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Case Number 2023LA000231
Date: 4/3/2023 12:08 PM
Thomas McRae
Clerk of Circuit Court
Third Judicial Circuit, Madison County Illinois

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

DAWN CALLENDER, individually and on behalf of other persons similarly situated, Plaintiff, v. QUALITY PACKAGING SPECIALISTS INTERNATIONAL, LLC, Defendant.	Case No.: 2023LA000231 Honorable Dennis Ruth

MEMORANDUM IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Dated: April 3, 2023

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INTRODUCTION

In this putative class action, Plaintiff Dawn Callender ("Plaintiff" or "Callender") allege that Defendant Quality Packaging Specialists International, LLC ("QPSI" or "Defendant") (Plaintiff and Defendant collectively referred to as the "Parties") violated Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/15(a) and 14/15(b) by requiring Plaintiff and its other Illinois workers to "clock" in and out using their finger and/or handprints. After months of arms-length negotiations, the Parties have reached a proposed $262,675.00 class settlement ("Settlement" or "Agreement") that provides a substantial benefit to Settlement Class Members. If approved, the Settlement will bring certainty, closure, and significant and valuable relief for individuals to what otherwise would likely be contentious and costly litigation regarding Defendant's alleged unlawful collection, use, storage, and disclosure of individuals' biometric identifiers and/or biometric information.

Plaintiff now seeks preliminary approval of the Settlement, certification of a settlement class, appointment of class counsel, and approval of the proposed form and method of class notice. This memorandum describes in detail the reasons why preliminary approval is in the best interest of the class and is consistent with 735 ILCS 5/2-801. As discussed in more detail below, the most important consideration in evaluating the fairness of a proposed class action settlement is the strength of Plaintiff's case on the merits balanced against the relief obtained in the settlement. *See Steinberg v. Software Associates, Inc.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999); *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990); *see also Am. Intn'l Grp., Inc., et al. v. ACE INA Holdings, et al.*, 2012 WL 651727 (N.D. Ill. Feb. 28, 2012).[1] While

[1] Section 2-801 is modeled after Rule 23 of the Federal Rules of Civil Procedure and, therefore, "federal decisions interpreting Rule 23 are persuasive authority with regard to questions of class certification in Illinois." *Avery v. State Farm Mut. Ins. Co.*, 216 Ill. 2d 100, 125 (2005).

Plaintiff believes she could secure class certification and prevail on the merits at trial, success is not guaranteed, particularly given the uncertainty in the law surrounding BIPA, and Defendant is prepared to vigorously defend this case and oppose certification of a litigated class. The terms of the Settlement, which include a $262,675.00 Settlement Fund providing Settlement Class Members with meaningful cash compensation, meet and exceed the applicable standards of fairness. Accordingly, the Court should preliminarily approve the Settlement so that Settlement Class Members can receive notice of their rights and the claims administration process may begin.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff's complaint alleges that Defendant collected, stored and used – without first providing notice, obtaining informed written consent or publishing data retention policies – the finger and/or handprints and associated personally identifying information of its employees (and former employees), who were required to "clock in" with their finger and/or handprints, in violation of the BIPA, 740 ILCS 14/1 *et seq*. *See* Declaration of Roberto Luis Costales ("Costales Decl.") ¶ 3.

In the months following to Plaintiff's filing of the instant lawsuit, the Parties engaged in significant arms-length settlement discussions, including informally exchanging relevant information surrounding the alleged claims. Costales Decl. ¶ 4, 5. After months of negotiations, the Parties reached an agreement on all material terms of a class action settlement and executed a term sheet ("Class Action Settlement Term Sheet"). Costales Decl. ¶ 6. Thereafter the Parties drafted and executed the Settlement Agreement and related documents which are submitted herewith. *Id*.

TERMS OF THE SETTLEMENT

The key terms of the Settlement, attached to the Costales Declaration as Exhibit A, are briefly summarized as follows:

A. Class Definition

The "Settlement Class" is defined as:

> All individuals who worked or are working for QPSI and who scanned their finger in QPSI's timekeeping system in Illinois between April 15, 2016 to April 21, 2021 without first providing written consent.[2]

Agreement ¶ 1.34. The Parties estimate that the Settlement Class is comprised of 266 class members.

B. Monetary And Prospective Relief

Defendant will establish a Settlement Fund of $262,675.00, from which each Settlement Class Member who submits a timely, simple, one page Claim Form approved by the Settlement Administrator shall be entitled to a gross settlement payment of $987.50. Agreement ¶ 1.38. The Settlement Fund will also be used to pay notice and administrative expenses, attorneys' fees, costs, and expenses, and an incentive award to the Class Representative. *Id.* ¶ 1.33.

Additionally, Defendant has represented that it is in compliance with BIPA, including all notice and consent provisions. *Id.* ¶ 2.2.

C. Release

In exchange for the relief described above, Defendant and each of its related and affiliated entities as well as all "Released Parties," as defined in ¶ 1.30 of the Settlement, will

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[2] Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this Action and members of their families; (2) Persons who properly execute and file a timely request for exclusion from the Settlement Class; and (3) the legal representatives, successors or assigns of any excluded Persons.

receive a full release of all claims arising out of or related to biometrics or BIPA in connection with Plaintiff's and the Settlement Class's employment with Defendant. *See id.* ¶ 3.

D. Notice And Administrative Expenses

The Settlement Fund will be used to pay the cost of sending the Notice set forth in the Agreement and any other notice as required by the Court, as well as all costs of administration of the Settlement Agreement ¶ 1.33.

E. Incentive Award

In recognition of the effort on behalf of the Settlement Class, Defendant has agreed that Plaintiff may receive, subject to Court approval, an incentive award of up to $10,000.00 from the Settlement Fund, as appropriate compensation for her time and effort serving as Class Representative and as party to the Action. Defendant will not oppose any request limited to this amount. *Id.* ¶ 8.4.

F. Attorneys' Fees, Costs, And Expenses

Defendant has agreed that the Settlement Fund may also be used to pay Class Counsel reasonable attorneys' fees and to reimburse costs and expenses in this Action, in an amount to be approved by the Court. *Id.* ¶ 8.1. Class Counsel has agreed to petition the Court for attorneys' fees, costs, and expenses of no more than 40% of the Settlement Fund. *Id.*

ARGUMENT

I. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE

Courts review proposed class action settlements using a well-established two-step process. Conte & Newberg, *Newberg on Class Actions*, § 11.25, at 38-39 (4th ed. 2002); *see e.g., Kaufman v. Am. Express Travel Related Servs. Co.*, 264 F.R.D. 438, 447 (N.D. Ill. 2009); *GMAC Mortgage Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 492 (1st Dist. 1992); *Shawn Fauley, Sabon, Inc. v. Metro Life Ins. Co.*, 2016 IL App (2d) 150236, ¶¶ 4, 7, 15. The first step is a

preliminary pre-notification hearing to determine whether the proposed settlement is "within the range of possible approval." *Newberg*, § 11.25, at 38-39; *Armstrong v. Board of Sch. Dirs. Of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds*; *Sabon*, 2016 IL App. (2d) 150236, ¶ 4. The preliminary approval hearing is not a fairness hearing, but rather a hearing to ascertain whether there is any reason to notify the class members of the proposed settlement based on the written submissions and informal presentation from the settling parties. *Manual for Complex Litigation*, § 21.632 (4th ed. 2002). If the Court finds the settlement proposal "within the range of possible approval," the case proceeds to the second step in the review process: the final approval hearing. *Newberg,* § 11.25, at 38-39.

Because the essence of settlement is compromise, courts should not reject a settlement solely because it does not provide complete victory, given that parties to a settlement "benefit by immediately resolving the litigation and receiving some measure of vindication for [their] position[s] while foregoing the opportunity to achieve an unmitigated victory." *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 347 (N.D. Ill. 2010) (internal quotations and citation omitted); *GMAC*, 236 Ill. App. 3d at 493 ("The court in approving [a class action settlement] should not judge the legal and factual questions by the same criteria applied in a trial on the merits"). There is a strong judicial and public policy favoring the settlement of class action litigation, and such a settlement should be approved by the Court after inquiry into whether the settlement is "fair, reasonable, and adequate." *Quick v. Shell Oil Co.*, 404 Ill. App. 3d 277, 282 (3d Dist. 2010); *Isby v. Bayh*, 75 F.3d 1191, 1198 (7th Cir. 1996). "Although this standard and the factors used to measure it are ultimately questions for the fairness hearing that comes after a court finds that a proposed settlement is within approval range, a more summary version of the same inquiry takes place at the preliminary phase."

Kessler v. Am. Resorts Int'l., 2007 WL 4105204, at *5 (N.D. Ill. Nov. 14, 2007) (citing *Armstrong*, 616 F.2d at 314).

The Settlement represents a fair and reasonable resolution of this dispute and is worthy of Notice to and consideration by the individuals in the Settlement Class. It will provide significant financial relief to Settlement Class Members as compensation for their Released Claims and will relieve the Parties of the burden, uncertainty, and risk of continued litigation.

The factors ultimately to be considered by a court in determining the fairness, reasonableness, and adequacy of a settlement are: "(1) the strength of the case for the plaintiffs on the merits, balanced against the money or other relief offered in the settlement; (2) the defendant's ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed." *City of Chicago*, 206 Ill. App. 3d at 972; *see also Armstrong*, 616 F.2d at 314. Of these considerations, the first is the most important. *Steinberg*, 306 Ill. App. 3d at 170; *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006).

A preliminary application of these factors to this case demonstrates that the proposed settlement is fair, reasonable, and adequate.

A. The Settlement Agreement Provides Substantial Relief To The Settlement Class, Particularly In Light Of The Uncertainty Of Prevailing On The Merits

As to the first factor, the Settlement in this case provides substantial material benefits to the Settlement Class: each Settlement Class Member who submits a timely, simple one-page Claim Form will be entitled to a gross settlement payment of $987.50. Agreement ¶ 1.38. In addition, the Settlement provides meaningful prospective relief, as Defendant has represented

that it is in compliance with BIPA, including all notice and consent provisions. *Id.* ¶ 2.2.

While Plaintiff believes she would likely prevail on her claims, she is also aware that Defendant denies the material allegations of the Complaint and intends to pursue several legal and factual defenses, including but not limited to whether Defendant actually possessed biometric information or biometric identifiers, and whether Settlement Class Members' claims are barred by the applicable statute of limitations. Costales Decl. ¶ 17. While the parties negotiated this settlement, the viability of the latter defense was the subject of at least one pending appellate case. *See Cothron v. White Castle Sys., Case No. 128004*.

In addition to any defenses on the merits Defendant would raise, should litigation continue Plaintiff would also be required to prevail on a class certification motion, which would be highly contested and for which success is certainly not guaranteed. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) ("Settlement allows the class to avoid the inherent risk, complexity, time and cost associated with continued litigation") (internal citations omitted). "If the Court approves the [Settlement], the present lawsuit will come to an end and [Settlement Class Members] will realize both immediate and future benefits as a result." *Id*. Approval would allow Plaintiff and the Settlement Class Members to receive meaningful and significant payments now, instead of years from now or never. *See id*. at 582.

Additionally, the fairness, reasonableness, and adequacy of the instant Settlement are supported by previously approved settlements, which provide less value than that achieved for the class here. For example, in *Zepeda v. Intercontinental Hotels Group, Inc.*, No. 2018-CH-02140 (Cir. Ct. Cook Cnty., Ill. 2018), the settlement provided each class member eligible to receive a *pro rata* share of a settlement fund that would amount to approximately $500 per person before deductions for administrative expenses, attorneys' fees and costs, and an incentive

award. In *Sekura v. L.A. Tan Enterprises, Inc.*, No. 2015-CH-16694 (Cir. Ct. Cook Cnty., Ill. 2016), the BIPA class settlement resulted in each class member being eligible to receive a *pro rata* share of a settlement fund that would have amounted to approximately $40 per person if each class member had submitted a valid claim. And in *Carroll v. Crème de la Crème, Inc.*, No. 2017-CH-01624 (Cir. Ct. Cook Cnty., Ill. 2018), the settlement resulted in each class member being eligible to enroll in credit and identity monitoring services free of charge without further monetary relief. *See also, e.g.*, *Marshall v. Lifetime Fitness, Inc.*, 2017-CH-14262 (Cir. Ct. Cook Cty.) (paying claimants $270 each in addition to credit monitoring); *Prelipceanu v. Jumio Corp.*, 2018-CH-15883 (Cir. Ct. Cook Cty., Ill. 2020) (awarding claimants a gross payment of approximately $260 each) *Lopez v. Multimedia Marketing & Sales, Inc.*, No. 17- CH-15750 (Cir. Ct. Cook Cnty., 2020) (awarding claimants a gross payment of approximately $565 each); *Mohn v. Chronister Oil Company*, No. 20-L-249 (Cir. Ct. Sangamon Cnty., 2022) (awarding claimants a gross payment of approximately $675 each).

This result is exceptional in comparison to other BIPA cases—and is certainly fair, reasonable, and adequate and warrants Court approval.

B. Defendant's Ability To Pay

The second factor that can be considered by the Court is the Defendant's ability to pay the settlement sum. Defendant's financial standing has not been placed at issue here.

C. Continued Litigation Is Likely To Be Complex, Lengthy, And Expensive

In absence of settlement, it is certain that the expense, duration, and complexity of the protracted litigation that would result would be substantial. Not only would the Parties have to undergo significant motion practice before any trial on the merits is even contemplated, but evidence and witnesses from throughout the State of Illinois and beyond would have to be

assembled for any trial. Further, given the complexity of the issues and the amount in controversy, the defeated party would likely appeal both any decision on the merits as well as on class certification. As such, the immediate and considerable relief provided to the Settlement Class under the Settlement Agreement weighs heavily in favor of its approval compared to the inherent risk and delay of a long and drawn-out litigation, trial, and appeal. Protracted and expensive litigation is not in the interest of any of the Parties or Settlement Class Members.

D. There Has Been No Opposition To The Settlement

While this factor is best examined after notice has been provided to the class, there is presently no known opposition to the Settlement. Thus, this factor weighs in favor of approval.

E. The Settlement Was The Result Of Arm's-Length Negotiations Between The Parties After A Significant Exchange Of Information

There is an initial presumption that a proposed settlement is fair and reasonable when it was the result of arm's-length negotiations. *Newburg*, § 11.42; *see also Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 21 (finding no collusion where there was "no evidence that the proposed settlement was not the product of 'good faith, arm's-length negotiations'"). Here, the Settlement was reached only after arm's-length negotiations between counsel for the Parties that took many months for the parties to complete. Costales Decl. ¶ 4-6. Moreover, negotiations began only after an exchange of information regarding the size and composition of the Settlement Class. *Id.* Such an involved process underscores the non-collusive nature of the proposed Settlement. Finally, given the fair result for the Settlement Class in terms of the monetary and prospective relief, it is clear that this Settlement was reached as a result of good-faith negotiations rather than any collusion between the Parties. As argued above, the projected amounts to be received by Settlement Class Members are higher than those in other BIPA class settlements approved by Illinois courts. Accordingly, this factor weighs in favor of preliminary approval.

F. The Reaction Of The Settlement Class

Like factor number four, undersigned counsel are aware of no opposition to the Settlement, and due to the strength of this Settlement and the amount of the award that each Settlement Class Member will receive, Plaintiff expects little to no opposition to the Settlement by any Settlement Class Member in the future. Plaintiff approves the Settlement and believe that it is a fair and reasonable settlement in light of the defenses raised by Defendant and the potential risks involved with continued litigation.

G. The Settlement Agreement Has Support Of Experienced Proposed Class Counsel

Proposed Class Counsel believes that the proposed Settlement is in the best interest of the Settlement Class Members because the Settlement Class Members will be provided an immediate payment instead of having to wait for lengthy litigation and any subsequent appeals to run their course. Further, due to the defenses that Defendant has indicated that it would raise should the case proceed through litigation – and the resources that Defendant has committed to defend and litigate this matter – it is possible that the Settlement Class Members would receive no benefit whatsoever in the absence of this Settlement. Given proposed Class Counsel's experience litigating similar class action cases in federal and state courts across the country, including other BIPA cases, this factor also weighs in favor of granting preliminary approval. *See* Costales Decl. ¶¶ 13-16.

H. The Parties Exchanged Information Sufficient To Assess The Adequacy Of The Settlement

The eighth factor is structured to permit the Court to consider the extent to which the court and counsel were able to evaluate the merits of the case and assess the reasonableness of the settlement. *City of Chicago*, 206 Ill. App. 3d at 972. Here, the Parties exchanged information regarding the facts and size of the class, and thoroughly investigated the facts and law relating to

Plaintiff's allegations and Defendant's defenses. Costales Decl. ¶ 4-6. Accordingly, this factor also weighs in favor of preliminary approval.

II. THE PROPOSED CLASS NOTICE SHOULD BE APPROVED

Under 735 ILCS 5/2-803, the Court may provide class members notice of any proposed settlement so as to protect the interests of the class and the parties. *See Cavoto v. Chicago Nat. League Ball Club, Inc.*, 2006 WL 2291181, at *15 (1st Dist. 2006) (collecting authorities and noting that "section 2-803 makes it clear that the statutory requirement of notice is not mandatory"). Notice must be provided to absent class members to the extent necessary to satisfy requirements of due process. *Id*. at *15 (citing *Frank v. Teachers Ins. & Annuity Assoc. of America*, 71 Ill. 2d 583, 593 (1978)); *see also* Fed. R. Civ. P. 23(d)(2) (advisory committee note) ("mandatory notice…is designed to fulfill requirements of due process to which the class action procedure is of course subject"). As explained by the United States Supreme Court, due process requires that the notice be the "best practicable, 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections'" as well as "'describe the action and the plaintiffs' rights in it.'" *Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 36 (citing *Phillips Petroleum Co. v. Shuts*, 472 U.S. 797, 812 (1985)).

The proposed Notice in this case satisfies both the requirements of 735 ILCS 5/2-803 and due process. As set forth in detail above, the Settlement Agreement contemplates a notice plan that provides traditional individual direct mail notice, which is designed to reach as many potential individuals in the Settlement Class as possible. Agreement ¶ 4. The direct notice process should be very effective at reaching Settlement Class Members given the relationship between Defendant and the Settlement Class Members (current or former workers). The proposed Notice Forms are attached to the Settlement Agreement as Exhibits B & C, and should

be approved by the Court. The proposed method of notice comports with 735 ILCS 5/2-803 and due process.

III. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES

For settlement purposes only, the Parties have agreed that the Court should make preliminary findings and enter an Order granting provisional certification of the Settlement Class and appoint Plaintiff and Plaintiff's counsel to represent the Settlement Class. "The validity of use of a temporary settlement class is not usually questioned." *Newberg*, §11.22. The *Manual for Complex Litigation* explains the benefits of settlement classes:

> Settlement classes – cases certified as class actions solely for settlement – can provide significant benefits to class members and enable the defendants to achieve final resolution of multiple suits. Settlement classes also permit defendants to settle while preserving the right to contest the propriety and scope of the class allegations if the settlement is not approved[.]…An early settlement produces certainty for the plaintiffs and defendants and greatly reduces litigation expenses.

Manual for Complex Litigation (Fourth) § 21.612.

Before granting preliminary approval of a class action settlement, a court should determine that the proposed settlement class is a proper class for settlement purposes. *Id.* § 21.632; *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). A class may be certified under Section 2-801 of the Illinois Code of Civil Procedure if the following "prerequisites" are satisfied: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members; (3) the representative parties will fairly and adequately protect the interest of the class; and (4) the class action is an appropriate method for the fair and efficient adjudication of the controversy. 735 ILCS 5/2-801; *CE Design Ltd. v. C & T Pizza, Inc.*, 2015 IL App (1st) 131465, ¶10. In this case, the Settlement Class as defined in the

Settlement Agreement and in Section III.A., *supra*, meets all of the applicable certification requirements.

A. The Class Is Sufficiently Numerous And Joinder Is Impracticable

Numerosity is met where "the class is so numerous that joinder of all members is impracticable." 735 ILCS 5/2-801(1). "Although there is no bright-line test for numerosity, a class of forty is generally sufficient." *Hinman v. M & M Rental Center, Inc.*, 545 F. Supp. 2d 802, 805-06 (N.D. Ill. 2008); *Kulins v. Malco, A Microdot Co., Inc.*, 121 Ill. App. 3d 520, 530 (1st Dist. 1984) (finding that 47 class members was sufficient to satisfy numerosity). Here, the proposed Class encompasses approximately 266 individuals. Costales Decl. ¶ 7. There is no question numerosity is met.

B. Common Questions Of Law And Fact Predominate

Commonality, the second requirement for class certification, is met where there are "questions of fact or law common to the class" and those questions "predominate over any questions affecting only individual members." 735 ILCS 5/2-801(2). Such common questions of law or fact exist when the members of the proposed class have been *aggrieved* by the same or similar misconduct. *See Walczak v. Onyx Acceptance Corp.*, 365 Ill. App. 3d 664, 673-74 (2d Dist. 2006); *Steinberg v. Chicago Med. Sch*., 69 Ill. 2d 320, 340-42 (1977); *see also Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998). Further, where "the defendant allegedly acted wrongfully in the same basic manner as to an entire class…the common class questions predominate the case[.]" *Walczak*, 365 Ill. App. 3d at 674 (citing *Clark v. TAP Pharmaceutical Products, Inc.*, 343 Ill. App. 3d 538, 548 (5th Dist. 2003)).

In this case, all members of the proposed Class share a common statutory BIPA claim that raises many common issues regarding the alleged collection, storage, use, and disclosure of their biometric identifiers or information without consent. Proving a BIPA violation would

require the resolution of some of the same factual and legal issues, including: (1) whether the information taken from Settlement Class Members constituted biometric identifiers or biometric information as defined by BIPA; (2) whether such information was taken without the consent required under BIPA; (3) whether Defendant had a BIPA-compliant, publicly available, written policy addressing retention and storage of biometric identifiers and information; and (4) whether such conduct violated BIPA. Predominance is satisfied "when there exists generalized evidence that proves or disproves an element on a simultaneous, class-wide basis…Such proof obviates the need to examine each class member's individual position." *Golon v. Ohio Savs. Bank*, 1999 WL 965593, at *4 (N.D. Ill. Oct. 15, 1999). Here, in the context of the Settlement Class, the common questions resulting from Defendant's alleged conduct predominate over any individual issues that may exist and can be answered on a class-wide basis based on common evidence maintained by Defendant. Accordingly, this factor is satisfied.

C. The Class Representative Will Provide Adequate Representation For Settlement Class Members

The third element of Section 2-801 requires that "[t]he representative parties will fairly and adequately protect the interests of the class." 735 ILCS 5/2-801(3). The class representative's interests must be generally aligned with those of the class members, and class counsel must be "qualified, experienced and generally able to conduct the proposed litigation." *See Miner v. Gillette Co.*, 87 Ill. 2d 7, 14 (1981). "The purpose of the adequate representation requirement is to ensure that all class members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim." *Walczak*, 365 Ill. App. 3d at 678 (citing *P.J.'s Concrete Pumping Service, Inc. v. Nextel West Corp.*, 345 Ill. App. 3d 992, 1004 (2d Dist. 2004)); *Purcell & Wardrope Chtd. V. Hertz Corp.*, 175 Ill. App. 3d 1069, 1078 (1st Dist. 1988). The adequacy requirement is satisfied where "the interests of those who are parties

are the same as those who are not joined" such that the "litigating parties fairly represent [them]," and where the "attorney for the representative party '[is] qualified, experienced and generally able to conduct the proposed litigation.'" *CE Design Ltd.*, 2015 IL App (1st) 131465, ¶ 16 (citing *Miner*, 87 Ill. 2d at 56)).

Here, Plaintiff's interests are entirely representative of and consistent with the interests of the proposed Settlement Class: all have allegedly had their biometric information or identifiers collected and used by Defendant in a manner that Plaintiff argues is inconsistent with the legal protections provided by BIPA. Plaintiff's pursuit of this matter has demonstrated that she has been, and will remain, a zealous advocate for the Settlement Class. Thus, Plaintiff has the same interests as the Settlement Class, and are suitable representatives.

Similarly, proposed Class Counsel has regularly engaged in complex litigation and has extensive experience in class action lawsuits. *See* Costales Decl. ¶¶ 11-13. Accordingly, Plaintiff's counsel will adequately represent the Settlement Class.

D. Certifying The Settlement Class Will Allow For A Fair And Efficient Adjudication Of The Controversy

The final prerequisite to class certification is met where "the class action is an appropriate method for the fair and efficient adjudication of the controversy." 735 ILCS 5/2-801(4). "In applying this prerequisite, a court considers whether a class action: (1) can best secure the economies of time, effort and expense, and promote uniformity; or (2) accomplish the other ends of equity and justice that class actions seek to obtain." *Gordon*, 224 Ill. App. 3d at 203. In practice, a "holding that the first three prerequisites of section 2-801 are established makes it evident that the fourth requirement is fulfilled." *Id*. at 204; *Purcell & Wardrope Chtd.*, 175 Ill. App. 3d at 1079 (the predominance of common issues [may] make a class action…a fair and efficient method to resolve the dispute"). Thus, the fact that numerosity, commonality and

predominance, and adequacy of representation have all been demonstrated in the instant case makes it "evident" that the appropriateness requirement is satisfied.

This case is particularly well-suited for class treatment because the claims of Plaintiff and proposed Settlement Class Members involve alleged violations of a state statute for the alleged unauthorized collection, storage, use, and disclosure of Settlement Class Members' biometric information or identifiers. It is unlikely that individuals would invest the time and expense necessary to seek relief through individual litigation. Moreover, because the action will now settle, the Court need not be concerned with issues of manageability relating to trial. When "confronted with a request for settlement only class certification," a "court need not inquire whether the case, if tried, would present intractable management problems…for the proposal is that there be no trial." *Amchem*, 521 U.S. at 620. Nor should the Court "judge the legal and factual questions" regarding certification of the proposed Settlement Class by the same criteria as a proposed class being adversely certified. *See GMAC*, 236 Ill. App. 3d at 493.

A class action is the superior method of resolving large-scale claims if it will "achieve economies of time, effort, and expense, and promote…uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Amchem*, 521 U.S. at 615. Accordingly, a class action is the superior method of adjudicating this action and the proposed Settlement Class should be certified.

CONCLUSION

For the reasons described above, Plaintiff respectfully requests that the Court enter the Preliminary Approval Order,[3] which (1) schedules a fairness hearing on the question of whether the proposed class action settlement should be approved as fair, reasonable, and adequate; (2)

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[3] A draft Preliminary Approval Order is filed herewith.

approves the form and content of the proposed Notice to the Settlement Class; (3) approves the proposed method of requesting exclusion from the Settlement; (4) directs the mailing of the Notice Form by first-class mail to the Settlement Class Members; (5) preliminarily approves the Settlement; and (6) preliminarily certifies the Settlement Class for purposes of settlement only.

Dated: April 3, 2023

Respectfully submitted,

/s/ Roberto Luis Costales

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