IN THE CIRCUIT COUIRT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

LEROY PAYTON and KYNDRA BYRD; on behalf of themselves and all others similarly situated, Plaintiff, v. AUTUMN RIDGE APARTMENTS I, LP; THE FERNDALE REALTY GROUP, LLC; THE FERNDALE PROPERTY MANAGEMENT GROUP, LLC; and ALON Z. YONATAN; Defendants.	Case No. 2021-CH-01769 Hon. Allen P. Walker Calendar 03

PLAINTIFFS' UNOPPOSED MOTION AND MEMORANDUM IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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I. INTRODUCTION

Plaintiffs Leroy Payton and Kyndra Byrd ("Plaintiffs") brought this class action lawsuit alleging Autumn Ridge Apartments I, LP; The Ferndale Realty Group, LLC; The Ferndale Property Management Group, LLC; and Alon Z. Yonatan ("Defendants") violated the Illinois' Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1 *et seq.* Specifically, Plaintiffs alleged that through the use of a fingerprint-scanning timeclock, Defendants collected biometric identifiers and/or biometric information[1] from their employees without complying with BIPA's

[1] "'Biometric identifier' means a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry. Biometric identifiers do not include writing samples, written signatures, photographs, human biological samples used for valid scientific testing or screening, demographic data, tattoo descriptions, or physical descriptions such as height, weight, hair color, or eye color. Biometric identifiers do not include donated organs, tissues, or parts as defined in the Illinois Anatomical Gift Act or blood or serum stored on behalf of recipients or potential recipients of living or cadaveric transplants and obtained or stored by a federally designated organ procurement agency. Biometric identifiers do not include biological materials regulated

requirements regarding retention and destruction policies, without providing the requisite notice and obtaining informed consent prior to the collection or dissemination of the biometric data, and by failing to adequately safeguard the biometric data. *See, e.g.,* First Amended Complaint at ¶¶ 19-26.

After just under two years of litigation, the Parties here have reached a Settlement. Ex. A, Stipulated Settlement Agreement (the "Settlement"). Under the terms of the Settlement, Defendants will create a cash fund of consisting of $135,000, or just under $900 for each of the 150 class members on a gross basis. The fund will be used to pay administration costs, and, if approved by the Court, incentive awards to the named Plaintiffs and attorney's fees and costs. The balance of the fund will then be distributed *pro rata* to each class member, without the need to file a claim form. Total recovery per class member will be just over $503. If any checks sent to class members remains uncashed after 90 days, those checks will be void and those funds will revert to Defendants.

The Court preliminarily approved the Settlement on December 29, 2022, and the notice process began immediately thereafter. As of March 15, 2023, the Class Administrator reported

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under the Genetic Information Privacy Act. Biometric identifiers do not include information captured from a patient in a health care setting or information collected, used, or stored for health care treatment, payment, or operations under the federal Health Insurance Portability and Accountability Act of 1996. Biometric identifiers do not include an X-ray, roentgen process, computed tomography, MRI, PET scan, mammography, or other image or film of the human anatomy used to diagnose, prognose, or treat an illness or other medical condition or to further validate scientific testing or screening.

'Biometric information' means any information, regardless of how it is captured, converted, stored, or shared, based on an individual's biometric identifier used to identify an individual. Biometric information does not include information derived from items or procedures excluded under the definition of biometric identifiers.

All provisions of the act apply equally to both biometric information and identifiers, for the sake of brevity, we use the term 'biometric data' to refer to both unless the distinction is necessary in context." 740 ILCS 14/10.

that of the 150 notices mailed, only 13 were deemed undeliverable following the process of address updating and skip-tracing to find current addresses – a successful notice rate of 91.33%. Ex. B, Declaration of Demetrius Jenkins at ¶6.

Class Counsel filed their motion for fees and incentive awards on January 23, 2023, which was then posted to the Settlement Website the following day and available to the public and Class Members for review. As of the Objection/Exclusion deadline of February 13, 2023, no objections have been filed and no Class Member has excluded themselves from the settlement. Ex B at ¶¶ 8-9.

The lack of objections or exclusions reflects the substantial relief provided to each Class Member, the opt-out structure of the Class, and the relative value of the Settlement to other privacy and BIPA class actions. *E.g.*, *Brown v. Moran Foods, LLC*, 2019-CH-02576 (Cir. Ct. Cook Cnty.) (fund constituting $1,100 per person with direct checks sent to all class members for approximately $625.00); *Edmond v. DPI Specialty Foods*, 2018-CH-09573 (Cir. Ct. Cook Cty.) (fund constituting $1,000 per person with direct checks sent to all class members for $604.65); *Watts v. Aurora Chicago Lakeshore Hosp. LLC*, 2017-CH-12756 (Cir. Ct. Cook Cty.) (fund constituting $1,000 per person with direct checks sent to all class members for $612.13). *See, also, e.g.*, *Carroll v. Crème de la Crème, Inc.*, 2017-CH-01624 (Cir. Ct. Cook Cty. Jun. 6, 2018), or needlessly required a claim form with unused settlement funds to revert fully to the defendant, *e.g.*, *McGee v. LSC Commc'ns*, 2017-CH-12818 (Cir. Ct. Cook Cty.) ($750 per claimant, with unclaimed funds reverting); *Marshall v. Lifetime Fitness, Inc.*, 2017-CH-14262 (Cir. Ct. Cook Cty.) ($270 per claimant with credit monitoring, with unclaimed funds reverting).

As set forth below, all these factors weigh in favor of final approval of this Settlement and the Parties respectfully request the Court grant Final Approval of the Class Action Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Illinois' Biometric Information Privacy Act

When first enacted in 2008, BIPA was unique in the Nation—both for its prescience in identifying the inevitable increase in the use (and potential for abuse) of biometric technology as well as its strict requirements for private companies that chose to implement such technology. Recognizing the "very serious need" to protect Illinois citizens' biometric data—which includes retina scans, fingerprints, voiceprints, and scans of hand or face geometry—the Illinois legislature unanimously passed BIPA in 2008 to provide individuals recourse when companies fail to appropriately handle their biometric data in accordance with the statute. 740 ILCS 14/5.

To enforce the statute, BIPA provides a civil private right of action and allows for the recovery of statutory damages in the amount of $1,000 for negligent violations—or $5,000 for willful violations—plus costs and reasonable attorneys' fees. 740 ILCS 14/20. The private right of action and the statutory damages are "integral" to the implementation of the Act. *Rosenbach v. Six Flags Ent. Corp*., 2019 IL 123186, ¶ 37

B. Plaintiffs' Allegations and Defendant's Fingerprint-Scanning System.

Plaintiffs are former employees of Defendants and both worked at Defendants' Autumn Ridge Apartments location in or around 2017-2019. Complaint at ¶¶ 19-20. At the start of their employment, Plaintiffs were required to scan their fingerprints into a time clock. *Id.* at ¶ 24. At the beginning and end of each workday, and before and after taking breaks, Plaintiffs were required to clock in and out by having their fingerprints scanned on the same machine. *Id.* at ¶ 26.

Plaintiffs allege that they never received the requisite disclosures nor signed a consent form before having their fingerprints scanned in violation of 740 ILCS §14/15(b). *Id.* at ¶ 41. Plaintiffs allege they never received nor were made aware of any policy regarding the retention and destruction of their biometric date, and thus that Defendant failed to create and comply with such a policy in violation of 740 ILCS §14/15(a). *Id.* at ¶ 38. Plaintiffs also allege, on information and belief, that Defendants transmitted their biometric data internally and externally, but failed to obtain written consent to do so in violation of 740 ILCS §14/15(d). *Id.* at ¶¶ 43-44. Finally, Plaintiffs allege, on information and belief, that Defendants did not protect or transmit their biometric data with the requisite level of care in violation of 740 ILCS §14/15(e). *Id.* at ¶ 47.

Defendant denies that biometric identifiers or information was ever obtained by their time clock or that it has engaged in any wrongdoing or violated BIPA in any way.

C. Litigation, Negotiation, and Settlement.

On April 13, 2021, Plaintiffs filed a class action lawsuit in the Circuit Court of Cook County, Chancery Division, naming Autumn Ridge Apartments I, LP, The Ferndale Realty Group, LLC, and Alon Z. Yonatan as defendants. The case was assigned to Judge Allen P. Walker and captioned *Payton v. Autumn Ridge I, LP*, No. 2021-CH-01769.

On June 3, 2021, the Court granted Plaintiffs leave to amend the complaint to add The Ferndale Property Management Group, LLC as a defendant. Plaintiffs filed their amended complaint on June 4, 2021. On June 25, 2021, the three original Defendants filed an unopposed

motion to stay the case pending the outcome of *Cothron v. White Castle* and *McDonald v. Symphony Bronzeville*.[2] The Court granted the motion and stayed the case.

Subsequently, the parties began limited informal discovery and started exploring the possibility of settlement. In November 2021, Plaintiffs made an initial class settlement offer. The parties then engaged in several rounds of negotiation over the fund size and terms of the settlement between November 2021 and late August 2022. The parties signed a preliminary term sheet reflecting the principal terms of the settlement on October 21, 2022. The parties agreed that, based on a class size of approximately 150 individuals, Defendants would create a settlement fund of $135,000.00 from which the costs of administration, Plaintiffs' attorneys' fees, and Plaintiff's incentive awards would be deducted, with the remainder divided *pro rata* between class members with no claims form required. Plaintiff agreed to limit their fee request to no more than 30% of the full fund amount.

In lieu of injunctive relief, the Defendants have represented that they have either complied with BIPA's informed consent requirements and/or no longer use any biometric time-clock. Further, Defendants represent that they will not transfer or otherwise disseminate such any biometric information or identifiers without informed written consent and will ensure the permanent deletion of any biometric data as required by BIPA.

Defendants have provided, *inter alia*, documents regarding the time clock device at issue and an affidavit regarding the class size and method for determining the same.

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[2] *McDonald* was subsequently decided on February 3, 2022 and held that an injury under BIPA is not one that "categorically fits within the purview of the" Illinois Worker's Compensation Act, and so is not pre-empted by that Act. *McDonald v. Symphony Bronzeville Park, LLC*, 2022 IL 126511, ¶ 50.

Cothron v. White Castle System, Inc., 128004, was decided on February 17, 2023, and held that a claim accrued for each separate scan of biometric information or identifiers.

III. TERMS OF THE SETTLEMENT AGREEMENT

The terms of the Settlement are set forth in the Stipulation of Class Action Settlement, and are briefly summarized here:

A. Class Definition.

The Settlement Class includes:

> All persons in the United States whose fingerprint was collected, captured, or otherwise obtained by any Defendant, in Illinois, at any time during the Class Period.

The Class Period is August 11, 2016 through the date of preliminary approval of this Class Settlement.

The following people are excluded from the Class: (1) any judge presiding over the action and their families and staff; (2) Defendants and their owners, officers, directors, parents, subsidiaries, successors, predecessors; (3) Plaintiffs' and Defendants' counsel and their staffs; and (4) all persons who timely elect to exclude themselves from the Settlement Class..

B. Settlement Payments.

The Settlement provides that Defendants will satisfy their monetary obligations by paying into a Settlement Fund $135,000.00. Ex. A at ¶ 56. Defendants have represented that there are 150 Settlement Class Members. From the Settlement Fund, payment of Settlement Administration Expenses, costs, attorneys' fees and any incentive award will be made. Ex. A at ¶¶ 56, 95-101. The Settlement Administrator will then distribute the fund *pro rata* directly to Class Members without the need for a claims process. Ex. A at 57. Assuming the Court grants a Fee and Cost award of $40,500 and two incentive awards of $5000, and with an estimated cost of

administration of $9,000, the minimum amount class members will receive is approximately $503.

Any checks not cashed after 90 days will be void and those funds will revert to Defendants. Ex. A at 57.

C. Injunctive and Prospective Relief.

Defendants have stopped using the fingerprint-scanning timeclocks at its Illinois locations. Ex. A at ¶ 58. The device at issue only stores data locally and none of the data has been transmitted, copied, or otherwise disseminated. *Id.* Defendants will comply with any and all requirements under BIPA for the destruction and retention of any biometric data that may be in their possession. *Id.*

D. Payment of Settlement Notice and Administrative Costs.

Defendants have agreed to pay from the Settlement Fund all expenses incurred by the Settlement Administrator in, or relating to, administering the Settlement, providing Notice, mailing checks, and any other related expenses. Ex. A at ¶ 56.

E. Payment of Attorneys' Fees, Costs, and Incentive Award.

Defendants have agreed to pay Plaintiffs' reasonable attorneys' fees to proposed Class Counsel in an amount to be determined by the Court. Ex. A at ¶ 56. Defendants have agreed not to challenge the fee petition unless the amount requested exceeds $40,500. Defendants have also agreed to pay Plaintiffs an incentive award in the amount of $5,000 each from the Settlement Fund, subject to Court approval, in recognition of their efforts as class representatives. Ex. A at ¶ 99. Plaintiff filed their Unopposed Motion for Fees, Costs, and Incentive Awards on January 23, 2023. It was then posted to the Settlement website the following day.

F. Release of Liability.

In exchange for the relief described above, Defendants and their insurers and all of Defendants' respective past, present or future heirs, executors, estates, administrators, predecessors, successors, assigns, direct or indirect parent companies, subsidiaries, licensors, licensees, associates, affiliates, divisions, employers, holding companies, agents, consultants, independent contractors, insurers, reinsurers, and customers, including without limitation employees of the foregoing, directors, board members, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations will be released from any and all claims by Settlement Class Members arising out of or relating to the collection, storage, use, dissemination, retention, or disclosure of biometric and/or fingerprint data or information. Ex. A at Section V.

Further, and in addition to the claims released by the Class, the Class Representatives have agreed to release claims which relate in any way to Defendants (and all other Released Parties), based on any acts, omissions, or facts in existence at any time up to the date of the final approval by the court of the Settlement Agreement. In other words, the proposed Class Representatives' release includes, but is broader than, the release of claims by the Class Members. *Id.*

IV. THE CLASS NOTICE MET OR EXCEEDED DUE PROCESS REQUIREMENTS

Prior to granting final approval to this Settlement, the Court must consider whether the Settlement Class received the best notice that is practicable under the circumstances. *Lee v. Buth-Na-Bodhaige, Inc*., 2019 IL App (5th) 180033, ¶ 80; see *Eisen v. Carlisle & Jacquelin*, 417 U.S.

156, 173(1974). The "best notice practicable" does not necessarily require receipt of actual notice by all class members in order to comport with the requirements of due process. In general, a notice plan that reaches at least 70% of class members is considered reasonable. Federal Judicial Center, *Judges' Class Action Notice & Claims Process Checklist & Plain Language Guide* (2010) , at 3 , available at https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf. Given that virtually everyone in the Settlement Class received individual direct notice, the effectuation of the Court-approved notice plan readily satisfies due process. *See Carrao v. Health Care Serv. Corp*., 118 Ill. App. 3d 417, 429–30 (1st Dist. 1983) (noting that while due process may require individual notice to class members whose identities and addresses can be readily obtained from defendant's files, it does not require individual notice in all circumstances).

The Court-approved notice plan here called for direct notice to all members of the Settlement Class via First-Class U.S. Mail, and the creation of a Settlement Website. Pursuant to the notice plan, Defendants provided American Legal Claims Services, LLC —the professional Settlement Administrator appointed by the Court—with a class list containing the names, and U.S. Mail addresses of all 150 members of the Settlement Class. (Ex. B, Jenkins Decl. ¶ 3.) Once provided, the Settlement Administrator updated the U.S. Mail addresses through the National Change of Address database to ensure the most up-to-date addresses as possible. *Id.* The Settlement Administrator then sent the Court-approved Short Form Notice to every single class member, without exception, which was successfully delivered via U.S. Mail to 137 class members. (Ex. B, Indra Jenkins. ¶¶4-6) Accordingly, direct notice was provided to 91.33% of the Settlement Class. These summary notices also directed members of the Settlement Class to a Settlement Website, https://www.autumnridgesettlement.com/, where they could—and are still able to—access the

"long form" notice and important court filings, including Plaintiff's Motion and Memorandum of Law for Attorneys' Fees, Expenses, and Incentive Award, and see deadlines and answers to frequently asked questions. (*Id.* at ¶7.)

In sum, the notice plan was highly successful and exceeds all that is required for due process. *See Carrao, 118 Ill. App. 3d at 429–30.*

V. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL

The procedural and substantive standards governing final approval of a class action settlement are well settled in Illinois. *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 493 (1st Dist. 1992).The proposed settlement "must be fair and reasonable and in the best interest of all those who will be affected by it." *Id.* Because a proposed settlement is the result of compromise, "the court in approving it should not judge the legal and factual questions by the same criteria applied in a trial on the merits, . . . [n]or should the court turn the settlement approval hearing into a trial." *Id.*

"Although review of class action settlements necessarily proceeds on a case-by-case basis, certain factors have been consistently identified as relevant to the determination of whether a settlement is fair, reasonable and adequate." *Id.* These factors—known as the *Korshak* factors—are:

> (1) The strength of the case for plaintiffs on the merits, balanced against the money or other relief offered in 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.

Id. (citing *City of Chi. v. Korshak*, 206 Ill. App. 3d 968971–72 (1st Dist. 1990)

Here, examination of each of the *Korshak* factors demonstrates that the Settlement is exceedingly fair, reasonable, adequate, and thus deserving of final approval.

A. The Strength of Plaintiff's Case Compared with the Relief Afforded Under the Settlement Supports Granting Preliminary Approval.

"The strength of plaintiff's case on the merits balanced against the settlement amount is the most important factor in determining whether a settlement should be approved." *Sys. Software Assocs.*, 306 Ill. App. 3d at 170. Here, although Plaintiffs are confident that they would ultimately prevail had this matter continued in litigation, there were not-insignificant obstacles in doing so. In light of those obstacles, the excellent monetary relief to the Settlement Class, along with the prospective relief regarding Defendants' future practices, are remarkable. This factor thus weighs strongly in favor of Preliminary Approval.

1. This Settlement Is an Excellent Result For The Class and is Well Within the Top BIPA and Other Privacy Class Action Settlements.

The strength of the Settlement relief speaks for itself: if approved, Defendants will create a cash fund amounting to almost $900 per class member on a gross basis.

BIPA settlements have had a wide range, with some finally approved settlements depressing the amount defendants have to pay with reversion and credit monitoring. *E.g.*, *Carroll*, 2017-CH-01624 (Cir. Ct. Cook Cnty.) (credit monitoring only); *McGee*, 2017-CH- 12818 ($750 per-claimant cap and reversion); *Marshall*, 2017-CH-14262 ($270 per-claimant cap and reversion). The leading BIPA settlements in the employment context—like this one—do not require a claims process at all, and instead distribute funds equally and directly with a check sent to all

Class Members. Even against those settlements, this Settlement excels. *See*, *e.g.*, *Brown v. Moran Foods, LLC*, 2019-CH-02576 (Cir. Ct. Cook Cnty.) (fund constituting $1,100 per person with direct checks sent to all class members for approximately $625.00); *Edmond*, 2018-CH-09573 (fund constituting $1,000 per person); *Watts*, 2017-CH-12756 (fund constituting $1,000 per person); *George v. Schulte Hospitality Group, Inc., et al.*, 2018-CH-04413 (Cir. Ct. Cook Cty.) (fund constituting approximately $1,000 per person). Defendants will create a fund constituting $900 per class member, with direct checks after fees and costs are deducted—a top-of-the-market result. Each Class Member will receive a minimum of almost $500.

Finally, aside from the monetary relief, the non-monetary benefits created by the Settlement also merit approval. Here, Defendants have stopped using biometric timeclocks at its Illinois locations. Ex. A, Agreement, at ¶ 58. Defendants have further agreed to destroy former employees' biometric data. This prospective relief aligns perfectly with both the goals of BIPA and those of this lawsuit, as it will ensure that Defendants' past employees are protected (in that their data is destroyed), and that its current and future employees are protected by Defendants' decision to halt the use of any biometric timeclocks.

2. Plaintiff Faced Unsettled Factual And Legal Issues.

Were this litigation to continue, there were a number of issues of first impression that—if decided in Defendant's favor—had the potential to substantially or fully deprive the putative class of relief.

First, a number of issues were addressed by Illinois Supreme Court decisions during the pendency of this litigation. The issue of what statute of limitations period applied to BIPA claims was decided by *Tims v. Black Horse Carriers, Inc.*, 2023 IL 127801, ¶ 35 (5-year period applies to all claims)). Second, the Illinois Supreme Court rejected the argument that the exclusivity

provisions of the Illinois Worker's Compensation Act, 820 ILCS 305/1 *et seq.,* bar BIPA claims against employers. *McDonald v. Symphony Bronzeville Park, LLC*, 2022 IL 126511, ¶ 1. Finally, the Illinois Supreme Court held that a claim accrues for each scan without consent. *Cothron v. White Castle Systems, Inc.*, 2023 IL 128004, ¶1.

As to the merits of the case, Defendants intended to argue, like numerous other BIPA defendants, that the information captured by its fingerprint scanners were not actually "biometric identifiers" or "biometric information" subject to BIPA, but rather some sort of mathematical representation of finger scans that fall outside of BIPA's purview. Though Plaintiffs are, again, confident that he could have defeated these arguments at summary judgment and/or trial, they concede the issue is far from settled and if Defendants were to prevail on their defense, it would be a complete defense to all claims of the Plaintiffs and proposed Class. The Settlement provides excellent relief to the Class without the delay necessitated by briefing and a trial on these questions. Further, a ruling on this issue either way would almost certainly lead to a lengthy, expensive, and uncertain appeals process.

Even if Plaintiff had succeeded at summary judgment and/or trial, damages per class member would potentially be limited to between $1,000 - $5,000 per violation alleged, with added litigation to establish that Defendants acted intentionally, and determining which of the alleged violations Defendants actually committed. Even though the Supreme Court has determined that violations are "per scan," Defendant would likely argue for a reduction in damages based on due process in light of the significant potential statutory damages at issue. *See, e.g.*, *Golan v. FreeEats.com, Inc.*, 930 F.3d 950 (8th Cir. 2019) (statutory award in TCPA class action of $1.6 billion reduced to $32 million). Again, this issue alone would undoubtably lead to a lengthy appeals process.

While Plaintiffs are confident in the strength of their case, they recognize that the law is largely still evolving in cases brought under BIPA and has factored in the risks and delays that would necessarily accompany briefing the arguments in both the trial and appellate courts. This Settlement—providing as it does top-of-the-market monetary relief, directly to the Settlement Class Members and without delay—is highly beneficial for the Settlement Class. When considered in light of the potential hurdles faced in obtaining recovery through continued litigation, the relief is well deserving of this Court's approval. Consequently, this "most important" factor weighs strongly in favor of preliminarily approving the Settlement.

B. Defendants' Ability to Pay Weighs in Favor of Final Approval

The second *Korshak* factor considers the defendants' ability to pay. Here, Defendants have represented that they or their insurers will be able to fully fund the Settlement. At the same time, however, a full victory at trial for the Class Members would result in a substantial aggregate judgment against a company of Defendants' sizes, even if it were not found reckless or willful in its actions. *See Kleen Prods. LLC v. Int'l Paper Co.*, No. 1:10-CV-05711, 2017 WL 5247928, at *2 (N.D. Ill. Oct. 17, 2017) (finding that "the size of the potential recovery weighs in favor of the [s]ettlement[,]" even though defendants had substantial ability to pay). In any event, the fact that Defendants might have the ability, if pressed, to pay a larger amount is not relevant when the proposed Settlement is otherwise fair, reasonable, and adequate and a judgment would represent a significantly greater negative impact on the company's financials. *See Glaberson v. Comcast Corp.*, No. CV 03-6604, 2015 WL 5582251, at *7 (E.D. Pa. Sept. 22, 2015) (collecting cases). Thus, given Defendants' willingness to pay the Settlement amount and the potential for a more injurious damages amount at trial, this factor is thus favorable in approving the Settlement. *Id.* at *8.

C. The Settlement is Reasonable in Light of the Complexity, Length, and Expense of Further Litigation.

The next relevant factor in assessing whether a court should grant approval asks whether the Settlement is fair and reasonable given how lengthy, complex, and expensive further litigation is likely to be. *See City of Chicago v. Korshak,* 206 Ill. App. 3d 968, 972 (1st Dist. 1991); *GMAC Mortg*., 236 Ill. App. 3d at 498 ("One of the principal purposes of an early settlement is to avoid costly and lengthy discovery."). This Settlement warrants approval because it provides immediate relief to the Settlement Class while avoiding potentially years of complex litigation and appeals. *Goldsmith v. Tech. Sols. Co.*, No. 92 C 4374, 1995 WL 17009594, at *4 (N.D. Ill. Oct. 10, 1995) ("As courts recognize, a dollar obtained in settlement today is worth more than a dollar obtained after a trial and appeals years later."). And in light of the unsettled issues of liability *and* damages highlighted above, absent the Settlement, the Parties are likely to litigate a number of issues that are either still being resolved by the courts or are matters of first impression. *See*, *e.g.*, *Pichler v. UNITE*, 775 F. Supp. 2d 754, 759 (E.D. Pa. 2011) (approving class action settlement in light of the complexity of future litigation on issues of first impression). Likewise, the Parties also would have been forced to litigate the issue of class certification. Although Plaintiff believes in the strength of his claims and that he would ultimately prevail on the issues, that process is by no means risk-free.

Protracted litigation would also consume significant resources, including the time and costs associated with formal written and oral discovery, securing expert testimony on complex biometric and data storage issues, and again, motion practice, trial and any appeals. It is possible that "this drawn-out, complex, and costly litigation process . . . would provide [Settlement] Class Members with either no in-court recovery or some recovery many years from now . . ." *In re AT*

& T Sales Tax Litig., 789 F. Supp. 2d 935, 964 (N.D. Ill. 2011). Because the proposed Settlement offers immediate—and substantial—monetary relief to the Settlement Class and a prompt end to Defendants' alleged misconduct while avoiding the need for extensive and drawn-out litigation, preliminary approval is appropriate. *See*, *e.g.*, *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.").

D. The Positive Reaction to the Settlement Supports Final Approval

The fourth and sixth *Korshak* factors—the amount of opposition to the Settlement and Class Members' reaction to the Settlement—are closely related and often examined together. *See, e.g.*, *Korshak*, 206 Ill. App. 3d at 973. Here, the Settlement Class's reaction to the Settlement has been entirely positive and weighs strongly in favor of final approval. As stated above, the Settlement Administrator has thoroughly implemented the notice plan, and the Objection/Exclusion Deadline has passed without a single person objecting to the Settlement or opting out of participating. Ex. B, Jenkins Decl. ¶¶ 8-9. The fact that no one has objected or requested to be excluded from the Settlement is powerful evidence of the Settlement Class's support for the Settlement. *See GMAC Mortg.*, 236 Ill. App. 3d at 497 ("The fact that only 26 of 590,000 members elected to opt-out is testimony . . . that the class believes the settlement is fair."); *Shaun Fauley*, 2016 IL App (2d) 150236, ¶ 20 (affirming trial court's finding that where opposition to class settlement was "*de minimis*," this fact weighed in favor of settlement approval). These two factors thus strongly support granting final approval to the Settlement.

E. The Settlement Was Reached Without Collusion and As a Result of Arm's-Length Negotiations Between the Parties.

The next factor looks to whether the parties colluded in negotiating the settlement. *See Korshak*, 206 Ill. App. 3d at 972. There is an initial presumption that a proposed settlement is fair and reasonable when it was the result of arm's-length negotiations. Newberg, § 11.42; *see also Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 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'"). The Parties engaged in multiple rounds of vigorous negotiations, that has produced an exceptionally strong Settlement for Class Members.

The Parties engaged in settlement discussions and exchanged informal information regarding the size and circumstances of the Class, as well as the specific technology at issue. The Parties engaged in several rounds of negotiation between November 2021 and late August 2022, before the Parties reached agreement on the principal terms of the settlement on October 21, 2022.

The Parties have since engaged in sharp negotiations concerning the detailed terms of the Settlement now before the Court, which produced a full written agreement. *Id*. The arm's-length nature of these negotiations is further confirmed by the Settlement itself: it provides significant cash payments to Settlement Class Members, and contains no provisions that might suggest fraud or collusion. Defendants have agreed not to challenge any fee request up to $40,500. It is true that similar so-called "clear sailing" provisions have raised the eyebrows of courts evaluating proposed class settlements. *See, e.g., Redman v. RadioShack Corp.,* 768 F.3d 622, 637 (7th Cir. 2014) (discussing potential for conflict of interest between class counsel and class over fees). But those concerns generally only arise in cases where the class will not receive a cash settlement (e.g. "coupon classes") *and* where any reduction of fees reverts to the

defendant (a "kicker clause"). *See,* William D. Henderson, "Clear Sailing Agreements: A Special Form of Collusion in Class Action Settlements," *77 Tulane L.Rev*. 813 (2003) (explaining concern with collusion frequently arises where class relief is nonpecuniary and/or attorney's fees are subject to reversion clause). Neither of those are the case here. Class Members will receive real and significant cash payments without having to submit a claim and *only* uncashed checks will revert to Defendants or their designees, and the agreement by Class Counsel to limit their fee request and for Defendants to not challenge the request simply allowed the Parties to determine the overall benefit for the Class and liability for the Defendants.

The Court should not hesitate to find that this factor weighs strongly in favor of settlement approval. *See Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 50 (finding there was no collusion where the record showed nothing but "good-faith, arm's-length negotiation").

F. Proposed Class Counsel Firmly Believes that this Settlement is in the Best Interests of the Settlement Class.

The Court should also consider whether counsel believes that the Settlement is fair to Settlement Class. *See Korshak*, 206 Ill. App. 3d at 972. Here, Class Counsel is well versed in the law and facts of this litigation and their practices focus exclusively on consumer and privacy-related class action and individual litigation. *See GMAC Mortg.*, 236 Ill. App. 3d at 497 (finding that this factor weighed in favor of approval because counsel, who believed the settlement to be fair and reasonable, had previously litigated a number of similar class actions). As a result of that experience and for the reasons explained above, Class Counsel firmly believes that the instant Settlement—which provides substantial direct payments to Settlement Class Members, requires Defendants to destroy all biometric identifiers and information in its possession, and ensures that

Defendants' alleged unlawful conduct does not continue—is fair, reasonable, adequate, and deserving of Final Approval.

G. The Stage of Litigation and Amount of Discovery Completed Ensures the Settlement is Fair, Reasonable and Adequate.

The final factor looks to the state of proceedings and the amount of discovery completed before the parties entered into the settlement. *See Korshak*, 206 Ill. App. 3d at 972.

The facts underlying Plaintiffs' allegations in this case—though by no means their legal import—are now substantially undisputed: Defendants used a time clock with a fingerprint scanner to identify its employees' identities, and, in Plaintiffs' view, without BIPA compliance. In short, the issues in this litigation have crystallized sufficiently for the Parties to assess the strengths and weaknesses of their negotiating positions (based upon the litigation to date, the anticipated outcomes of fact and expert discovery, and additional motion practice) and evaluate the appropriateness of any proposed resolutions. *See Bayat v. Bank of the West*, No. 13-cv-2376, 2015 WL 1744342, at *6 (N.D. Cal. Apr. 15, 2015) (concluding that sufficient discovery had been completed to evaluate the settlement even though parties reached an early settlement "because the issues in this case are straightforward and not particularly fact intensive").

For all of the foregoing reasons, Plaintiffs and proposed Class Counsel firmly believe that the monetary and prospective relief provided by the Settlement weigh heavily in favor of a finding that the Settlement is fair, reasonable, and adequate, and well within the range of approval.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs Kyndra Byrd and Leroy Payton respectfully requests that this Court enter the attached Proposed Order (Ex. C) finally approving the Parties' Class Action Settlement and ordering all other such relief the Court deems just or necessary.

Submitted: March 28, 2023

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Attorneys for Plaintiff

EXHIBIT A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

LEROY PAYTON and KYNDRA BYRD; on behalf of themselves and all others similarly situated, Plaintiff, v. AUTUMN RIDGE APARTMENTS I, LP; THE FERNDALE REALTY GROUP, LLC; THE FERNDALE PROPERTY MANAGEMENT GROUP, LLC; and ALON Z. YONATAN; Defendants.	Case No. 2021-CH-01769 Hon. Allen P. Walker Calendar 03

STIPULATION OF CLASS ACTION SETTLEMENT

This Stipulation of Class Action Settlement is entered into by and among Plaintiffs Leroy Payton and Kyndra Byrd ("Plaintiffs"), for themselves individually and on behalf of the Settlement Class and Defendants Autumn Ridge Apartments I, LP; The Ferndale Realty Group, LLC; The Ferndale Property Management Group, LLC; and Alon Z. Yonatan ("Defendants"). This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve discharge and settle the Released Claims upon and subject to the terms and conditions hereof, and is subject to the approval of the Court.

I. FACTUAL BACKGROUND AND RECITALS

1. On April 13, 2021, Plaintiffs filed a class action lawsuit in the Circuit Court of Cook County, Chancery Division, naming Autumn Ridge Apartments I, LP, The Ferndale Realty Group, LLC, and Alon Z. Yonatan as defendants.
2. The case was assigned to Judge Allen P. Walker and captioned *Payton v. Autumn Ridge I, LP*, No. 2021-CH-01769.
3. On June 3, 2021, the Court granted Plaintiffs leave to amend the complaint to add The Ferndale Property Management Group, LLC as a defendant. Plaintiff filed their amended complaint on June 4, 2021.
4. On June 25, 2021, the three original Defendants filed an unopposed motion to stay the case pending the outcome of *Cothron v. White Castle* and *McDonald v. Symphony Bronzeville*.
5. The Court granted the motion and stayed the case.
6. Beginning in November 2021, the Parties began to discuss the potential for a class settlement.
7. The Parties were able come to an agreement on the basic terms of a class settlement at the end of August 2022.
8. A terms sheet was signed by all parties on October 21, 2022 reflecting that Defendants (or their insurers) would establish a $135,000 fund based on an estimated class size of 150 individuals, with the costs of administration and any approved attorneys' fees and costs and incentive awards being paid out of the fund with the remainder distributed *pro rata* to each Class Member without requiring a claim form.
9. Defendants have agreed to provide a signed declaration and documents regarding class size and the method for determining the same.

10. In lieu of injunctive relief, the Defendants have represented that they have either complied with BIPA's informed consent requirements and/or no longer use any biometric time-clock. Further, Defendants represent that they will not transfer or otherwise disseminate any such biometric information or identifiers without informed written consent and will ensure the permanent deletion of any biometric data as required by BIPA.

11. This Settlement represents the Parties' agreement to resolve all matters pertaining to, arising from, or associated with the Litigation, including all Released Claims Plaintiffs and Settlement Class Members have or may have had against Defendants and the Released Parties defined below.

12. The Parties have agreed to settle the Litigation on the terms and conditions set forth herein in recognition that the outcome of the Litigation is uncertain and that achieving a final result through litigation would require substantial additional risk, discovery, time and expense.

13. Defendants deny all charges of wrongdoing or liability of any kind whatsoever that Plaintiffs or Settlement Class Members have asserted in this Litigation or may in the future assert. Despite Defendants' belief that they are not liable for, and have good defenses to, the claims alleged in the Litigation, Defendants desire to settle the Litigation, and thus avoid the expense, risk, exposure, inconvenience, and distraction of continued litigation of any action or proceeding relating to the matters being fully settled and finally put to rest in this Settlement Agreement. Neither this Settlement Agreement, nor any negotiation or act performed or document created in relation to the Settlement Agreement

or negotiation or discussion thereof is, or may be deemed to be, or may be used as, an admission of, or evidence of, any wrongdoing or liability.

14. Following arm's-length negotiations, the Parties now seek to enter into this Settlement Agreement. Plaintiffs and Class Counsel have conducted an investigation into the facts and the law regarding the Litigation and have concluded that a settlement according to the terms set forth below is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiffs and the Settlement Class recognizing: (1) the existence of complex and contested issues of law and fact; (2) the risks inherent in litigation; (3) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement; (4) the magnitude of the benefits derived from the contemplated settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever; and (5) Plaintiffs' determination that the settlement is fair, reasonable, adequate, and will substantially benefit the Settlement Class Members.

15. Considering the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Parties are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in their respective best interests.

16. In consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Litigation be settled and compromised, and dismissed with prejudice, on the following terms and conditions.

II. DEFINITIONS

As used in this Agreement, the following terms have the meanings specified below:

17. "Administrative Expenses" shall mean expenses associated with the Settlement Administrator, including but not limited to costs in providing notice, communicating with Settlement Class Members, evaluation of claims, and disbursing payments to the proposed Settlement Class Members.

18. "Class," "Settlement Class," "Class Member," or "Settlement Class Member" shall mean each member of the settlement class, as defined in Paragraph 18 of this Agreement, who does not timely elect to be excluded from the Settlement Class.

19. "Class Counsel" shall mean Michael Drew of Neighborhood Legal, LLC; and Celetha Chatman and Michael Wood of Community Lawyers, LLC.

20. "Class Period" shall mean August 11, 2016 through the date of preliminary approval of the Class Settlement.

21. "Counsel" or "Counsel for the Parties" shall mean both Class Counsel and Defendants' Counsel, collectively.

22. "Court" shall mean Judge Allen Price Walker of the Circuit Court of Cook County, Illinois, or any other judge who shall have jurisdiction over the pending Litigation.

23. "Defendants" shall mean Autumn Ridge Apartments I, LP; The Ferndale Realty Group, LLC; The Ferndale Property Management Group, LLC; and Alon Z. Yonatan.

24. "Defendant's Counsel" shall mean Laura Elkayam and Jason Rosenthal of Much Shelist, P.C.; and Johner T. Wilson III and Reginald Cloyd III of Dinsmore & Shohl LLP.

25. "Effective Date" shall mean the date when the Settlement Agreement becomes Final.

26. "Fee and Expense Application" shall mean the motion to be filed by Class Counsel, in which they will seek approval of an award of attorneys' fees, costs, and expenses, as well as an Incentive Award for the Class Representative.

27. "Fee Award" shall mean the amount of attorneys' fees, costs, and expenses awarded by the Court to Class Counsel.

28. "Final" shall mean the later of (i) if there are no objectors, the date of entry of the Final Approval Order; (ii) if there are one or more objectors, the date upon which the time expires for filing or noticing any appeal of the Final Approval Order; (iii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Final Approval Order without any material modification, of all proceedings arising out of the appeal(s) (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal(s) following decisions on remand); or (iv) the date of final dismissal of any appeal or the final dismissal of any proceeding on appeal with respect to the Final Approval Order.

29. "Final Approval Hearing" shall mean the hearing before the Court where the Plaintiffs will request a judgment to be entered by the Court approving the Settlement Agreement, approving the Fee Award, and approving an Incentive Award to the Class Representatives.

30. "Final Approval Order" shall mean an order entered by the Court that:

    i. Certifies the Settlement Class pursuant to 735 ILCS 5/2-801;

ii. Finds that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of this Agreement;

iii. Dismisses Plaintiffs' claims pending before it with prejudice and without costs, except as explicitly provided for in this Agreement;

iv. Approves the Release provided in Section V of this Agreement and orders that, as of the Effective Date, the Released Claims will be released as to the Released Parties; and

v. Finds that, pursuant to 735 ILCS 5/2-1301, there is no just reason for delay of entry of final judgment with respect to the foregoing.

31. "Incentive Award" shall mean an award paid from the Settlement Fund to Plaintiffs Leroy Payton and Kyndra Byrd in acknowledgement of their participation in pursuit of this litigation and shall have the qualities further set forth in Paragraph 99 of this Agreement.

32. "Litigation" shall mean the case captioned *Payton v. Autumn Ridge I, LP*, No. 2021-CH-01769 pending in the Circuit Court of Cook County, Illinois.

33. "Long Form Notice" means notice of this Settlement, substantially in the form of Exhibit B hereto, which shall be available on the Settlement Website as described in Paragraph 68 to inform Class Members of their rights and duties under this Settlement.

34. "Notice" shall mean the direct notice of this proposed Settlement, which is to be provided substantially in the manner set forth in this Agreement and in Exhibits A and B hereto and is consistent with the requirements of due process.

35. "Notice Date" means the date by which the Notice is disseminated to the Settlement Class, which shall be a date no later than twenty-eight (28) days after entry of Preliminary Approval.

36. "Objection/Exclusion Deadline" shall mean the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a person within the Settlement Class must be postmarked and/or filed with the Court, which shall be designated as a date approximately forty-five (45) days after Preliminary Approval, as approved by the Court.

37. "Parties" shall mean Plaintiffs and Defendants, collectively.

38. "Plaintiffs" or "Class Representatives" shall mean the named class representatives, Leroy Payton and Kyndra Byrd.

39. "Preliminary Approval" shall mean the date of entry of the Preliminary Approval Order.

40. "Preliminary Approval Order" shall mean the Court's Order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing notice of the Settlement to the Settlement Class substantially in the form of the Notice set forth in this Agreement.

41. "Class Released Claims" shall mean any and all actual, potential, filed, unfiled, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra-contractual claims, damages, liquidated damages, punitive damages, exemplary damages, multiplied damages, expenses, costs, attorneys' fees and/or obligations, whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on the Illinois Biometric Information Privacy Act or other

federal, state, local, statutory or common law or any other law, including the law of any jurisdiction outside the United States, against the Defendants, arising out of or relating to the collection, capture, receipt, storage, use, dissemination, retention, or disclosure of biometric and/or fingerprint data or information at any time prior to and up to the date of final approval by the court of the Settlement Agreement, including any and all claims that were pleaded in the Litigation.

42. "Representative Released Claims" shall mean all Class Released Claims as well as all claims, demands, liens (both general and charging), agreements, contracts, requests for injunctive relief, covenants, promises, suits, any and all manner of action or actions, causes of action, obligations, controversies, debts, costs, sanctions, expenses, attorneys' fees, expert fees, litigation costs, damages including, but not limited to, physical and emotional distress, statutory damages, remedial benefits, expenses for treatment the Class Representatives may have received or may receive in the future, treble damages, punitive damages, special and consequential damages, judgments, penalties, fines, insurance and reinsurance coverage, and liabilities of whatever kind, amount, or nature in law, equity, or otherwise, whether now known or unknown, suspected or unsuspected, fixed or contingent, and whether or not concealed or hidden, which have existed or may have existed, or which do exist or hereafter can, shall, or may exist, which relate in any way to Defendants, based on any acts, omissions, or facts in existence at any time up to the date of the final approval by the court of the Settlement Agreement. These claims are only released by the Class Representatives individually and not by any member of the Settlement Class.

43. "Released Parties" shall refer to Defendants as well as any and all of their respective past, present or future heirs, executors, estates, administrators, predecessors, successors, assigns, direct or indirect parent companies, subsidiaries, licensors, licensees, associates, affiliates, divisions, employers, holding companies, agents, consultants, independent contractors, insurers, reinsurers, and customers, including without limitation employees of the foregoing, directors, board members, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations.

44. "Releasing Parties" shall refer, jointly and severally, and individually and collectively, to Plaintiffs, the Settlement Class Members, and to each of their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, through, or on behalf of them.

45. "Settlement Administrator" shall mean, subject to Court approval, American Legal Claims Service, LLC.

46. "Settlement Fund" means or refers to the settlement fund to be established by Defendants (or their insurers) for purposes of this settlement in the total amount of $135,000.00 (One-Hundred Thirty-Five Thousand United States Dollars) to be deposited into the Escrow Account, according to the schedule set forth herein. The Settlement Fund represents the total extent of Defendants' monetary obligations under this Agreement. In no event shall the total monetary obligation with respect to this Agreement on behalf of Defendants exceed $135,000.00 (One-Hundred Thirty-Five Thousand United States Dollars). The Settlement Fund shall be used for payment of the following: (i) the pro-rata

cash benefits of Settlement Class Members pursuant to Paragraph 57 below; (ii) the Administrative Expenses actually incurred by the Settlement Administrator as described in Section VII below; (iii) the Fee Award, as described in Paragraphs 96-98 below; and (iv) any Incentive Award to the Plaintiffs, not to exceed $5,000 per Plaintiff, as may be ordered by the Court and as described in Paragraph 99 below. The Settlement Fund shall be kept in the Escrow Account with permissions granted to the Settlement Administrator to access said funds until such time as the listed payments are made. The Settlement Administrator shall be responsible for all tax filings with respect to any earnings on the Settlement Fund and the payment of all taxes that may be due on such earnings. The payment of the Settlement Amount by Defendants (or their insurers) fully discharges the Defendants and the other Released Parties' financial obligations (if any) in connection with the Settlement, meaning that no Released Party shall have any other obligation to make any payment into the Escrow Account or to any Class Member, or any other person, under this Agreement.

47. "Settlement Website" means the website to be established by the Settlement Administrator to provide Notice and further information regarding the Litigation and the Settlement.

48. "Short Form Notice" means notice of this Settlement, substantially in the form of Exhibit A hereto, which shall be sent directly to each Class Member as described in Section VII to inform Class Members of their rights and duties under this Settlement.

III. SETTLEMENT CLASS CERTIFICATION

49. For the purposes of the Settlement only, the Parties stipulate and agree that:

a. the Class shall be certified in accordance with the definition contained in Paragraph 52 below;

b. Plaintiffs shall represent the Class for settlement purposes and shall be the Class Representatives; and

c. Plaintiffs' Counsel shall be appointed as Class Counsel.

50. Defendants do not consent to certification of the Class for any purpose other than to effectuate the Settlement. If the Court does not enter Final Approval of the Settlement, or if for any other reason final approval of the Settlement does not occur, is successfully objected to, or challenged on appeal, any certification of any Class will be vacated and the Parties will be returned to their positions with respect to the Action as if the Agreement had not been entered into.

51. In the event that Final Approval of the Settlement is not achieved: (a) any Court orders preliminarily or finally approving the certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in this Agreement, that Defendants did not oppose the certification of a Class under this Agreement, or that the Court preliminarily approved the certification of a Class, shall not be used or cited thereafter by any person or entity, including in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class.

52. Subject to Court approval, the following Settlement Class shall be certified for settlement purposes:

> All persons in the United States whose fingerprint was collected, captured, or otherwise obtained by any Defendant, in Illinois, at any time during the Class Period.

53. The following people are excluded from the Class: (1) any judge presiding over the action and their families and staff; (2) Defendants and their owners, officers, directors, parents, subsidiaries, successors, and predecessors; (3) Plaintiffs' and Defendants' counsel and their staffs; and (4) all persons who timely elect to exclude themselves from the Settlement Class.

IV. SETTLEMENT OF THE LITIGATION AND ALL CLAIMS AGAINST THE RELEASED PARTIES

54. Final approval of this Settlement Agreement will settle and resolve with finality, on behalf of Plaintiffs, the Litigation and Representative Released Claims.

55. Final approval of this Settlement Agreement will settle and resolve with finality, on behalf of the Settlement Class, the Litigation and the Class Released Claims.

V. SETTLEMENT FUND

56. Establishment of Settlement Fund

a. Within fourteen (14) days of Preliminary Approval, Defendants shall create the Settlement Fund by paying to the Settlement Administrator a reasonable estimate of the Administrative Expenses. Within forty-five (45) days of Preliminary Approval, Defendants (or their insurers) shall pay the remainder of the total sum of $135,000 (One-Hundred Thirty-Five Thousand Dollars) into the Settlement Fund. The foregoing payment obligations are contingent on receipt of adequate payment instructions and a valid W-9 for the Settlement Fund.

b. All funds required to be paid by Defendants (or their insurers) under this paragraph shall be provided by Defendants (or their insurers) to the Settlement

Administrator and maintained by an escrow agent as a Court-approved Qualified Settlement Fund pursuant to Section 1.468B-1 et seq. of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended, and shall be deposited in an interest-bearing account.

c. If the Settlement Agreement is not finally approved or if this Agreement is terminated or fails to become Effective, the Settlement Fund belongs to Defendants (including any accrued interest thereon), less any Administrative Expenses paid to date. Plaintiffs shall have no financial responsibility for any Administrative Expenses paid out of the Settlement Fund in the event that the Settlement Agreement is not finally approved.

d. The Settlement Fund shall be used to pay (i) Each Class Members' *pro rata* share of the Settlement Fund, (ii) Court-approved Incentive Awards to the Class Representative, (iii) any Court-approved Attorneys' Fee Award; and (iv) costs of administration of the Agreement to the Settlement Administrator, including without limitation payment of Administrative Expenses.

e. In accordance with Paragraph 57 below, the amount of any uncashed checks after the expiration date, less any funds necessary for settlement administration, will be returned to Defendants or their designees.

f. The Settlement Fund represents the total extent of the Released Parties' monetary obligations under the Settlement Agreement. Defendants' contribution to the Settlement Fund shall be fixed under this Section and be final. Released Parties shall have no obligation to make further payments into the Settlement Fund and

shall have no financial responsibility or obligation relating to the settlement beyond the Settlement Fund.

The Court may require changes to the method of allocation to Settlement Class Members without invalidating this Settlement Agreement, provided that the other material terms of the Settlement Agreement are not altered, including but not limited to the scope of the Release, the scope of the Settlement Class, and the amount of the Settlement Fund.

IV. SETTLEMENT RELIEF

57. Settlement Payments to Settlement Class Members

a. The Settlement Administrator shall send each Settlement Class Member a Settlement Payment Check within fourteen (14) days of the Effective Date via First Class U.S. Mail to their last known mailing address, as updated through the National Change of Address Database, if necessary, by the Settlement Administrator.

b. All Settlement Payments will state on the face of the check that the check will expire and become null and void unless cashed within ninety (90) days after the date of issuance.

c. To the extent that a check issued to a Settlement Class Member is not cashed within ninety (90) days after the date of issuance, the check will be void, and such funds shall revert to Defendants or their designees.

58. Prospective Relief**:** Defendants represent that they no longer use the fingerprint scanning timeclock or any other biometric timeclock device at any of its facilities in Illinois. Defendants further represent that, to the best of their knowledge, information, and belief,

any biometric data (if any) collected by the timeclock was stored internally on the device itself and, other that the dates and times of employees' working hours, was never transmitted to, transferred to, or copied by any third party. Defendants further represent that they will comply with all of BIPA's requirements related to the retention and destruction of any biometric data they may possess.

V. RELEASE

59. In addition to the effect of any final judgment entered in accordance with this Agreement, upon final approval of this Agreement, and for other valuable consideration as described herein, the Released Parties shall be completely released, acquitted, and forever discharged from any and all Class Released Claims and Representative Released Claims.

60. As of the Effective Date, and with the approval of the Court, all Releasing Parties hereby fully, finally, and forever release, waive, discharge, surrender, forego, give up, abandon, and cancel all Class Released Claims and Representative Released Claims against the Released Parties. As of the Effective Date, all Releasing Parties will be forever barred and enjoined from prosecuting any action against the Released Parties asserting any and/or all Class Released Claims and Representative Released Claims.

61. Each Releasing Party waives any and all defenses, rights, and benefits that may be derived from the provisions of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the release contained in this Agreement.

62. The Released Parties do not admit any liability or wrongdoing. The Settlement Agreement may not be construed in whole or in part as an admission of fault by the Released Parties. The Released Parties agree to this settlement to avoid the burden and expense of litigation without in any way acknowledging any fault or liability.

VI. PRELIMINARY APPROVAL ORDER

63. This Settlement shall be subject to approval of the Court. As set forth in Section XIII, either Party shall have the right to withdraw from the Settlement if the Court does not approve the material aspects of the Settlement.

64. Plaintiffs, through Class Counsel, shall submit this Agreement, together with its Exhibits, to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement, certification of the Settlement Class, appointment of Class Counsel and the Class Representatives, and entry of the Preliminary Approval Order, substantially in the form of Exhibit C, which order shall seek a Final Approval Hearing date and approve the Notices and Claim Form for dissemination in accordance with the Notice Plan.

65. At the time of the submission of this Settlement Agreement to the Court as described above, the Parties shall request that, after Notice is given, the Court hold a Final Approval Hearing approximately one hundred (100) days after entry of the Preliminary Approval Order and approve the settlement of the Litigation as set forth herein.

66. Procedure for Approving Settlement

a. Plaintiffs will file an unopposed motion for an order conditionally certifying the Settlement Class, giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the "Unopposed Motion for Preliminary Approval") under the terms specified herein.

b. At the hearing on the Unopposed Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the Unopposed Motion for Preliminary

Approval, and submit a proposed order granting conditional certification of the Class and preliminary approval of the Settlement; appointing the Class Representatives and Class Counsel; approving the forms of notice to the Settlement Class; and setting the Final Approval Hearing.

c. For the purposes of the Settlement and the proceedings contemplated herein only, the Parties stipulate and agree that the Class shall be conditionally certified in accordance with the definition contained above, that Plaintiffs shall be conditionally appointed class representatives, and that Plaintiffs' Counsel shall be conditionally appointed as counsel for the Class. Should the Court decline to preliminarily approve any material aspect of the Settlement, the Settlement will be null and void, the Parties will have no further obligations under it, and the Parties will revert to their prior positions in the Action as if the Settlement had not occurred.

VII. SETTLEMENT ADMINISTRATOR'S DUTIES

67. The Settlement Administrator shall provide notice to class members as outlined below, in Section VIII.

68. Within fourteen (14) days after the entry of the Preliminary Approval, the Settlement Administrator will develop, host, administer and maintain the Settlement Website at an available URL reasonably acceptable and approved in advance by the Parties, containing the notice substantially in the form of Exhibit B, the "Long Form Notice".

69. If any Notice is returned as undeliverable, the Settlement Administrator shall forward it to any forwarding address provided by the U.S. Postal Service. If no such forwarding address is provided, the Settlement Administrator will utilize a national address locator

service to attempt to obtain the most recent address for the Settlement Class Member. For any Notice sent to Class Members that are returned undeliverable, Settlement Class Members will have the longer of the remaining time to object/opt-out of the Settlement or fourteen (14) days from the date of any remailing to object or opt-out of the Settlement as provided herein.

70. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Settlement Agreement. The Settlement Administrator shall maintain all such records as required by applicable law in accordance with its business practices and such records will be made available to Class Counsel and Defendants' Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. Upon request, the Settlement Administrator shall provide Class Counsel and Defendants' Counsel with information concerning Notice, requests for exclusion, administration, and implementation of the Settlement.

71. The Settlement Administrator shall receive requests for exclusion from persons in the Settlement Class and provide to Class Counsel and Defendants' Counsel a copy thereof within five (5) days of the Objection/Exclusion Deadline. If the Settlement Administrator receives any requests for exclusion or other requests from Settlement Class Members after the deadline for the submission of requests for exclusion, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendants' Counsel.

72. The Settlement Administrator shall make the Settlement Payments as described in Paragraph 57 by check and mail them to Settlement Class Members within fourteen (14) days after the Effective Date.

73. The Settlement Administrator shall be responsible for all tax fillings related to the Escrow Account, including requesting Form W-9s from Settlement Class Members, performing back-up withholding as necessary, and making any required "information returns" as that term is used in 26 U.S.C. § 1 *et seq.*

VIII. NOTICE TO PROPOSED SETTLEMENT CLASS MEMBERS

74. Class List

a. Defendants shall provide the Settlement Administrator with a list of all names and last known addresses, in their possession, of all persons in the Settlement Class (the "Class List") as soon as practicable, but no later than fourteen (14) days after entry of the Preliminary Approval Order.

b. The Settlement Administrator shall keep the Class List, and all personal information obtained therefrom, strictly confidential.

c. Prior to mailing Notice, the Settlement Administrator will update the addresses on the Class List using the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. The Settlement Administrator shall take all reasonable steps to obtain the correct address of any Class Members for whom Notice is returned by the U.S. Postal Service as undeliverable and shall attempt re-mailings as described above.

75. Direct Notice

a. No later than the Notice Date, the Settlement Administrator shall send Notice via first-class U.S. Postal Service to each Settlement Class Member substantially in the form attached as Exhibit A.

b. The Notice shall advise Settlement Class Members prior to the Final Approval Hearing that there is a pending settlement and to further inform Settlement Class Members of their rights under the Settlement, including:

i. Their right to be excluded from the settlement and the deadlines and procedure for doing the same;

ii. Their right to object to the settlement and the procedure and deadlines for doing the same;

iii. The address to the Settlement Website and that such website contains further information regarding the Settlement.

IX. EXCLUSIONS

76. Exclusion Period. On or before the Objection/Exclusion Deadline, Settlement Class Members may exclude themselves from the Settlement in accordance with this Section. If the Settlement is finally approved by the Court, all Settlement Class Members who have not validly excluded themselves by the end of the Objection/Exclusion Deadline will be bound by the Settlement and will be deemed a Releasing Party as defined herein, and the relief provided by the Settlement will be their sole and exclusive remedy for the claims alleged by the Settlement Class.

77. Exclusion Process

a. A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked on or before the Objection/Exclusion Deadline.

b. To exercise the right to be excluded, a member of the Settlement Class must timely request exclusion by providing his/her/their name, address, and telephone

number; the name and number of this case, a statement that he/she/they wish(es) to be excluded from the Settlement Class; and a signature. A request to be excluded that is sent to an address other than that designated in the Class Notice, or that is not postmarked within the time specified, shall be invalid and the person serving such a request shall be considered a member of the Settlement Class and shall be bound as Settlement Class Members by the Agreement, if approved.

c. Any member of the Settlement Class who elects to be excluded shall not:

i. be bound by any order or final judgment;

ii. be entitled to relief under this Settlement Agreement;

iii. gain any rights by virtue of this Settlement Agreement; or

iv. be entitled to object to any aspect of this Settlement Agreement. A member of the Settlement Class who requests to be excluded from the Settlement Class also cannot object to the Settlement.

78. The request for exclusion must be personally signed by the person requesting exclusion. So-called "mass" or "class" exclusion requests shall not be permitted.

79. Within three (3) business days after the Objection/Exclusion Deadline, the Settlement Administrator shall provide Class Counsel and Defendants' Counsel a written list reflecting the name and address of all persons who make a timely and valid exclusion from the Settlement Class. If the number of persons making a timely and valid exclusion from the Settlement Class reaches or exceeds 25 individuals, Defendants may elect to terminate this Agreement on the ground that exclusion at that level threatens to frustrate the essential purpose of this Agreement. Defendants may exercise its right to terminate this Agreement under this subsection by notifying Class Counsel by email of its election

within seven (7) days of receiving the list of persons making a timely and valid exclusion from the Settlement Class.

80. A list reflecting all individuals who timely and validly excluded themselves from the Settlement shall also be filed with the Court at the time of the motion for final approval of the Settlement.

X. OBJECTIONS

81. The Notice shall advise Settlement Class Members of their rights, including the right to be excluded from or object to the Settlement Agreement and its terms.

82. The Notice shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline approved by the Court, the person making an objection shall file notice of his/her/their intention to do so and at the same time:

a. file copies of such papers he/she/they proposes to submit at the Final Approval Hearing with the Clerk of the Court; and

b. send copies of such papers via United States mail, hand delivery, or overnight delivery to both Class Counsel and Defendants' Counsel. A copy of the objection must also be mailed to the Settlement Administrator at the address that the Settlement Administrator will establish to receive requests for exclusion or objections, Claim Forms, and any other communication relating to this Settlement.

83. Any Settlement Class Member who intends to object to this Settlement must include in any such objection:

a. his/her/their full name, address, email address, and current telephone number;

b. the case name and number of the Litigation;

c. all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials;

d. the identification of any other objections he/she/they has filed, or has had filed on his/her/their behalf, in any other class action cases in the last four years; and

e. the objector's signature.

84. If represented by counsel, the objecting Settlement Class Member must also provide the name and telephone number of his/her/their counsel. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he/she/they must state as such in the written objection, and must also identify any witnesses he/she/they may call to testify at the Final Approval Hearing and all exhibits he/she/they intends to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection.

85. Any Settlement Class Member who fails to timely file and serve a written objection and notice of intent to appear at the Final Approval Hearing pursuant to this Agreement, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

86. Settlement Class Members cannot both object to and exclude themselves from this Settlement Agreement. The Settlement Administrator shall attempt to contact any

Settlement Class Member who submits both a request for exclusion and an objection at least one time by e-mail or, if no e-mail address is available, by telephone to give the Settlement Class Member an opportunity to clarify whether they choose to exclude themselves or proceed with their objection. The Settlement Class Member shall have until twenty-one (21) days prior to the Final Approval Hearing to inform the Settlement Administrator regarding their final choice. Any Settlement Class Member who attempts to both object to and exclude themselves from this Settlement Agreement and fails to clarify their final choice, or if the Settlement Administrator is unable to contact such Settlement Class Member after reasonable effort as set forth in this paragraph, will be deemed to have excluded themselves and will forfeit the right to object to this Settlement Agreement or any of its terms.

XI. FINAL APPROVAL HEARING

87. The Parties will jointly request that the Court hold a Final Approval Hearing approximately one hundred (100) days after entry of the Preliminary Approval Order. The Final Approval Hearing will be conducted by Zoom videoconference or as the Court otherwise directs.

88. At least fourteen (14) days prior to the Final Approval Hearing, or by some other date if so directed by the Court, Plaintiffs will move for (i) final approval of the Settlement; (ii) final appointment of the Class Representatives and Class Counsel; and (iii) final certification of the Settlement Class, including for the entry of a Final Order and Judgment consistent with Section XII below, and file a memorandum in support of the motion for final approval. Plaintiffs shall provide a copy of the motion for final approval

and supporting memorandum at least five (5) business days in advance of filing to Defendants' counsel for review.

89. At the Final Approval Hearing, the Parties will request that the Court consider whether the Settlement Class should be certified as a class pursuant to 735 ILCS § 5/2-801 for settlement and, if so,

a. consider any properly and timely filed objections,

b. determine whether the Settlement is fair, reasonable and adequate, was entered into in good faith and without collusion, and should be approved, and shall provide findings in connections therewith, and

c. enter the Final Approval Order, including final approval of the Settlement Class and the Settlement Agreement, and Fee and Incentive Awards.

XII. FINAL APPROVAL ORDER

90. The Parties shall jointly seek entry of a Final Approval Order, the text of which the Parties shall agree upon. The dismissal orders, motions or stipulation to implement this Section shall, among other things, seek or provide for a dismissal with prejudice and waiving any rights of appeal.

91. The Parties shall jointly submit to the Court a proposed final order that, without limitation:

a. Approves finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of 735 ILCS 5/2-801 and directing its consummation according to its terms;

b. Dismisses, with prejudice, all claims of the Settlement Class against Defendants in the Litigation, without costs and fees except as explicitly provided for in this Agreement; and

c. Reserves continuing and exclusive jurisdiction over the Settlement and this Agreement, including but not limited to the Litigation, the Settlement Class, the Settlement Class Members, Defendants, and the Settlement for the purposes of administering, consummating, supervising, construing and enforcing the Settlement Agreement and the Settlement Fund.

92. Class Counsel shall use their best efforts to assist Defendants in obtaining dismissal with prejudice of the Litigation and take all steps necessary and appropriate to otherwise effectuate all aspects of this Agreement.

XIII. TERMINATION OF THE SETTLEMENT

93. The Settlement is conditioned upon preliminary and final approval of the Parties' written Settlement Agreement, and all terms and conditions thereof without material change, material amendments, or material modifications by the Court (except to the extent such changes, amendments or modifications are agreed to in writing between the Parties). All Exhibits attached hereto are incorporated into this Settlement Agreement. Accordingly, any Party may elect to terminate and cancel this Settlement Agreement within ten (10) days of any of the following events:

i. This Settlement Agreement is changed in any material respect to which the Parties have not agreed in writing;

ii. The Court refuses to grant Preliminary Approval of this Agreement;

iii. The Court refuses to grant final approval of this Agreement in any material respect;

iv. The Court refuses to enter a final judgment in this Litigation in any material respect; or

v. The Court's order granting preliminary or final approval is substantially modified or reversed.

94. In the event the Settlement Agreement is not approved or does not become final, or is terminated consistent with the provisions herein, the Parties, pleadings, and proceedings will return to the *status quo ante* as if no settlement had been negotiated or entered into, and the Parties will negotiate in good faith to establish a new schedule for the Litigation.

XIV. ATTORNEYS' FEES, COSTS AND EXPENSES AND INCENTIVE AWARD

95. At least twenty-one (21) days prior to the Objection/Exclusion Deadline, Class Counsel will move the Court for an award of attorneys' fees plus their reasonable costs and expenses.

96. The amount of the Fee Award shall be determined by the Court based on a petition from Class Counsel. Class Counsel has agreed, with no consideration from Defendants, to limit their request for fees, costs, and reasonable expenses to no more than $40,500 of the Settlement Fund. Defendants agree to not object to or otherwise challenge, directly or indirectly, Class Counsel's petition for attorneys' fees, costs, and expenses if limited to this amount. Payment of the Fee Award shall be made from the Settlement Fund and should the Court award less than the amount sought by Class Counsel, the difference in

the amount sought and the amount ultimately awarded pursuant to this section shall remain in the Settlement Fund and be distributed to Settlement Class Members.

97. The Fee Award shall be paid solely from the Settlement Fund by wire transfer from the Settlement Administrator within seven (7) days of the Effective Date and sent to an account designated by Class Counsel.

98. Notwithstanding any contrary provision of this Agreement, the Court's consideration of the Fee Award is to be conducted separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement Agreement, and any award made by the Court with respect to Class Counsel's attorneys' fees or expenses, or any proceedings incident thereto, including any appeal thereof, shall not operate to terminate or cancel this Agreement or be deemed material thereto.

99. Prior to or at the same time as Plaintiffs seeks final approval of the Settlement Agreement, Class Counsel shall move the Court for an Incentive Award for the Class Representatives in an amount not to exceed $5,000 (Five Thousand Dollars) for each Class Representative, and Defendants agree that it will not oppose the requested Incentive Award. The Incentive Awards shall be paid solely from the Settlement Fund and should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this section shall remain in the Settlement Fund and be distributed to Settlement Class Members.

100. Payment of the Incentive Awards shall be made by check payable to each Plaintiffs and mailed by the Settlement Administrator to Plaintiff's Counsel within seven (7) days of the Effective Date.

101. In no event will Defendants' liability for attorneys' fees, expenses, and costs, Administration Expenses, and/or an Incentive Award exceed the funding obligations set out this Agreement. Defendants shall have no financial responsibility for this Settlement Agreement outside of the Settlement Fund. Defendant shall have no further obligation for attorneys' fees or expenses to any counsel representing or working on behalf of either one or more individual Settlement Class Members or the Settlement Class. Defendants will have no responsibility, obligation or liability for allocation of fees and expenses among Class Counsel.

XV. MISCELLANEOUS REPRESENTATIONS

102. For income tax purposes, the Parties agree that payments made pursuant to this Agreement shall be allocated as statutory penalties and shall not be subject to required withholdings and deductions and may be reported as non-wage income, as required by law. If required by IRS regulations, the Settlement Administrator shall issue to each Class Participant who cashes a Settlement Check, and the Class Representative who cashes any Incentive Award, an IRS Form 1099. Other than the reporting requirements herein, Class Participants shall be solely responsible for the reporting and payment of their share of any federal, state and/or local income or other taxes on payments received pursuant to this Settlement Agreement. It is understood and agreed that Defendants take no position and offer no advice regarding how any Class Member chooses to treat any payment made hereunder for tax or any other purpose.

103. Each Party to this Settlement Agreement acknowledges and agrees that:

a. no provision of this Settlement Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers regarding this Settlement Agreement, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended);

b. each Party (A) has relied exclusively upon his, her or its own, independent legal and tax advisers for advice (including tax advice) in connection with this Settlement Agreement, (B) has not entered into this Settlement Agreement based upon the recommendation of any Party or any attorney or advisor to any other Party, and (C) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other Party to avoid any tax penalty that may be imposed on that Party; and

c. no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement Agreement.

104. The Parties agree that the Settlement Agreement provides fair, equitable and just compensation, and a fair, equitable, and just process for determining eligibility for compensation for any given Settlement Class Member related to the Released Claims.

105. The Parties (i) acknowledge that it is their intent to consummate this Settlement Agreement, and (ii) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement. Class Counsel and Defendants' Counsel agree to cooperate with each other in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, and the Final Approval Order, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement.

106. The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiffs and the Settlement Class, and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand.

107. Nothing express or implied in this Agreement is intended or shall be construed to confer upon or give any person or entity other than the Parties, Released Parties, and Settlement Class Members any right or remedy under or by reason of this Agreement. Each of the Released Parties is an intended third-party beneficiary of this Agreement with respect to the Released Claims and shall have the right and power to enforce the release of the Released Claims in his, her or its favor against all Releasing Parties.

108. The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully this Settlement Agreement, including its Exhibits, and have

been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

109. Any headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

110. The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any prior or subsequent breach of this Agreement.

111. This Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents.

112. This Agreement may not be amended, modified, altered, or otherwise changed in any manner except by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

113. The Parties agree that Exhibits A through C to this Settlement Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

114. The Parties may agree, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of the Agreement.

115. Except as otherwise provided herein, each Party shall bear its own costs.

116. Plaintiffs represent and warrant that they have not assigned any claim or right or interest therein as against the Released Parties to any other person or party.

117. The Parties represent that they have obtained the requisite authority to enter this Settlement Agreement in a manner that binds all Parties to its terms.

118. The Parties specifically acknowledge, agree and admit that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders or other documents shall be considered a compromise within the meaning of Illinois Rule of Evidence Rule 408, and any other equivalent or similar rule of evidence, and shall not (1) constitute, be construed, be offered, or received into evidence as an admission of the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Litigation or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, or (2) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue.

119. This Settlement Agreement, whether approved or not approved, revoked, or made ineffective for any reason, and any proceedings related to this Settlement Agreement and any discussions relating thereto, shall be inadmissible as evidence of any liability or wrongdoing whatsoever and shall not be offered as evidence of any liability or wrongdoing in any court or other tribunal in any state, territory, or jurisdiction, or in any manner whatsoever. Further, neither this Settlement Agreement, the Settlement contemplated by it, nor any proceedings taken under it, will be construed or offered or received into evidence as an admission, concession or presumption that class certification is appropriate, except to the extent necessary to consummate this Agreement and the binding effect of the Final Order and Judgment.

120. The provisions of this Settlement Agreement, and any orders, pleadings or other documents entered in furtherance of this Settlement Agreement, may be offered or received in evidence solely (1) to enforce the terms and provisions hereof or thereof, (2) as may be specifically authorized by a court of competent jurisdiction after an adversary hearing upon application of a Party hereto, (3) to establish payment, or an affirmative defense of preclusion or bar or other defense in a subsequent case, (4) in connection with any motion to enjoin, stay or dismiss any other action, and/or (5) to obtain Court approval of the Settlement Agreement.

121. This Agreement may be executed in one or more counterparts exchanged by hand, messenger, facsimile, or PDF as an electronic mail attachment. All executed counterparts and each of them shall be deemed to be one and the same instrument, provided that counsel for the Parties to this Agreement all exchange signed counterparts.

122. This Agreement shall be binding upon, and insure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

123. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and the Parties hereby submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

124. This Agreement shall be governed by and construed in accordance with the laws of the state of Illinois.

125. This Agreement is deemed to have been prepared by Counsel for the Parties as a result of arm's-length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Agreement and its Exhibits, it shall not be construed more strictly against one Party than another.

126. Unless otherwise stated herein, any notice required or provided for under this Agreement shall be in writing and shall be sent by electronic mail or hand delivery, postage prepaid, as follows:

Class Counsel	**Defendants' Counsel**
Michael Drew Neighborhood Legal, LLC 20 N. Clark Street #3300 Chicago, IL 60602 mwd@neighborhood-legal.com	Johner T. Wilson III Dinsmore & Shohl LLP 222 W. Adams Street #3400 Chicago, IL 60606 JT.Wilson@dinsmore.com Jason M. Rosenthal Laura Elkayam Much Shelist, P.C. 191 N. Wacker Drive #1800 Chicago, IL 60606 jrosenthal@muchlaw.com lelkayam@muchlaw.com

[REMAINDER OF PAGE LEFT BLANK]

AGREED:

12/27/2022 Leroy Payton Date *By and through his Attorneys*	12/27/2022 Kyndra Byrd Date *By and through her Attorneys*
12/27/2022 Michael Drew Date Neighborhood Legal, LLC 20 N. Clark St. #3300 Chicago, IL 60602 s/ Michael Wood 12/27/2022 Michael Wood Date Celetha Chatman Community Lawyers, LLC 980 N. Michigan Ave. #1400 Chicago, IL 60611 *Attorneys for Plaintiffs*	

Autumn Ridge Apartments I, LP By: Attorney 12/20/22 Date Its: Authorized Representative	The Ferndale Property Management Group, LLC By: Attorney 12/20/22 Date Its: Authorized Representative
Alon Z. Yonatan 12/20/22 Date *By and through his Attorneys*	
Johner T. Wilson III 12-22-22 Date Reginald Cloyd III Dinsmore & Shohl, LLP 222 W. Adams Street #3400 Chicago, IL 60606 *Attorneys for above Defendants*	

The Ferndale Realty Group, LLC [signature] 12/20/22 By: [illegible] Date Its: Authorized Representative	
s/ Jason M. Rosenthal 12/20/22 Laura Elkayam Date Jason Rosenthal Much Shelist, P.C. 191 N. Wacker Drive #1800 Chicago, IL 60606 *Attorneys for above Defendant*	

EXHIBIT B

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

LEROY PAYTON and KYNDRA BYRD; on behalf of themselves and all others similarly situated, Plaintiff, v. **AUTUMN RIDGE APARTMENTS I, LP; THE FERNDALE REALTY GROUP, LLC; THE FERNDALE PROPERTY MANAGEMENT GROUP, LLC; and ALON Z. YONATAN;** Defendants.	Case No. 2021-CH-01769

DECLARATION OF AMERICAN LEGAL CLAIM SERVICES, LLC REGARDING DUE DILIGENCE IN NOTICING

I, Demetrius Jenkins, declares that the following is true and correct:

1. I am a competent adult, over the age of eighteen, and this declaration is based on my personal knowledge.

2. I am a Case Manager for American Legal Claim Services, LLC ("ALCS"). ALCS was selected by the Court to serve as the Settlement Administrator and to otherwise comply with the provisions set forth in the Stipulation of Class Action Settlement and Preliminary Approval Order. I was responsible for overseeing the dissemination of Notice of Settlement ("Class Notice") to class members, exclusion processing, and all other matters required as Settlement Administrator.

3. **Class List Receipt and Processing:** On January 9, 2023, ALCS received the mailing lists ("Class List") from counsel for the Defendant containing 150 records with the names and street addresses. ALCS reviewed and processed the data. No duplicates were identified based on a combination of name and address. The final Class List contained 150 class members. Throughout the noticing process, ALCS utilized several means of ensuring the most accurate mailing addresses for class members. These methods included National Change of Address through the USPS, skip-tracing, and manual updates from class members.

4. **Initial Class Notice:** On January 25, 2023, ALCS mailed the Class Notice, substantially in the form approved by the Court (attached hereto as Exhibit A), to 150 class members.

5. **Returned Mail Handling:** ALCS processed all Class Notices returned by USPS that did not contain an updated address ("UAA"). For these, ALCS conducted address searches using a nationally recognized location service to attempt to locate new addresses for these class members. Of the 150 Notices mailed, 22 were returned by USPS as of the date of this declaration. ALCS has remailed 10 Notices to an updated address. One (1) remailed Notice was returned by USPS as of the date of this declaration.

6. **Noticing Campaign Summary:** The following is a summary of the noticing, as of the date of this Declaration:

   - Class Notices initially mailed via USPS: 150
   - Class Notices returned by USPS: 22
   - Class Notices remailed via USPS: 10
   - Remailed Class Notices returned as UAA: 1
   - Total number of mailed Class Notices deemed undeliverable: 13
   - Percentage of Class Notices deemed delivered: 91.33%

7. **Website:** ALCS created a case website www.autumnridgesettlement.com that provided further information as stated in the Notice. The website contained sections for Important Court Documents, Key Dates and FAQs. Class members had an opportunity to update their address online.

8. **Exclusions:** The Class Notice instructed those who wish to opt out of the settlement to write to the Settlement Administrator stating that the class member does not wish to participate. It further states that an opt out request must be postmarked by February 13, 2023. We have not received any exclusion for this case as of the date of this declaration.

9. **Objections:** The Class Notice informed class members who wish to object to the settlement to file their written objection with the Court by February 13, 2023. I am not aware of any objections being filed with the Court as of the date of this declaration.

I declare under penalty of perjury pursuant to the laws of the State of Florida that the foregoing is true and correct to the best of my knowledge. Executed on March 14, 2023 in Jacksonville, Florida.

Demetrius Jenkins

Exhibit A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
Payton v. Autumn Ridge Apartments I, LP, No. 2021-CH-01769,
(Cook County Cir. Ct.) Cook County, Illinois

A court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.

A settlement has been reached in a class action lawsuit between Autumn Ridge Apartments I, LP; The Ferndale Realty Group, LLC; The Ferndale Property Management Group, LLC; and Alon Z. Yonatan ("Defendants") and some of their current and former Illinois employees. The lawsuit claims that Defendants violated an Illinois law called the Biometric Information Privacy Act ("BIPA") by collecting scans of their employees' fingerprints using a fingerprint scanning timeclock and not complying with the law's requirements. Defendants deny any wrongdoing and maintain that they have not violated any laws. The settlement does not establish who is right. Rather, the Parties chose to settle this lawsuit to avoid the time and expense of continued litigation. The lawsuit is called *Payton v. Autumn Ridge Apartments I, LP*, No. 2021-CH-01769, and is before Judge Allen Price Walker in the Circuit Court of Cook County, Chancery Division, in Chicago, Illinois.

For complete information, visit www.autumnridgesettlement.com.

OUR RECORDS INDICATE THAT YOU ARE A MEMBER OF THE SETTLEMENT CLASS

- **How do I know if I am a Class Member?** The Settlement Class includes all individuals whose fingerprints were scanned by any Defendant in Illinois from August 11, 2016 through December 29, 2022 before signing any consent form regarding biometric information.
- **What can I get out of the Settlement?** If you're a member of the Settlement Class, and the Court approves the Settlement, a check will automatically be mailed to you. You do not have to send in a claim form. The exact amount of the check will vary depending on the final cost of the Settlement approved by the Court which will include legal fees and incentive payments to the named Plaintiffs. You will receive between $500 - $600. Defendants no longer use the fingerprint scanning timeclock.
- **What are my options?** You have three options: You can do nothing, exclude yourself from the settlement, or object to any of the settlement terms.

All requests for Exclusion and Objections must be postmarked by February 13, 2023.

1. **Do Nothing:** You will receive a payment and won't be able to sue Defendants in a future lawsuit about their use of the fingerprint-scanning timeclock.
2. **Exclude yourself**: If you exclude yourself from the Settlement, you won't receive a check, but you will keep your right to sue Defendants in your own lawsuit regarding their use of the fingerprint-scanning timeclock. You must contact the Settlement Administrator by mail to exclude yourself.
   To exclude yourself, you must write to the Settlement Administrator at the following address:

   Payton v. Autumn Ridge Apartments
   c/o American Legal Claims Services, LLC
   PO Box 23668
   Jacksonville FL 32241-3668

   and include the following information:

   i. Your name, address, and telephone number.
   ii. the name and case number of this case: *Payton v. Autumn Ridge Apartments I, LP*, No. 2021-CH-01769, (Cook County Cir. Ct.),
   iii. a statement that you wish to be excluded from the Settlement Class; and
   iv. your personal signature.

Your request must be postmarked on or before **February 13, 2023.**

If you exclude yourself from the Settlement, you will receive no payment under the Settlement and will not be a Settlement Class Member. You will keep your right to start your own lawsuit against Defendants for the same claims made in this lawsuit. You will not be legally bound by the Court's judgments related to the Settlement Class and the Defendants in this class action.

3. **Object to the Settlement**: Objecting simply means telling the Court that you don't like something about the Settlement. You may Object only if you stay in the Settlement Class as a Class Member and do not exclude yourself. Excluding yourself from the Settlement Class is telling the Court that you don't want to be a Settlement Class Member. You CANNOT do both – by excluding yourself, you have no basis to object because the case no longer affects you or your legal rights.

   If you disagree with any of the terms of the Settlement, and do not exclude yourself from the Settlement Class, you can Object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should deny approval by filing an objection.

   To object, you must file a letter or brief with the Court stating that you object to the Settlement in *Payton v. Autumn Ridge Apartments I, LP*, No. 2021-CH-01769, (Cook County Cir. Ct.) no later than: **February 13, 2023.**

   You must e-file or file your Objection to the Circuit Court of Cook County at the following address:

   Clerk of the Circuit Court of Cook County – Chancery Division
   Richard J. Daley Center, 8th Floor, 50 W. Washington Street
   Chicago, IL 60602

   Instructions and links for e-filing are available at: https://www.cookcountyclerkofcourt.org/

   You must also send copies of your objection and any documents or exhibits attached to Class Counsel and Defendants' Counsel, and the Settlement Administrator, via mail, overnight, or hand-delivery, at the following addresses, **postmarked no later than: February 13, 2023.**

<table>
<tr><th colspan="2">Class Counsel</th></tr>
<tr><td colspan="2">Michael Drew
Neighborhood Legal, LLC
20 N. Clark Street #3300
Chicago, IL 60602
mwd@neighborhood-legal.com</td></tr>
<tr><th colspan="2">Defendants' Counsel</th></tr>
<tr><td>Johner T. Wilson III
Dinsmore & Shohl LLP
222 W. Adams Street #3400
Chicago, IL 60606
JT.Wilson@dinsmore.com</td><td>Jason M. Rosenthal
Laura Elkayam
Much Shelist, P.C.
191 N. Wacker Drive #1800
Chicago, IL 60606
jrosenthal@muchlaw.com
lelkayam@muchlaw.com</td></tr>
<tr><th colspan="2">Settlement Administrator</th></tr>
<tr><td colspan="2">Payton v. Autumn Ridge Apartments
American Legal Claim Services LLC
PO Box 23668
Jacksonville FL 32241-3668</td></tr>
</table>

The Objection must be in writing, must be signed, and must include the following information:

i. Your full name, address, email address, and current telephone number;
ii. the case name and case number of the Litigation (*Payton v. Autumn Ridge Apartments I, LP*, No. 2021-CH-01769 (Cook County Cir. Ct.);
iii. all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials;
iv. the identification of any other objections you have filed, or has had filed on your behalf, in any other class action cases in the last four years; and
v. your personal signature.

If you are represented by an attorney, you must also include:

vi. The name, address, and telephone number of your attorney.

If you intend to appear at the Final Approval Hearing (either in person or via Zoom), with or without an attorney, you must also:

vii. State that you intend to appear at the Final Approval Hearing,
viii. Identify any witnesses that you may call to testify at the Final Approval Hearing, and,
ix. Identify any and all exhibits you intend to introduce as evidence at the Final Approval Hearing, which you must also attach to or include with the written objection.

Class Counsel will file with the Court and post on the settlement website its request for attorneys' fees and incentive awards by **January 23, 2023.**

Any Settlement Class Member who fails to timely file and serve a written objection and notice of intent to appear at the Final Approval Hearing pursuant to this Agreement shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

- **Do I have a lawyer**? Yes. The Court has appointed lawyers from the firms Neighborhood Legal, LLC and Community Lawyers, LLC as "Class Counsel." They represent you and other Settlement Class Members. The lawyers will request to be paid from the total class fund that Defendants have agreed to pay. The request is subject to Court approval. You can hire your own lawyer, but you will have to pay that lawyer's fees and costs if you do.
- **Who are the Plaintiffs**? The Court has chosen the original Plaintiffs, Leroy Payton and Kyndra Byrd, as the Class Representatives. These individuals hired the lawyers and had the lawsuit filed on their behalf and on behalf of the class. They are a Class Member like you as well.
- **When will the Court approve the settlement**? The Court will hold a final approval hearing on **April 11, 2023, at 11:00AM** before Judge Allen Price Walker in Room 2402 at the Richard J. Daley Center, 50 W. Washington, Chicago, IL 60602. The hearing may take place via Zoom **Meeting ID: 955 0046 1687 Password: 640378.** The court will hear objections, determine if the settlement is fair, and consider Class Counsel's request for fees and expense of up to $40,500 and an incentive award of up to $5,000, each, for the Class Representatives.

EXHIBIT C

IN THE CIRCUIT COUIRT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

LEROY PAYTON and KYNDRA BYRD; on behalf of themselves and all others similarly situated, Plaintiff, v. AUTUMN RIDGE APARTMENTS I, LP; THE FERNDALE REALTY GROUP, LLC; THE FERNDALE PROPERTY MANAGEMENT GROUP, LLC; and ALON Z. YONATAN; Defendants.	Case No. 2021-CH-01769 Hon. Allen P. Walker Calendar 03

FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

This matter having come before the Court on Plaintiffs' Unopposed Motion in Support of Final Approval of Class Action Settlement (the "Motion"), the Court having reviewed in detail and considered the Motion and memorandum in support of the Motion, the Class Action Settlement Agreement ("Settlement Agreement") between Plaintiffs Leroy Payton and Kyndra Byrd and Defendants Autumn Ridge Apartments I, LP; The Ferndale Realty Group, LLC; The Ferndale Property Management Group, LLC; and Alon Z. Yonatan (together, the "Parties"), and all other papers that have been filed with the Court related to the Settlement Agreement, including all exhibits and attachments to the Motion and the Settlement Agreement, and Plaintiffs' Unopposed Motion for Attorneys' Fees and Costs and Incentive Awards, and the Court being fully advised in the premises, and having held a Final Approval Hearing on April 11, 2023.

IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms used in this Order that are not otherwise defined herein have the same meaning assigned to them as in the Settlement Agreement.

2. The Court has subject-matter jurisdiction to approve the Settlement Agreement, including all attached exhibits, and personal jurisdiction over all Parties to the Action, including all Settlement Class Members.

3. On December 29, 2022, this Court preliminarily approved the Settlement Agreement are as fair, reasonable, and adequate, and conditionally certified, pursuant to Section 2-801 of the Illinois Code of Civil Procedure, and for the purposes of settlement only, the following Settlement Class consisting of:

> All persons in the United States whose fingerprint was collected, captured, or otherwise obtained by any Defendant, in Illinois, at any time during the Class Period.

4. Notice to the Settlement Class has been provided in accordance with the Court's Preliminary Approval order, and the substance of and dissemination program for the Notice provided the best practicable notice under the circumstances; was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and their rights to object to or exclude themselves from the Settlement Agreement and to appear at the Final Approval Hearing; was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to received notice; and fulfilled the requirements of 735 ILCS 5/2-803 and due process.

5. The Settlement Agreement was the result of arm's-length negotiations conducted in good faith by experienced attorneys familiar with the legal and factual issues of this case and is supported by the Class Representatives and Class Counsel. The Class Representatives and Class

Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement.

6. The Court has considered each of the factors set forth in *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 971-72 (1st Dist. 1990). The Court finds that the Settlement Agreement is fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members in light of the complexity, expense, and duration of the litigation and the risks involved in establishing liability and damages and in maintaining the class action through trial and appeal. The consideration provided under the Settlement Agreement constitutes fair value given in exchange for the Released Claims. The Court finds that the consideration to be paid to the Settlement Class Members is reasonable, considering the facts and circumstances of the claims and affirmative defenses available in the Action and the potential risks and likelihood of success of alternatively pursuing litigation on the merits.

7. No Settlement Class Member has objected to any of the terms of the Settlement Agreement, and no Settlement Class Member has submitted any request for exclusion.

8. The Parties and their counsel are directed to implement and consummate the Settlement Agreement according to its terms and conditions. The Parties and Settlement Class Members are bound by the terms and conditions of the Settlement Agreement.

9. The Settlement Agreement is hereby finally approved in all respects, and the Parties are hereby directed to perform its terms.

10. Other than as provided in the Settlement Agreement and this Order, the Parties shall bear their own costs and attorneys' fees.

11. Subject to the terms and conditions of the Settlement Agreement, this Court hereby enters a Final Judgment and dismisses the Action on the merits and with prejudice.

12. Upon the Effective Date of the Settlement Agreement, Plaintiffs and Each Settlement Class Member, shall be deemed to have released, and by operation of the Final Judgment shall have, fully, finally, and forever release, waive, discharge, surrender, forego, give up, abandon, and any and all actual, potential, filed, unfiled, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra-contractual claims, damages, liquidated damages, punitive damages, exemplary damages, multiplied damages, expenses, costs, attorneys' fees and/or obligations, whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on the Illinois Biometric Information Privacy Act or other federal, state, local, statutory or common law or any other law, including the law of any jurisdiction outside the United States, against the Defendants, arising out of or relating to the collection, capture, receipt, storage, use, dissemination, retention, or disclosure of biometric and/or fingerprint data or information at any time prior to and up to the date of final approval by the court of the Settlement Agreement, including any and all claims that were pleaded in the Litigation.

13. Additionally, upon the Effective Date of the Settlement Agreement, the Class Representatives shall be deemed to have released, and by operation of the Final Judgment shall have, fully, finally, and forever release, waive, discharge, surrender, forego, give up, abandon, and cancel all Class Released Claims as well as all claims, demands, liens (both general and charging), agreements, contracts, requests for injunctive relief, covenants, promises, suits, any and all manner of action or actions, causes of action, obligations, controversies, debts, costs, sanctions, expenses, attorneys' fees, expert fees, litigation costs, damages including, but not limited to, physical and emotional distress, statutory damages, remedial benefits, expenses for

treatment the Class Representatives may have received or may receive in the future, treble damages, punitive damages, special and consequential damages, judgments, penalties, fines, insurance and reinsurance coverage, and liabilities of whatever kind, amount, or nature in law, equity, or otherwise, whether now known or unknown, suspected or unsuspected, fixed or contingent, and whether or not concealed or hidden, which have existed or may have existed, or which do exist or hereafter can, shall, or may exist, which relate in any way to Defendants, based on any acts, omissions, or facts in existence at any time up to the date of the final approval by the court of the Settlement Agreement. These claims are only released by the Class Representatives individually and not by any member of the Settlement Class.

14. All Settlement Class Members are hereby permanently barred and enjoined from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or other action in any jurisdiction based on the Released Claims.

15. The Parties may, without further approval from the Court, agree to and adopt such amendments, modifications, and expansions of the Settlement Agreement and its implementing documents (including all exhibits) that (i) shall be consistent in all respects with this Final Judgment; and (ii) do not limit the rights of the Settlement Class Members.

16. The Court awards to Class Counsel $_____ as a fair and reasonable attorneys' fee, which shall include all attorneys' fees and reimbursable expenses associated with this Action. This amount shall be paid from the Escrow Account pursuant to the terms in the Settlement Agreement.

17. The Court awards to each Class Representative an incentive award of $_____

18. for their time and effort serving the Settlement Class in this Action. This amount shall be paid from the Escrow Account pursuant to the terms in the Settlement Agreement. This amount

includes their pro rata share of the Settlement Fund and Class Representatives will not receive an additional amount from the Settlement Fund.

19. The Court approves administration costs in the amount of $_____ to be paid from the Settlement Fund to the Claims Administrator.

20. The total amount for distribution to the 150 Class is $_____. Each Class Member will be mailed a check for $_____

21. To the extent that any payments made to Settlement Class Members pursuant to the Settlement Agreement are not cashed within 90 days of issuance, the total amount of uncashed checks shall revert to Defendants or their designees.

22. Without affecting the finality of this Final Judgment for purposes of appeal, the Court retains jurisdiction as to all matters related to the administration, consummation, enforcement, and interpretation of the Settlement Agreement and this Final Judgment, and for any other necessary purpose.

23. All future hearing dates are stricken.

IT IS SO ORDERED.

ENTERED:

_____

Hon. Allen P. Walker