expense, to object to the fairness, reasonableness or adequacy of the Settlement Agreement, to any terms of the Settlement Agreement, to the request of Plaintiffs' Counsel for an award of attorneys' fees and reimbursement of expenses, or the request for Plaintiffs' compensation. Class Members or their attorneys who intend to make an appearance at the Settlement Fairness Hearing must both file with the Court and serve Plaintiffs' Counsel and Defendant's Counsel with a notice of intention to appear by no later than (DATE).

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<sup>1</sup> The Settlement Fairness Hearing is open to the public, and therefore any member of the public may attend and listen to the hearing. However, only Class Members who file objections may appear and speak at the hearing to set forth their objections.

31. Any Class Member who does not comply with any of these requirements may waive and forfeit any right to object to the Settlement, Plaintiffs' Counsel's petition for attorney's fees and reimbursement of expenses, and Plaintiffs' request for Plaintiffs' Compensation.

32. Class members should not contact the Court relative to either the attorneys' fees and expenses application or the final approval of the Settlement. Due to electronic filing rules of the Court, filings normally are required to be made electronically. Objectors should therefore not wait until the last minute, to assure they can comply with the Clerk's requirements for electronic filing. For further information on E-filing requirements, class members should consult the website of the Clerk of the District Court, \_\_\_\_\_.

#### **TERMINATION OF THE AGREEMENT OF SETTLEMENT**

33. The Settlement Agreement will terminate if the Court does not approve the Settlement or declines to enter the final judgment or if the final judgment entered by the Court is reversed or modified on appeal. If the Settlement is terminated, the Settlement will become null and void, and the Action will revert to its status as of March 10, 2020.

#### **FURTHER INFORMATION**

34. This Notice is only a summary and does not fully describe all aspects of the Action or the Settlement. It is subject to and controlled by the more detailed provisions of the Settlement Agreement and related orders, exhibits, and other papers filed in the Action. For examination of the Settlement Agreement and related exhibits, orders and other papers, Class Members should visit the homepage of the Treasurer's website, <http://icash.illinoistreasurer.gov> and <https://illinoistreasurer.gov> or obtain access to the U.S. District Court for the Northern District of Illinois through Public Access to Court Electronic Records ("PACER") at <https://pacer.uscourts.gov>. Because of orders entered by the District Court relating to COVID-19, which restrict access to the Office of the Clerk and the U.S. Courthouse, it is not currently possible to inspect files in person at the Office of the Clerk. If you are unable to access information on the Treasurer's website or PACER, you may contact the Treasurer's Office by calling 833-623-0612 or, outside of office hours, send an email to [unclaimedproperty@illinoistreasurer.gov](mailto:unclaimedproperty@illinoistreasurer.gov).

PLEASE DO NOT CONTACT THE COURT OR THE OFFICE OF THE CLERK OF THE COURT CONCERNING THE SETTLEMENT OR THIS NOTICE.

BY ORDER OF THE COURT

Dated: \_\_\_\_\_, 2021

Chicago, Illinois

# **Exhibit A-2**

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

ANTHONY D. KOLTON,	.,	)
		)
	Plaintiffs,	)
v.		) No. 16-cv-3792
		)
MICHAEL W. FRERICHS,		)
Treasurer of the State of Illinois,		)
		)
	Defendant.	)

**SUMMARY NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

**To:** All persons and entities who owned unclaimed property in the form of money that was held by the Illinois State Treasurer (“Treasurer”) during the period from August 22, 2017 through ((THE DATE OF PRELIMINARY APPROVAL)).

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS CLASS ACTION.

**WHY SHOULD I READ THIS NOTICE?**

YOU ARE NOTIFIED, pursuant to an Order of the United States District Court for the Northern District of Illinois, Eastern Division (the “Court”) that the above-captioned action has been certified as a class action on behalf of two classes: (i) owners of unclaimed property held in the form of money by the Treasurer as of (the date of preliminary approval) (the “Rule 23(b)(2) Class”), and (ii) persons whose unclaimed property claims were paid or approved by the Treasurer during the period August 22, 2017 through (the date of preliminary approval) (the “Rule 23(b)(3) Settlement Class,” and together with the Rule 23(b)(2) Class, the “Classes”).<sup>1</sup> A settlement of this action has been proposed that requires the Treasurer to pay interest to all Class members, and to pay interest in the future to persons and entities whose unclaimed property is held by the Treasurer in the form of money, and thus compensate them for earnings on their property while in State custody. The action asserts claims on behalf of the Classes and alleges that the Treasurer is required by the United States Constitution to compensate Class members for the earnings on their money while held by the State.

**WHAT AM I ENTITLED TO RECEIVE UNDER THE SETTLEMENT?**

The proposed settlement provides that the Treasurer will pay interest on unclaimed property starting from the latest of August 22, 2017, the date the property is delivered to the Treasurer, or the date the Treasurer converted the property to money through the date the

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<sup>1</sup> For both Classes, only owners of unclaimed property that the Treasurer held in the form of money (., cash) are included in the class. Owners of tangible items such as coins or jewelry and owners of securities are not included unless and until the Treasurer sells and converts those items or securities into money.

unclaimed property is returned to the owner (the “Settlement”). The interest rate shall be the greater of the interest rate the Treasurer earns on unclaimed property on a monthly basis or the monthly percentage change in the Consumer Price Index for all Urban Consumers during the period that the Treasurer held the property. The Treasurer will pay interest for a period of up to ten years and may charge an administrative fee of up to \$5.00 for each claimed property, deductible only from interest due.

### **WHO WILL DETERMINE IF THE SETTLEMENT IS FAIR?**

The Court will hold a hearing on (( )) before the Honorable Charles P. Kocoras at the United States District Courthouse for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois 60604, Courtroom 2325, to determine (i) whether the proposed settlement is fair, reasonable and adequate to the Classes and should be approved; and (ii) whether the application of counsel for the Classes for an award of attorneys’ fees and reimbursement of expenses and for an award for the named Plaintiffs (Anthony D. Kolton, S. David Goldberg, Jeffrey Sculley and Henry C. Krasnow) in connection with their representation of the Classes should be approved. The application of Class counsel for an award of attorneys’ fees and reimbursement of expenses shall be in accordance with F.R. Civ. P. 23(h), 42 U.S.C. §1988 (as applicable), and common law in an amount not to exceed \$9.5 million or 25% of the benefit to the Classes.

### **HOW CAN I GET MORE INFORMATION ABOUT THE SETTLEMENT?**

If you are a member of the Rule 23(b)(2) Class or the Rule 23(b)(3) Settlement Class, your rights will be affected and you may be entitled to compensation under the Settlement. The documents relating to the Settlement and the instructions for claiming compensation are posted on the website of the Treasurer and may be found at <https://icash.Illinoistreasurer.gov> and <https://illinoistreasurer.gov>.

If you are a Member of the Rule 23(b)(3) Settlement Class, you should also receive an email or letter containing the full Notice of Certification and Proposed Settlement of Class Action and Hearing (“Notice”). If you have not yet received the Notice, which describes the action and your rights in detail, you should go to the website of the Treasurer set out above and search for the Notice. If your mailing address or email address has changed since you received your payment from the Treasurer, you can provide your updated email address and mailing address at <https://icash.Illinoistreasurer.gov>. If you are unable to access information on the Treasurer’s website, you may contact the Treasurer’s office by calling 833-623-0612 or, outside of office hours, send an email to [unclaimedproperty@illinoistreasurer.gov](mailto:unclaimedproperty@illinoistreasurer.gov).

### **WHAT SHOULD I DO IF I AM A MEMBER OF THE RULE 23(b)(3) SETTLEMENT CLASS AND DO NOT WANT TO PARTICIPATE IN THE SETTLEMENT?**

If you are a member of the Rule 23(b)(3) Settlement Class and wish to remain a member of that Class, you do not need to take any action at this time. If you do not wish to be bound by the Settlement and the Order and Final Judgment of the Court, you must exclude yourself from that Class by submitting a request for exclusion in writing to Counsel for Plaintiffs and the Classes and Counsel for the Treasurer at the addresses listed below that is post-marked no later than (( )) in accordance with the instructions set forth in the Notice on the Treasurer’s website. If properly



excluded, you will not be bound by any judgments or orders in the action and will not be eligible to receive payments from the Settlement.

### **CAN I OBJECT TO THE SETTLEMENT?**

Members of the Rule 23(b)(2) Class and the Rule 23(b)(3) Settlement Class have the right to object and be heard in connection with the Court hearing and to retain their own attorney, at their own expense. Class members are not required either to appear or object. All objections to the Settlement or Plaintiffs' Counsel's motions for an award of attorneys' fees and litigation expenses or for awards to Plaintiffs must be in writing and must include the name of the original property owner. If a claim for the property has been paid, then the objection must specify (1) the name(s) of the person(s) who claimed the funds, (2) the claimant's address at the time the claim was paid and the current address, if different, (3) the dollar amount the claimant was paid, and (4) the date or approximate date the claimant recovered the unclaimed funds. Objectors also should provide the unclaimed funds claim number and property identification numbers, if known. All objections must be filed with the Court and received by Plaintiffs' Counsel and the Treasurer's Counsel at the addresses listed below prior to (( )) in accordance with the instructions found on the Treasurer's website or the Notice.

### **WHO CAN I CONTACT IF I HAVE QUESTIONS ABOUT THE SETTLEMENT?**

Please do not contact the Court, the Court Clerk's Office or the Treasurer regarding this Summary Notice. All questions regarding the contents of this Notice should be directed to Counsel for the respective parties.

#### **COUNSEL FOR PLAINTIFFS AND THE CLASSES**

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Arthur Susman  
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#### **COUNSEL FOR THE TREASURER OF THE STATE OF ILLINOIS**

Sarah Newman  
OFFICE OF THE  
ILLINOIS ATTORNEY GENERAL  
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Email: [sarah.newman@illinois.gov](mailto:sarah.newman@illinois.gov)

BY ORDER OF THE COURT:

Honorable Charles P. Kocoras

Dated: June 10, 2021 DRAFT



# **Exhibit B**

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

ANTHONY D. KOLTON, S. DAVID	)	
GOLDBERG, JEFFREY S. SCULLEY, and	)	
HENRY C. KRASNOW, individually and on	)	
behalf of classes of all others similarly situated,	)	
	)	
Plaintiffs,	)	
v.	)	No. 16-cv-3792
	)	Hon. Charles P. Kocoras
	)	
MICHAEL W. FRERICHES,	)	
Treasurer of the State of Illinois,	)	
	)	
Defendant.	)	

**JUDGMENT APPROVING SETTLEMENT  
AND DISMISSING ACTION**

WHEREAS:

A. Plaintiffs, Anthony D. Kolton, S. David Goldberg, Jeffrey S. Sculley and Henry C. Krasnow (“Plaintiffs”), on behalf of themselves and on behalf of the Classes they represent, and Defendant, Michael W. Frerichs, Treasurer of the State of Illinois (“Defendant” or “Treasurer”) (together “the Settling Parties”), have entered into a Settlement of the claims asserted in the above-titled action (the “Action”), the terms of which are set forth in an Agreement of Settlement and annexed exhibits dated June 10, 2021 (collectively, the “Settlement Agreement”);

B. This Court entered an Order Preliminarily Approving Proposed Settlement, Directing the Issuance of Notice to the Classes, and Setting a Fairness Hearing, dated \_\_\_\_\_, 2021 (the “Preliminary Approval Order”), preliminarily approving the proposed Settlement, directing individual and publication notice to Rule 23(b)(3) Settlement Class Members and publication Notice to Rule 23(b)(2) Class Members, scheduling a hearing for

\_\_\_\_\_, 2021 (the “Fairness Hearing”), providing Rule 23(b)(3) Settlement Class Members with an opportunity to request to be excluded from the class and providing Class Members, other than those Rule 23(b)(3) Settlement Class Members who requested to be excluded, to object to the proposed Settlement and to be heard at the Fairness Hearing;

C. The Court held the Fairness Hearing on \_\_\_\_\_, 2021 at \_\_\_\_\_ a.m./p.m. to determine, among other things, whether (i) the proposed Settlement of the Action on the terms and conditions provided in the Settlement Agreement is fair, reasonable, and adequate and should be approved by the Court, (ii) a Judgment as provided for in the Settlement Agreement should be entered, (iii) Plaintiffs’ Counsel’s Request for Attorneys’ Fees and Expenses should be granted, and (iv) whether Plaintiffs’ Request for Compensation should be granted; and

D. The Court, having considered all matters submitted to it at the hearing, along with all prior submissions by the parties to the Settlement and others, and otherwise having determined the fairness, reasonableness, and adequacy of the proposed Settlement of the claims of the Class Members against the Released Parties;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court finds that the distribution of the Notice, the publication of the Summary Notice, and the notice methodology, all implemented in accordance with the terms of the Settlement Agreement and this Court’s Preliminary Approval Order:

(a) constituted the best practicable notice to Class Members under the circumstances of this Action;

(b) were reasonably calculated, under the circumstances, to apprise Class Members of (i) the pendency of this class action, (ii) the right of the 23(b)(3) Settlement Class Members to exclude themselves from the Class; (iii) the right of all Class Members to object to

any aspect of the proposed settlement and to appear at the Fairness Hearing, either on their own or through counsel hired at their own expense, if they did not exclude themselves from the Class, and (iv) the binding effect of the Order and Judgment in this action, whether favorable or unfavorable, on all Rule 23(b)(2) Class Members and Rule 23(b)(3) Settlement Class Members who did not request exclusion from the Class;

(c) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice; and

(d) fully satisfied all applicable requirements of the Federal Rules of Civil Procedure (including Rules 23(c) and (d)), the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law.

2. The Court finds that it has personal jurisdiction over all Class Members and that the Court has subject matter jurisdiction to approve the terms of the Settlement Agreement, including its exhibits, and including all documents submitted to the Court in connection with the implementation of this Settlement.

3. The Court finds that the terms and provisions of the Settlement Agreement were entered into by the Settling Parties in good faith and are fully and finally approves the Agreement as fair, reasonable, and adequate as to, and in the best interests of, each of the Plaintiffs and the Class Members, and consistent and in compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Rules of the Court and any other applicable law. The Settling Parties and their counsel are hereby directed to implement and consummate the Settlement Agreement according to its terms and provisions.

4. Within 60 days after this Judgment becomes final, the Treasurer will begin distributing just compensation payments to the members of the Rule 23(b)(3) Class and any members of the Rule 23(b)(2) Class whose claims have been paid since entry of the Preliminary Approval Order whose current mailing address can be verified through reasonable efforts and, if not verifiable, shall request confirmation of the Class Member's address; and shall begin including just compensation with payments of principal to Rule 23(b)(2) Class Members and Future Claimants.

5. The Court finds for the purposes of the Settlement only that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Class members is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the Plaintiff Henry C. Krasnow are typical of the claims of the Class that Plaintiff Krasnow seeks to represent; (d) Plaintiff Krasnow fairly and adequately represents the interests of the Class; (e) the questions of law and fact common to the Class members predominate over any questions affecting only individual Class members; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. For the purposes of the Settlement only, Plaintiff Krasnow is certified as Class Representative under Rule 23 of the Federal Rules of Civil Procedure, and Terry Rose Saunders and Arthur Susman are appointed Class Counsel.

6. The Court finds that all members of the Classes are bound by this Judgment Approving Settlement and Dismissing Action. The "Rule 23(b)(3) Settlement Class" as defined in the Settlement Agreement, means, all owners of Unclaimed Property whose Unclaimed Property Claims were paid or approved for payment from August 22,

2017 through (Date of Preliminary Approval), except those Class Members who submitted Requests for Exclusion from the Class; the “Rule 23(b)(2) Class”, as defined in the Settlement Agreement, means all persons who were owners of Unclaimed Property held in the form of money by the Treasurer as of (Date of Entry of Preliminary Approval Order).

7. This Action, including all individual and class claims resolved by it, is hereby dismissed on the merits and with prejudice, without fees or costs to any party except as otherwise provided in this Judgment.

8. “Released Claims” means any and all actual or potential, suspected or unsuspected, known or unknown, asserted or unasserted claims, actions, causes of action, demands, obligations, liabilities, attorneys’ fees and costs, whether arising under local, state or federal law, whether by statute, contract, common law, or equity, whether brought in an individual, representative, or any other capacity, actual or contingent, liquidated or unliquidated, that arise from or reasonably relate to the Action or the Settlement, including the Settlement Just Compensation Measure, the Plan of Distribution or Defendant’s failure to pay just compensation on Unclaimed Property held by the Treasurer prior to August 22, 2017, provided that Released Claims do not include covenants, obligations or other provisions, or claims relating to the covenants, obligations or other provisions, set forth in the Settlement Agreement and do not relate to any future enactments by the General Assembly regarding Unclaimed Property.

9. With respect to Releases of the Parties:

(a) “Released Plaintiff Parties” means Plaintiffs, Class Members and Plaintiffs’ Counsel;

(b) “Released Parties” means Michael Frerichs, Treasurer of the State of Illinois and his representatives and successors in office and the State of Illinois, including every department, agency, instrumentality, or division of the State of Illinois and their Representatives.

10. The terms and provisions of the Settlement Agreement and of this Judgment are binding on Released Plaintiff Parties, and they are hereby permanently barred and enjoined from instituting, commencing or prosecuting, either directly or in any other capacity, any Released Claims against any Released Parties.

11. The Releases and relevant definitions, which are set forth in Sections 1.23, 1.27, 1.28 and 5 of the Settlement Agreement, are expressly incorporated herein in all respects. The Release is effective as of the date the Final Judgment becomes Final and forever discharges the Released Plaintiff Parties and Released Parties from any claims or liabilities arising from or related to the Released Claims.

(a) When the Final Judgment becomes Final, the Released Plaintiff Parties, for good and sufficient consideration, the receipt and adequacy of which is hereby acknowledged, shall be deemed to have, by operation of law and this Judgment, fully, finally, and forever released, relinquished, settled, and discharged all Released Claims against the Released Parties, shall have covenanted not to sue the Released Parties with respect to all such Released Claims, and shall be permanently barred and enjoined from asserting any such Released Claim against the Released Parties.

(b) With respect to any and all Released Claims, the Plaintiffs expressly waive, and each of the other Released Plaintiff Parties shall be deemed to have waived, and by operation of the Judgment shall have waived, the benefit of the provisions of California Civil Code Section 1542 (to the extent it applies to the action), which provides: “A GENERAL

RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.” Released Plaintiff Parties having acknowledged the significance and consequence of this waiver of the provision of Section 1542, waive the provisions and protections of Section 1542, assume full responsibility for any loss that may be incurred by reason of such waiver, and hereby release unknown and unsuspected claims.

(c) When the Final Judgment becomes Final, Plaintiffs further expressly waive, and each of the other Released Plaintiff Parties shall be deemed to have waived, and by operation of the Judgment shall have waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, that is similar, comparable, or equivalent in effect to California Civil Code Section 1542 or that would otherwise act to limit the effectiveness or scope of the releases. Plaintiffs expressly acknowledge, and the other Released Plaintiff Parties shall be deemed to have expressly acknowledged, that they may hereafter discover facts in addition to or different from those that any of them or their counsel now know or believe to be true with respect to the subject matter of the Released Claims, but, upon the date the Final Judgment becomes Final, Plaintiffs shall expressly have, each other Released Plaintiff Party shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims.

(d) When the Final Judgment becomes Final, Defendant shall, by operation of law and this Judgment, fully, finally, and forever release, relinquish, settle, and discharge all Released Claims against the Released Plaintiff Parties, shall have covenanted not to sue the



Released Plaintiff Parties with respect to all such Released Claims, and shall be permanently barred and enjoined from asserting any such Released Claim against the Released Plaintiff Parties.

12. The Court finds that all of the pleadings in the Action were filed in good faith in accordance with Rule 11 of the Federal Rules of Civil Procedure.

13. The Court finds that Plaintiffs' Counsel and Plaintiffs adequately represented the Classes for purposes of negotiating, entering into and implementing the Settlement.

14. Plaintiffs' Counsel is hereby awarded attorneys' fees in the amount of \_\_\_\_\_. Plaintiffs' Counsel is hereby awarded reimbursement of litigation expenses in the amount of \_\_\_\_\_. Defendant shall pay such attorneys' fees and litigation expenses from funds held in the Unclaimed Property Trust Fund.

15. Plaintiffs Anthony D. Kolton, S. David Goldberg, Jeffrey S. Sculley and Henry C. Krasnow are hereby awarded the sum of \_\_\_\_\_ each in recognition of their representation of the Classes. Defendant may pay such compensation from funds held in the Unclaimed Property Trust Fund, or from other funds appropriated to the Treasurer.

16. Nothing in this Judgment shall preclude any action to enforce the terms of the Settlement Agreement or this Judgment.

17. The Settling Parties are hereby authorized, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and all exhibits attached to the Settlement Agreement, provided that such amendments, modifications and expansions of the Settlement Agreement are not materially

inconsistent with this Judgment and do not materially limit the rights of Class Members under the Settlement Agreement.

18. The finality of this Judgment shall not be affected, in any manner, by rulings that the Court may make on Plaintiffs' Counsel's application for an award of attorneys' fees and reimbursement of expenses or Plaintiffs' request for compensation.

19. The Court reserves jurisdiction over the Action, including all future proceedings concerning the administration, consummation, and enforcement of this Settlement Agreement, and any action arising under or to enforce this Settlement Agreement shall be commenced and maintained only in this Court.

SO ORDERED.

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Honorable Charles P. Kocoras  
United States District Judge

Dated: \_\_\_\_\_, 2021

Chicago, Illinois

## **Exhibit 2**

I, Anthony Kolton, declare as follows:

1. I am over the age of 18. I have personal knowledge of the matters in this Declaration and if called upon could and would testify to them.
2. I am one of the Plaintiffs and a class representative in the above-captioned case. I submit this declaration, on behalf of myself and the Rule 23(b)(2) Class, in support of this Court's approval of the proposed settlement with Defendant.
3. I know Arthur Susman professionally, and my association with him does not prevent me from exercising independent judgment as to the interests of the Class.
4. I agreed to serve as a representative of the Class that the Court has certified and have been willing, able and ready to perform the duties and obligations of a Class representative, including being available for discovery and fact finding. I am familiar with the Amended Complaint in this case and have been kept apprised of the progress of the litigation. I have read the Settlement Agreement, including exhibits, and made an independent judgment that the Settlement is fair and in the interest of the Class before signing the Settlement Agreement. I will remain as class representative and not request exclusion from the Class.
5. I believe that the proposed Settlement achieves a significant recovery for the Rule 23(b)(2) Class and is an excellent result, particularly when considered in light of the risks of trial, the uncertainty of success at trial, especially as to the compensation to which Class members are entitled, and the likelihood of an appeal on that issue. The proposed settlement also permits an immediate recovery to the Class without the risk and delay of trial.
6. Based upon my understanding of the Class claims and the terms of the Settlement Agreement, I believe the proposed Settlement is fair, adequate and reasonable, and in the best interests of Class members, and should therefore be granted final approval.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

  
Anthony Kolton

Dated: 5/21/2021  
Chicago, Illinois

## **Exhibit 3**

I, S. David Goldberg, declare as follows:

1. I am over the age of 18. I have personal knowledge of the matters in this Declaration and if called upon could and would testify to them.
  2. I am one of the Plaintiffs and a class representative in the above-captioned case. I submit this declaration, on behalf of myself and the Rule 23(b)(2) Class, in support of this Court's approval of the proposed settlement with Defendant.
  3. I know Arthur Susman professionally, and my association with him does not prevent me from exercising independent judgment as to the interests of the Class.
  4. I agreed to serve as a representative of the Class that the Court has certified and have been willing, able and ready to perform the duties and obligations of a class representative, including being available for discovery and fact finding. I am familiar with the Amended Complaint in this case and have been kept apprised of the progress of the litigation. I have read the Settlement Agreement, including exhibits, and made an independent judgment that the Settlement is fair and in the interest of the Class before signing the Settlement Agreement. I will remain as class representative and not request exclusion from the Class.
  5. I believe that the proposed Settlement achieves a significant recovery for the Rule 23(b)(2) Class and is an excellent result, particularly when considered in light of the risks of trial, the uncertainty of success at trial, especially as to the compensation to which Class members are entitled, and the likelihood of an appeal on that issue. The proposed Settlement also permits an immediate recovery to the Class without the risk and delay of trial.
  6. Based upon my understanding of the Class claims and the terms of the Settlement Agreement, I believe the proposed Settlement is fair, adequate and reasonable, and in the best interests of Class members, and should therefore be granted final approval.
- I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

  
S. David Goldberg


Dated: May 27, 2021  
Chicago, Illinois

## **Exhibit 4**

I, Jeffrey Sculley, declare as follows:

1. I am over the age of 18. I have personal knowledge of the matters in this Declaration and if called upon could and would testify to them.
2. I am one of the Plaintiffs and a class representative in the above-captioned case. I submit this declaration, on behalf of myself and the Rule 23(b)(2) Class, in support of this Court's approval of the proposed settlement with Defendant.
3. I know Thomas Doyle, who was previously one of the attorneys for Plaintiffs in this case, professionally, and my association with him does not prevent me from exercising independent judgment as to the interests of the Class.
4. I agreed to serve as a representative of the Class that the Court has certified and have been willing, able and ready to perform the duties and obligations of a Class representative, including being available for discovery and fact finding. I am familiar with the Amended Complaint in this case and have been kept apprised of the progress of the litigation. I have read the Settlement Agreement, including exhibits, and made an independent judgment that the Settlement is fair and in the interest of the Class before signing the Settlement Agreement. I will remain as class representative and not request exclusion from the Class.
5. I believe that the proposed Settlement achieves a significant recovery for the Rule 23(b)(2) Class and is an excellent result, particularly when considered in light of the risks of trial, the uncertainty of success at trial, especially as to the compensation to which Class members are entitled, and the likelihood of an appeal on that issue. The proposed settlement also permits an immediate recovery to the Class without the risk and delay of trial.
6. Based upon my understanding of the Class claims and the terms of the Settlement Agreement, I believe the proposed Settlement is fair, adequate and reasonable, and in the best interests of Class members, and should therefore be granted final approval.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

  
Jeffrey Sculley

Dated: 6/2/21  
Chicago, Illinois



## **Exhibit 5**

I, Henry C. Krasnow, declare as follows:

1. I am over the age of 18. I have personal knowledge of the matters in this Declaration and if called upon could and would testify to them.

2. I am one of the Plaintiffs and a class representative in the above-captioned case. I submit this declaration, on behalf of myself and the Rule 23(b)(3) Class, in support of this Court's approval of the proposed settlement with Defendant.

3. I know Arthur Susman socially, and my association with him does not prevent me from exercising independent judgment as to the interests of the Class.

4. I agreed to serve as a representative of the Class that the Court has certified and have been willing, able and ready to perform the duties and obligations of a class representative, including being available for discovery and fact finding. I am familiar with the Amended Complaint in this case and have been kept apprised of the progress of the litigation. I have read the Settlement Agreement, including exhibits, and made an independent judgment that the Settlement is fair and in the interest of the Class before signing the Settlement Agreement. I will remain as class representative and not request exclusion from the Class.

5. I believe that the proposed Settlement achieves a significant recovery for the Rule 23(b)(3) Class and is an excellent result, particularly when considered in light of the risks of trial, the uncertainty of success at trial, especially as to the compensation to which Class members are entitled, and the likelihood of an appeal on that issue. The proposed Settlement also permits an immediate recovery to the Class without the risk and delay of trial.

6. Based upon my understanding of the Class claims and the terms of the Settlement Agreement, I believe the proposed Settlement is fair, adequate and reasonable, and in the best interests of Class members, and should therefore be granted final approval.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

  
Henry C. Krasnow

Dated: May 31, 2021  
Chicago, Illinois