

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIDAL SOLER and COREY STEWART,
Individually and on behalf of all others similarly situated,
Plaintiffs,
-against -
FRESH DIRECT, LLC, and FRESH DIRECT HOLDINGS, INC.,
Defendants.

Civil Action No. 20-cv-3431 (AT)(BCM)

COURT-AUTHORIZED NOTICE OF PROPOSED SETTLEMENT

If you applied for a job at Fresh Direct between January 1, 2015, and July 29, 2021, and you were denied employment because of your criminal history, you may be entitled to a payment from a Class Action Settlement.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

Applicants for employment at Fresh Direct, LLC (“Fresh Direct” or “Defendant”) brought a class action lawsuit under the New York State Human Rights Law (“NYSHRL”); New York State Corrections Law Article 23-A; Section 8-107(10) and Section 8-107(11) of the New York City Human Rights Law (“NYCHRL”), also known as the Fair Chance Act (“FCA”), against Fresh Direct, for allegedly failing to follow the required process for considering criminal convictions in hiring.

- The Parties in the lawsuit have reached a Settlement, subject to Court approval. Under this Settlement, Fresh Direct has agreed to pay a total of \$900,000 that will be used to pay applicants who qualify and, service awards, administrative expenses, and attorneys’ fees and costs. Fresh Direct expressly contests and denies the allegations in the lawsuit. You may be entitled to a pro rata share of a \$900,000 settlement.
- Visit the Settlement Website at www.FreshDirectSettlement.com for additional details about the Settlement. You may obtain additional information by calling (833) 944-5278 or by writing to the Settlement Administrator, as laid out in Section 5.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	You must submit a Claim Form by September 18, 2023 to be eligible to receive a payment under the Settlement.
DO NOTHING	If you do not submit a Claim Form by September 18, 2023, you will not be eligible to receive a payment under the Settlement and you will give up your right to sue or be a part of any other lawsuit against Fresh Direct on these claims.
EXCLUDE YOURSELF	If you wish to exclude yourself (“opt out”) from the Settlement you must follow the directions outlined in Section 10 below. If you exclude yourself, you will not receive a payment under the Settlement and you cannot object to the Settlement. <u>Your exclusion request must be postmarked no later than September 18, 2023.</u>
OBJECT	You may write to the Court about why you believe the Settlement is not fair or reasonable. You must object in writing in order to appear at the Fairness Hearing to speak to the Court about the fairness of the Settlement. <u>If you wish to object to the Settlement, you must send a written objection the Settlement Administrator postmarked no later than September 18, 2023.</u>

These rights and options – **and deadlines** – are explained in this Notice. Your legal rights will be affected whether you act or do not act. You have a choice to make now.

Contact Christopher McNerney or Adam Koshkin
Outten & Golden LLP 685 Third Ave., 25th Floor New York, NY 10017
(212) 245-1000 or FreshDirectSettlement@outtengolden.com

The Court in charge of this case still has to decide whether to give final approval to the Settlement. Settlement payments will be made if the Court approves the Settlement and after appeals, if any, are resolved. Please be patient.

BASIC INFORMATION

1. Why did I receive this Notice and what is this lawsuit about?

Applicants for employment at Fresh Direct brought a class action lawsuit against Fresh Direct for allegedly violating the NYSHRL, New York State Corrections Law Article 23-A, and the NYCHRL. The lawsuit is known as *Vidal Soler and Corey Stewart v. Fresh Direct, LLC*, No. 20 Civ. 3431. The Court in charge of the lawsuit is the United States District Court for the Southern District of New York.

Plaintiffs alleged that Fresh Direct violated the NYSHRL, New York State Corrections Law Article 23-A, and NYCHRL, statutes which, among other things, govern the conduct and use of criminal background check procedures for applicants seeking positions for employment. The Plaintiffs in the lawsuit claimed that Fresh Direct failed to follow the processes laid out in those statutes for considering a job applicant's criminal history in hiring decisions. Defendant denies violating the NYSHRL, New York State Corrections Law Article 23-A, or NYCHRL with respect to its hiring practices and decisions.

Fresh Direct's records show that you applied for employment at Fresh Direct sometime between January 1, 2015 and July 29, 2021, received a conditional job offer, and had that conditional job offer revoked or withdrawn after disclosing prior criminal convictions and/or after prior criminal convictions appeared on a criminal background check.

The Court ordered that you be sent this Notice because the proposed Settlement may apply to you, and you have a right to know about it and all your options before the Court decides whether to approve the Settlement.

2. What is a class action?

A class action is a lawsuit where one or more persons (Class Representatives) sue not only for themselves, but also for other people with similar claims. These other people, such as yourself, are known as Class Members. In a class action, one court resolves the issues for all Class Members, except for those who exclude themselves from the class.

3. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Fresh Direct. Both sides believe they would have prevailed, but there was no ruling in favor of either party. Instead, both sides agreed to a settlement. That way, they avoid the costs, delays, and uncertainties associated with a trial, and the people affected will get compensation.

WHO IS IN THE SETTLEMENT

4. How do I know if I am part of the Settlement?

You are automatically a member of the Class if you applied for employment with Fresh Direct sometime between January 1, 2015 and July 29, 2021, you received a conditional offer of employment and your conditional offer of employment was withdrawn following your disclosure of prior criminal convictions or your criminal convictions appeared in a criminal background check. If you aren't sure about whether you qualify as a Class Member, you can contact the Settlement Administrator, as explained in Section 5 of this Notice.

THE SETTLEMENT BENEFITS – WHAT YOU GET

5. What does the Settlement provide?

You are receiving this Notice because Fresh Direct's records indicate that you are eligible to participate in the Settlement as a Class Member. Class Members who timely submit Claim Forms will receive an equal share of the settlement fund, the amount of which will be determined by how many Class Members submit Claim Forms and the terms of the Settlement. If there is sufficient additional money remaining in the settlement fund after the deadline to cash settlement checks expires, then it is possible you may receive a second payment if economically feasible.

Under the Settlement, Fresh Direct has agreed to pay a total of \$900,000.00 (the "Gross Settlement Amount"). Subject to Court approval, the Gross Settlement Amount will be used to pay attorneys' fees of up to \$300,000.00 (one-third of the Gross Settlement Amount), plus reimbursement of actual litigation expenses and costs. Subject to Court approval, the Gross Settlement Amount will also be used to pay Service Awards of \$10,000.00 each to the two Named Plaintiffs (\$20,000 total) for bringing the lawsuit, their service to the Class, and reaching this Settlement. An additional plaintiff who gave testimony necessary to reaching this

Contact Christopher McNerney or Adam Koshkin
Outten & Golden LLP 685 Third Ave., 25th Floor New York, NY 10017
(212) 245-1000 or FreshDirectSettlement@outtengolden.com

settlement will receive a Service Award of \$5,000, subject to Court approval. The Gross Settlement amount will also cover the costs and expenses of the Settlement Administrator.

The Settlement Agreement is on the case website and the Settlement Administrator also can provide a copy.

6. How do I submit my Claim Form?

To be eligible to receive a payment from this Settlement, you **must** submit the attached Claim Form, which **must** be received by the Settlement Administrator (or postmarked if mailed) no later than **September 18, 2023**.

You may print and mail, email, fax, or submit online the completed form to the Settlement Administrator at:

Soler v. Fresh Direct Settlement Administrator
P.O. Box 2003
Chanhassen, MN 55317-2003
Toll-Free: (833) 944-5278
Fax: (952) 404-5750
info@FreshDirectSettlement.com
www.FreshDirectSettlement.com

7. How will my payment be taxed?

We cannot estimate your payment at this time because your payment depends on the number of participating Class Members, and the Court needs to approve the service awards and attorneys' fees and costs. But upon such payment, 50% of your payment will be allocated as a non-wage payment and reported on an IRS Form 1099-MISC. The remaining 50% will be allocated as a wage payment which will be subject to withholdings required by law and reported on an IRS Form W-2. Neither Class Counsel nor Defendant makes any representations concerning the tax consequences of this Settlement, and you are advised to seek your own personal tax advice regarding the tax implications of the Settlement.

8. Are my Legal Rights Affected if I do not submit a Claim Form?

Yes. Unless you affirmatively exclude yourself from the Settlement by September 18, 2023, you will not be able to start, continue, or be a part of any other lawsuit against Fresh Direct involving the legal issues addressed in this lawsuit. If you do nothing, you will not receive any money from the proposed settlement and will lose your right to pursue legal action against Fresh Direct for the claims addressed here.

9. By not excluding myself from this Settlement, what legal claims am I releasing?

If the Court grants final approval of the Settlement, then all Class Members who do not opt-out of the Settlement are giving up (also called "releasing") their right to sue Fresh Direct for all claims against it that accrued during the period January 1, 2015, through July 29, 2021, under Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, Article 23-A of the New York State Corrections Law, the New York City Human Rights Law, the New York City Fair Chance Act and related New Jersey, Pennsylvania and Maryland state and local laws.

Class Members will give up these rights whether or not they choose to submit a Claim Form to be eligible to receive a settlement payment. In other words, unless you opt-out of the lawsuit, you will be covered by the release, even if you do not submit a Claim Form. Releasing your claims means that you cannot sue, continue to sue, or be party to any other lawsuit against Defendant about the legal issues in this case. By staying in the Class and endorsing your settlement check, you are agreeing that all of the Court's Orders will apply to you and legally bind you.

THE LAWYERS REPRESENTING YOU

10. Do I have a lawyer in this case?

The Court has appointed the lawyers at Outten & Golden LLP to represent you and all Class Members. Together, these lawyers are called "Class Counsel." Unless you elect to exclude yourself from the Settlement, you will continue to be represented by Class Counsel in connection with the implementation of the Settlement throughout the duration of the terms of the Settlement at no cost to you.

If you have questions about the proposed Settlement, you can get free legal help by contacting Class Counsel:

Contact Christopher McNerney or Adam Koshkin
Outten & Golden LLP 685 Third Ave., 25th Floor New York, NY 10017
(212) 245-1000 or FreshDirectSettlement@outtengolden.com

Ossai Miazad
Christopher M. McNerney
Outten & Golden LLP
685 Third Avenue, 25th Floor
New York, NY 10017
212-245-1000
FreshDirectSettlement@outtengolden.com

Adam Koshkin
Outten & Golden LLP
One California St., 12th Floor
San Francisco, CA 94111
415-638-8800
FreshDirectSettlement@outtengolden.com

11. How will the lawyers be paid?

Class Counsel will ask the Court to approve payment of up to \$300,000.00 for their attorneys' fees (i.e. one third of the Gross Settlement Amount) plus reimbursement of actual litigation expenses and costs. The Court may award less than these requested amounts.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you want to be able to sue Fresh Direct for similar claims discussed above on your own, then you must exclude yourself from the Class. The process is also sometimes referred to as "opting out."

12. How do I opt out of the Settlement?

To exclude yourself from the Settlement, you must send a letter by First Class U.S. Mail stating the following: "I opt out of the Fresh Direct Applicant Settlement." Be sure to include your name, address, email address, telephone number, and your signature. Your opt-out request must be postmarked no later than 60 days from date of mailing of this Notice, September 18, 2023, and must be mailed to:

Soler v. Fresh Direct Settlement Administrator
P.O. Box 2003
Chanhassen, MN 55317-2003

If you asked to be excluded, you will not receive a settlement payment, and you cannot object to the Settlement, but you will be able to separately sue Fresh Direct. If you wish to exclude yourself in order to file an individual lawsuit against Fresh Direct, you should speak to a lawyer as soon as possible because your claims are subject to statutes of limitations.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

13. How do I tell the Court that I do not like the Settlement?

You can object to the Settlement if you do not like any part of it. To object, you must send a letter via First Class U.S. Mail saying that you object to the settlement in *Soler et al. v. Fresh Direct, LLC*, No. 20-cv-03431-AT-BCM (S.D.N.Y.). Be sure to include your name, address, email address, telephone number, and all reasons why you object to the Settlement. Any reasons not included in your objection will not be considered. Mail the objection to:

Soler v. Fresh Direct Settlement Administrator
P.O. Box 2003
Chanhassen, MN 55317-2003

Your letter must be postmarked no later than 60 days from date of mailing of this Notice, September 18, 2023.

THE COURT'S FAIRNESS HEARING

The Court will hold a fairness hearing on **October 17, 2023** at **1:00 p.m.**, telephonically by phone. Information to access the hearing will be posted on the case website one week before the hearing. You do not need to attend the hearing, but you may attend if you would like at your own expense.

At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long the Court's decision will take.

DATED: July 20, 2023

Contact Christopher McNerney or Adam Koshkin
Outten & Golden LLP 685 Third Ave., 25th Floor New York, NY 10017
(212) 245-1000 or FreshDirectSettlement@outtengolden.com