IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS, CHANCERY DIVISION

MANUEL MARTINEZ, individually and on behalf of themselves and all other similarly situated persons, known and unknown, Plaintiff,	)	
v.	)	Case No. **2023CH000053**
C STUDIO MANUFACTURING, LLC, Defendant.	)	

Plaintiff's Memorandum of Law in Support of his
Unopposed Motion for Final Approval of Class Action Settlement

Class Representative Manuel Martinez ("Plaintiff" or "Class Representative") respectfully requests that the Court grant final approval of the Parties' Class Action Settlement Agreement. Attached as Exhibit 1 is a true and accurate copy of the Parties' Settlement Agreement; Ex. 1 is incorporated herein. The Settlement achieved by the Class Representative and Class Counsel has been met with approval by the Class Members. Direct notice has been sent to 118 Class Members via direct US Mail, with 109 notices ultimately successfully delivered. Further, Defendant provided 78 email addresses for the Class Members; 76 of the 78 emails sent to the Class members were reported as delivered. Attached as Exhibit 2 is the Declaration Regarding Settlement Administration, par. 5; Ex. 2 is incorporated herein. Forty-seven total claims were received by the Settlement Administrator, of which 34 were filed prior to the deadline. Seventeen of the timely-filed claims are valid claims filed by Settlement Class Members on the class list. The remaining balance of timely claims were filed by individuals who were not on the class list. Ex. 2, par. 5.

There have been no objections and no opt out requests. Ex. 2, pars. 9-10. The absence of any objections and any opt outs is a testament to the fairness and adequacy of this Settlement.

The Settlement provides for the creation of a Settlement Fund valued at $150,000 to compensate Class Members. This Settlement brings certainty, closure, and valuable relief for Settlement Class Members, ending what otherwise would be contentious and costly litigation over the liability of Defendant C Studio Manufacturing, LLC ("Defendant" or "C Studio") for its alleged violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, et seq ("BIPA").

Had there been no Settlement, the Class Members may not have received any compensation. While Plaintiff believes he would be able to secure class certification and prevail on the merits, success would not be assured, and Defendant remains prepared to vigorously defend this case on the merits and at class certification. In short, the Settlement received support from the Class Members and will result in positive relief when and if finally approved. The Settlement meets or exceeds applicable standards and is fair, adequate, and reasonable. This Court should grant final approval of the Settlement, and approve Plaintiff's unopposed request for Attorneys' Fees and Expenses, Settlement Fees and Expenses, , and the Service Award sought in the Amended Motion for Attorney's Fees, Litigation Costs, Settlement Administration Costs and Settlement Class Representative's Service Award filed by Plaintiff and Class Counsel on January 10, 2024. Attached as Exhibit 3 is a true and accurate copy of Plaintiff's Motion for Attorney's Fees, Litigation Costs, Settlement Administration Costs, and Settlement Class Representative's Service Award; Ex. 3 is incorporated herein.

I. BACKGROUND

A. The Biometric Information Privacy Act ("BIPA")

BIPA is an Illinois statute that provides individuals with a right to privacy in their biometric information. To effectuate its purpose, BIPA requires private entities that seek to use

biometric identifiers (e.g., fingerprints and handprints) and biometric information (any information gathered from a biometric identifier which is used to identify an individual) to:

(1) inform the person whose biometrics are to be collected in writing that biometrics will be collected or stored;

(2) inform the person whose biometrics are to be collected in writing of the specific purpose and the length of term for which such biometrics are being collected, stored and used;

(3) receive a written release from the person whose biometrics are to be collected allowing the capture and collection of their biometrics; and

(4) publish a publicly available retention schedule and guidelines for permanently destroying biometrics. 740 ILCS 14/15.

BIPA was enacted in a large part to protect the privacy rights of individuals, to provide them with a means of enforcing their rights, and to regulate the practice of collecting, using and disseminating such sensitive and irreplaceable information.

B. The Case and Procedural History

1. Plaintiff's Allegations.

On March 9, 2023, Plaintiff filed a Class Action Complaint in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, alleging that Defendants violated BIPA, 740 ILCS 14/1, et seq., by requiring him and other employees and staffers to use a biometric timekeeping system as part of their jobs. In particular, Plaintiff alleged Defendant violated BIPA in three ways: (1) collecting biometric fingerprint identifiers and information from him and other Illinois staffers and employees without following BIPA's informed written consent procedures; (2) possessing biometric identifiers and information without a publicly available data retention schedule and destruction policy; and (3) disclosing biometric identifiers and information from him and other employees to defendants' timekeeping vendor without consent. Defendant has generally denied every allegation of liability, wrongdoing and damages and raised a variety of

defenses including consent and common law waiver. Defendant identified and alleged facts that potentially support defenses relevant to the merits and to class certification.

2. Procedural History and the Parties' Settlement Negotiations.

Following the filing of the lawsuit, on April 13, 2023, Defendant removed the action to the United States District Court for the Northern District of Illinois, Case No. 1:23-cv-2319. The Parties to this Agreement began discussing the potential for a class-wide settlement. The matter was remanded back to this Court on August 30, 2023. Counsel for the Parties' expended significant efforts to reach a settlement, including but not limited to exchanging information regarding Defendant's alleged timekeeping system and the potential class members. The Parties retained the expertise of (Ret.) Honorable Wayne R. Andersen of JAMS to mediate the dispute. After days of mediation and extensive arms-length negotiations, the Parties were able to reach an agreement on the terms of a class-wide settlement.

Following the settlement conference, the Parties continued to negotiate and refine the terms of the Settlement, including the benefits, the forms of the notice, and the scope of the release. Eventually, these extensive negotiations culminated in the Settlement Agreement to which this Court granted preliminary approval on November 6, 2023. Attached as Exhibit 4 is a true and accurate copy of the Order Granting Preliminary Approval of the Settlement; Ex. 4 is incorporated herein. Plaintiff now seeks final approval of the class action settlement.

II. THE PROPOSED SETTLEMENT

The terms of the Settlement already preliminarily approved by the Court are contained in the Settlement Agreement, and are briefly summarized below:

A. The Settlement Class

The Class Representative seeks final approval of the following class:

All persons who scanned or otherwise used their finger (or any portion thereof) or

any other biometric identifier or information to enroll in or clock into or out of Defendant's timekeeping system in the state of Illinois at any time from March 9, 2018 through the date of Preliminary Approval. (Ex. 1, III - A)

B. The Settlement Fund

While denying all liability and wrongdoing, Defendant has agreed to pay an amount no greater than $150,000 ("Settlement Fund") to resolve this matter on a class-wide basis. The Settlement Fund is the maximum amount of Defendant's monetary obligations under the Settlement. All residual funds in the Settlement Fund, including unclaimed funds, funds from uncashed checks, and/or funds remaining in the fund after the Settlement Administrator makes all required payments under this Agreement, shall revert in full to Defendant. Ex. 1.

The term "Net Fund" is the Gross Fund minus the following deductions, which are subject to Court approval: Class Counsel's attorney fees, litigation costs, settlement administration costs, and a service award to the Class Representative.

Class Counsel seeks reasonable attorneys' fees and costs of 33.33% of the settlement, or $50,000, per the Settlement Agreement. This amount is inclusive of all costs and expenses. Separately, Plaintiff seeks a Service Award of $1,000 for Martinez. See attached Exhibit 5 – C-Studio Settlement Account; Ex. 5 is incorporated herein. There were 17 valid claims. Each of the 17 claimants who submitted a valid claim will receive the amount of $1,250.00, after accounting for the foregoing. (Ex. 5)

C. Notice and Settlement Administration

In order to reach as many potential Class Members as possible, the Settlement Administrator ALCS distributed the Class Notice by USPS First Class Mail to all 118 Class Members, 17 were returned by USPS. Ex. 2, ¶ 6. The undelivered Notices were remailed to 8 updated addresses, and none were returned. Also, ALCS emailed the notice to the 78 class

members for whom email addresses were available, and 76 were reported as delivered. Ex. 2, ¶ 5. Overall, there was a 95.76% delivery percentage of Notices. Ex. 2, ¶ 7.

D. Exclusion and Objection Procedure

Class Members had an opportunity to exclude themselves from the Settlement or object to its approval. The procedures and deadlines for filing exclusion requests and objections (see Ex. 2, exhibit A; Ex. 1, exhibit D Notice of Proposed Class Action Settlement) were identified in the Notices directly sent to Settlement Class Members. The notice informed Class Members that the deadline to exclude themselves or object to the settlement was February 20, 2024. Ex. 2, exhibit A thereto.

Critically, no objections were made, and no member elected to exclude himself or herself from the Settlement.

E. Release

The term "Released Parties" is defined in the Settlement Agreement and includes C Studio and its affiliates and each of their respective past, present and future predecessors, successors, assigns, parents, subsidiaries, affiliates, joint venturers, partnerships, limited liability companies, corporations, unincorporated entities, divisions, groups, directors, officers, shareholders, members, grandmembers, employees, partners, agents, insurers, co-insurers, attorneys, legal representatives, other agents and all other Persons, entities or individuals acting for or on their behalf. The notices informed Settlement Class Members that they would be bound by the Release contained in the Settlement Agreement if they submitted a Claim Form by February 5, 2024. Ex. 2, exhibit A thereto.

"Released Claims" means any and all claims, actions, causes of action, rights, demands, disputes, suits, debts, liens, contracts, warranties, agreements, offsets or liabilities, including but not limited to tort claims, equitable claims, claims for breach of contract, breach of warranty, breach

of the duty of good faith and fair dealing, breach of federal, state, or local statutory duties, actual or constructive fraud, misrepresentation, omission, fraudulent inducement, statutory or consumer misrepresentation, omission or fraud, unfair business or trade practices, any right to recovery or relief in, through or as a result of a parens patriae action, a private-attorney-general action or other governmental action or investigation, restitution, rescission, compensatory and punitive damages, statutory damages, injunctive or declaratory relief, public injunction, any right to relief pursuant to a public injunction, attorneys' fees, interests, costs, penalties and any other claims, whether known or unknown, alleged or not alleged in the Litigation, suspected or unsuspected, contingent or matured, direct or indirect, under federal, state, provincial or local law, rules or regulations, that the Releasing Parties now have or may in the future have with respect to any conduct, acts, omissions, facts, matters, transactions or oral or written statements or occurrences on or prior to the Preliminary Approval Date arising from or relating to BIPA, biometric data, biometric information, biometric identifiers, or the actual or alleged facts, transactions, events, matters, occurrences, acts, disclosures or failures of disclosure, statements, representations, omissions or failures to act, make disclosures or obtain consents or releases regarding the collection, capture, storage, use, profiting from, possession, disclosure, publication and/or dissemination of biometric data, biometric identifiers or biometric information, including all claims that were brought or could have been brought in the Litigation, belonging to any and all Releasing Parties. Ex. A, Section 1, par. 33.

III. THE SETTLEMENT WARRANTS FINAL APPROVAL

The Notice informed Settlement Class Members that upon final approval, the Settlement will provide payments to the Settlement Class Members who submitted timely, valid claims. If the Settlement is approved, each Settlement Class Member who submitted a timely, valid claim form will receive a check for $1,250.00, representing their portion of the Settlement

Fund. This is a strong result for the valid claimants, where BIPA itself provides $1,000.00 per violation.

Class Counsel requested attorneys' fees and costs of 33% of the Settlement Fund, for the time, expense, and effort expended in investigating the facts, litigating the case, and negotiating the Settlement. The Class Representative applied to the Court for a payment of $1,000 as a Service Award for his time, effort, and service in this matter.

In addition, the Notice Plan implemented by the Parties informed Settlement Class Members of their rights under the Settlement and how to provide claims. Because the Settlement reached by the Parties is fair, reasonable, and provides adequate compensation to the Class Members, and because the Notice Plan effectively notified Settlement Class Members of their rights under the Settlement Agreement, this Settlement warrants final approval by the Court.

A. The Notice Plan Successfully Informed Settlement Class Members About Their Rights Under the Settlement Agreement.

Because class actions by their nature involve a class representative acting on behalf of a larger class of consumers, critical to any class action settlement is that class members are effectively informed of the settlement and their rights and options thereunder. Accordingly, "[a]fter determining that a lawsuit may proceed on a class-wide basis, through settlement or otherwise, a court may order such notice as it deems necessary to protect the interests of the class." 735 ILCS 5/2-803.

Here, in preliminarily approving the Settlement, the Court approved the robust Notice Plan outlined in the Settlement Agreement. The Notice Plan provided for three proposed forms of Class Notice: an Emailed Notice, a Mailed Notice and a Settlement Website. Ex. 4, ¶ 19.

Pursuant to the Notice Plan (Ex. 4, ¶22), on January 5, 2024, the Settlement Administrator mailed the approved Class Action Notice and Claim Form with a postage pre-paid return

envelope to the 118 Class Members via USPS First Class Mail. Also, ALCS emailed the notice to the 78 class members with email addresses. Ex. 2 ¶ 5. On December 6, 2023, the website www.cstudiobipasettlement.com was made available with the Published Notice and the ability to file a claim.

For Class Members whose notices were returned as undeliverable without a forwarding address, the Settlement Administrator performed an advance address search to locate an updated address. In this case, one hundred nine (109) Settlement Class Members were mailed Notice Packets that were not returned as undeliverable by the Post Office, a 95.76% direct notice percentage. Ex. 4, ¶ 7.

All communications contained explanations of the Settlement Class Members' rights under the Settlement Agreement and information on how to obtain further information regarding the case and filing a claim.

As directed by the Court in its Preliminary Approval Order, the Parties implemented the Notice Plan. Upon implementation, the Notice Plan proved to be successful at informing potential Settlement Class Members of the Settlement in this matter, as evidenced by the claims rate.

Accordingly, given the significant number of individuals who received direct notice, there is little doubt that the Notice Plan implemented by the Parties was more than sufficient to notify the Settlement Class Members of the Settlement and their rights and options thereunder, and satisfied Due Process considerations.

B. All Factors Favor Final Approval.

Final approval of the Settlement is warranted here, not only because the Settlement Class Members were sufficiently notified of their rights and options under the Settlement, but also because the Settlement itself meets the applicable criteria for final approval. There is a strong

judicial and public policy favoring the settlement of class action litigation, and a settlement should be approved by the Court after determining that the settlement is "fair, reasonable, and adequate." *Quick v. Shell Oil Co.*, 404 Ill. App. 3d 277, 282 (3rd Dist. 2010); *Isby v. Bayh*, 75 F.3d 1191, 1198 (7th Cir. 1996).

In determining whether a settlement is fair, reasonable, and adequate, Illinois courts apply an eight-factor evaluation, also known as the "*Korshak* factors." *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990). The factors ultimately to be considered by a court are: "(1) the strength of the case for the 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." *Korshak*, 206 Ill. App. 3d at 972; See also *Armstrong v. Board of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980). Of these considerations, the first is most important. *Steinberg v. Sys. Software Assocs., Inc.,* 306 Ill. App. 3d 157, 170 (1st Dist. 1999); *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006). Because each of these factors supports a finding that the Settlement here is "fair, reasonable, and adequate," the Court should grant final approval of the Settlement.

1. The Settlement provides significant benefits to the Settlement Class, particularly given the uncertain outcome of litigation.

The first factor, the strength of the Class Representative's case on the merits, balanced against the relief obtained under the Settlement, "is the most important factor in determining whether a settlement should be approved." *Steinberg*, 306 Ill. App. 3d at 170. The Settlement in this case provides significant benefits to the Settlement Class, as every Settlement Class Member

who submitted a valid, approved claim will receive $1,250.00. Plaintiff and Settlement Class Counsel have obtained a good result for the Settlement Class. This is especially true given the significant legal obstacles that the Plaintiff and the Settlement Class would undoubtedly have encountered in attempting to achieve a similar result through litigation, and the significant likelihood of no recovery whatsoever.

While Plaintiff might have prevailed on the merits of his BIPA claims at trial, success was far from assured and C Studio was, and is, prepared to vigorously defend this case. If C Studio were to succeed on any of its defenses to liability against Plaintiff's individual claims, Settlement Class Members would recover nothing. In addition to any defenses on the merits C Studio would raise, Plaintiff would also otherwise be required to prevail on a class certification motion, which would be highly contested and for which success would certainly not be guaranteed. See *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 582 (N.D. Ill. 2011). "Settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation." *Id.* at 586 (internal citations omitted); "If the Court approves the [Settlement], the present lawsuit will come to an end and [Class Members] will realize both immediate and future benefits as a result." *Id.* Approval would allow Plaintiff and the Settlement Class Members to receive meaningful and significant payments now, instead of years from now—or perhaps never. See *Id.* at 582.

In the absence of settlement, it is certain that the expense, duration, and complexity of the protracted litigation that would result would be substantial. Not only would the Parties have to undergo significant motion practice before any trial on the merits could even be contemplated, but evidence and witnesses from across the country would have to be assembled during any trial. Further, given the complexity of the issues and the amount in controversy, the defeated party would likely appeal both any decision on the merits (at summary judgment and/or trial), as well as any decision on class certification, especially given that the applicable limitations

period under BIPA has still been untested, as is the amount of damages available to individuals. As such, the immediate and considerable relief provided to the Settlement Class under the Settlement Agreement weighs in favor of its approval compared to the inherent risk and delay of a long and drawn-out litigation, trial, and appellate process. This entire process, with uncertain results and high risk to all involved, would likely take years to complete.

Weighing the strength of Plaintiff's claims and the potential risks inherent in continued litigation against the significant immediate benefit provided to the Settlement Class Members if this Settlement is finally approved, the first *Korshak* factor strongly supports granting final approval of the Settlement. The Settlement Fund created here, which provides substantial and meaningful benefits to the Settlement Class Members exceeds the applicable standards of fairness. Therefore, given the amount of monetary relief provided by the Settlement and the significant risk of not obtaining any recovery whatsoever if litigation were to proceed, the Court should find that this first factor is satisfied here.

2. Defendants are able to satisfy their obligations under the Settlement Agreement.

Resolving this matter preserved financial resources for notice and distribution to the Settlement Class Members. Under the terms of the Settlement, Defendants are able to establish the Settlement Fund that will be used to pay the valid claims submitted, along with all other fees and expenses, including the Settlement Administrator's fees and expenses in implementing the Notice Plan and reviewing submitted claims. Accordingly, this factor also supports granting final approval.

3. Continued litigation would necessitate the resolution of complex and novel legal issues, as well as extensive and lengthy discovery.

The third factor, the "complexity, length and expense of further litigation," *Korshak*, 206 Ill. App. 3d at 972, also weighs heavily in favor of final approval of the Settlement. As the *Korshak*

court observed, a "fair and reasonable settlement" is preferred over continued litigation which would leave any potential recovery "in limbo." 206 Ill. App. 3d at 973; see also *Isby*, 75 F.3d at 1199–1200 (affirming the final approval of a settlement where continued litigation "would require the resolution of many . . . complex issues" and "entail considerable additional expense"). When comparing the "significance of immediate recovery" versus the "mere possibility of relief in the future, after protracted and expensive litigation . . . [i]t has been held proper to take the bird in the hand instead of a prospective flock in the bush." *Lipuma v. Am. Express Co.,* 406 F. Supp. 2d 1298, 1323 (S.D. Fla. 2005).

As explained above, litigating this matter would involve significant expense and prolonged discovery. Any decision on the merits favorable to Defendant would be appealed by Plaintiff, and vice versa, further delaying any final resolution of the matter and significantly increasing expenses for the Parties. Even if Plaintiff were to ultimately succeed in defeating any dispositive motions brought by Defendant, he would still have to prevail on his motion for class certification. And any such motion for class certification would not only be heavily contested, but would also require additional, extensive discovery efforts by the Parties, including the gathering of employment and timekeeping records in addition to other data concerning individuals who may no longer have any contact or relationship with Defendant.

Furthermore, the current status of BIPA jurisprudence is rapidly evolving, presenting highly novel and complex issues which put both Plaintiff and Defendant at risk on the merits.

Given the complexity of the claims at issue and the scope of the class, and the significant expenses that would result from having this case proceed with class discovery, dispositive motion briefing, adverse class certification, trial, and any potential appeals, this factor heavily favors granting final approval. In contrast to how long litigation would take, final approval will

permit the Settlement Class Members to promptly receive their compensation and allow the Parties to avoid any further expenses and reach a final resolution of their dispute.

4. The Settlement Class Members supported the Settlement: there are no objections, nor exclusion to the Settlement.

With regard to the fourth and sixth *Korshak* factors – as they are "closely related," *Korshak*, 206 Ill.App.3d at 973, – final approval of the Settlement is not only in the best interest of the Parties, but is also supported by the Settlement Class Members. No Settlement Class Members have filed an objection to the Settlement, no Settlement Class Member has chosen to exclude themselves of the Settlement, and no Settlement Class Members have complained to Class Counsel about the relief provided by the Settlement or Class Counsel's Motion for award of attorneys' fees and Service Award. The comprehensive scope of the Notice Plan, and the fact that there is not a single objection to the Settlement demonstrate that the Settlement Class Members support this Settlement.

The lack of objectors challenging the Settlement is particularly noteworthy and strongly supports a finding that the Settlement is "fair and reasonable." *Am. Civil Liberties Union v. United States Gen. Servs. Admin.*, 235 F. Supp. 2d 816, 819 (N.D. Ill. 2002); see also *In re Mexico Money Transfer Litig.*, 164 F.Supp.2d 1002, 1021 (N.D. Ill. 2000) (granting final approval of settlements and finding the fact that "99.9% of class members have neither opted out nor filed objections to the proposed settlements . . . is strong circumstantial evidence in favor of the settlements"). This is especially the case given the frequency with which "professional objectors" seek out such settlements and file generic objections even where there is no legitimate basis. See *In re Initial Pub. Offering Sec. Litig.*, 728 F. Supp. 2d 289, 295 n.37 (S.D.N.Y. 2010) (collecting authorities and noting that "[r]epeat objectors to class action settlements can make a living simply by filing frivolous appeals and thereby slowing down the execution of settlements" and that "courts are

increasingly weary of professional objectors: some of [which are] obviously canned objections filed by professional objectors") (internal citations omitted).

5. The Settlement was a result of arms-length negotiations overseen by an experienced jurist, Judge Wayne R. Andersen (Ret.).

With respect to the fifth factor, this Settlement was not reached as a result of any "collusion" between the Parties. There is an initial presumption that a proposed settlement is fair and reasonable when it was the result of arms-length negotiations. A. Conte & H. Newberg, *Newberg on Class Actions*, § 11.42 (4th ed. 2002); 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'"). Here, a settlement in principle was reached as a result of extended negotiations during the settlement conference presided by Judge (Ret.) Wayne R. Andersen, as well as follow-up negotiations before the Parties were finally able to reach an agreement as to the terms of the Settlement.

Further evidencing the non-collusive nature of the proposed Settlement is the confirmatory discovery that took place as part of the settlement process and the negotiations regarding the final form of the Settlement Agreement and attendant documents, even after an agreement in principle had been reached. Moreover, the significant monetary relief to be provided to Settlement Class Members following final approval also demonstrates the absence of collusion. It cannot be said that the Parties colluded in reaching this Settlement given the matter settled for the gross amount of $1,250.00 per Settlement Class Member—a number well in line with BIPA class settlements—and given the Parties reached such settlement during a mediation with Judge (Ret.) Anderson of JAMS. This Settlement was in no way the product of collusion and, as such, this factor weighs in favor of granting final approval.

6. Class Counsel have significant experience in prosecuting similar class actions and believe that the Settlement is fair, reasonable, and adequate.

Class Counsel have regularly engaged in complex litigation on behalf of consumers, including similar class actions involving violations of BIPA, in state and federal courts across the country, including cases in the Circuit Court of DuPage County. Accordingly, given their extensive experience litigating and settling similar actions, Class Counsel are competent and qualified to provide their opinion as to the strength of the Settlement achieved. In light of their experience, Class Counsel believes that final approval of the Settlement is in the best interests of Class Members. Final approval of the Settlement will avoid any risks and delays associated with allowing the litigation to move forward and will provide the Class Members with immediate relief. Moreover, the benefits provided under the Settlement are significant among BIPA settlements like this one, providing a gross recovery of $1,250.00 to each class member claimant.

Given the defenses that Defendant would raise, and the resources that Defendant have committed to defending and litigating this matter through appeal, Class Counsel are confident that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members. This factor also strongly favors granting final approval of the Settlement.

7. The stage of litigation and amount of discovery completed has ensured that the Settlement is fair, reasonable, and adequate.

The last factor also supports final approval because this Settlement was reached only after significant investigation by Class Counsel and arms-length negotiations between the Parties. The Parties exchanged information and reached a settlement in principle with the assistance of Judge Wayne R. Andersen. The Parties also engaged in negotiations over the final form of the Settlement, including conferences and further confirmatory discovery. See *Isby*, 75 F.3d at 1200 ("Approval of a settlement is proper where discovery and investigation conducted by class counsel prior to entering into settlement negotiations was extensive and thorough."). This case was originally filed on March 9, 2023, but Class Counsel's investigation of Plaintiff's claims and

Defendant's alleged biometric practices began well before that. Both before and after the Parties entered into the Settlement Agreement, the Parties exchanged information regarding the scope and nature of Defendant's policies and practices, continuing through the settlement conference and in the weeks thereafter while the Settlement was being negotiated and finalized. Class Counsel became well informed as to the data, equipment, policies, procedures and other critical information necessary to "evaluate the merits of the case and assess the reasonableness of the settlement." *Korshak*, 206 Ill.App.3d at 974. In short, the final executed Settlement was only reached after sufficient discovery and negotiations involving the nature and scope of Defendants' alleged biometric practices, further favoring final approval.

IV. THE UNOPPOSED ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARD SHOULD BE APPROVED

Because no objection was filed in opposition to Plaintiffs' Motion for Attorney's Fees, Litigation Costs, Settlement Administration Costs, and Settlement Class Representative's Service Award, and because all factors favor granting final approval of the Settlement, the Court should also approve an award of Attorneys' Fees and Expenses of $50,000 to Class Counsel and the Service Award of $1,000 requested by Plaintiff.

Each Notice sent to the Settlement Class Members informed them of the amount of Attorneys' Fees and Expenses and the Service Award that Class Counsel and Plaintiff, respectively, would seek. Ex. 1, ex. D; Ex. 2, ex. A thereto. Accordingly, the Class Members had ample opportunity to consider the merits of the attorneys' fees. However, no objections to the Attorneys' Fees and Expenses were brought, and no Settlement Class Members have even informally expressed any dissatisfaction with the Attorneys' Fees and Expenses or Service Award sought respectively by Class Counsel and Plaintiff.

The lack of any opposition is unsurprising, since, as discussed above, Class Counsel's fees and expenses are reasonable in light of the substantial relief to the Class Members and are in line with fees sought in similar BIPA actions. In fact, several Illinois trial courts have approved an attorneys' fee award of forty percent of the common fund in three BIPA cases. See *Zepeda v. Intercontinental Hotels Group, Inc.*, No. 18-CH-02140, (Cir. Ct. Cook County, Ill. 2018); *Svagdis v. Alro Steel Corp.*, No. 17-CH-12566 (Cir. Ct. Cook County, Ill. 2018); *Zhirovetskiy v. Zayo Group, LLC.*, No- 17-CH-14262 (Cir. Ct. Cook County, Ill. 2019). Here, Plaintiff's counsel is requesting less – only 33.33% of the settlement for its fees and expenses.

With regard to Settlement Fees and Expenses, Plaintiff is requesting approval of $10,155.00 to be paid to the Settlement Administrator for its expenses in administering the settlement (Ex. 3, VI). Plaintiff further requests a $1,000 Service Award. Ex. 5.

For the reasons stated in the Plaintiffs' Motion for Attorney's Fees, Litigation Costs, Settlement Administration Costs, and Settlement Class Representative's Service Award, and because no Settlement Class Member has voiced any opposition or objection to the Attorneys' Fees and Expenses, Settlement Fees and Expenses, or Service Award sought, Plaintiff and Settlement Class Counsel respectfully request that in finally approving this Settlement, the Court also approve the requested Attorneys' Fees and Expenses, Settlement Fees and Expenses, and Service Award.

V. CONCLUSION

For the reasons stated above and in Plaintiff's Motion for Attorney's Fees, Litigation Costs, Settlement Administration Costs, and Class Representative's Service Award, Plaintiff respectfully requests that this Court enter an Order granting final approval of this Settlement and approving Plaintiff's request for Attorneys' Fees and Expenses, Settlement Fees and Expenses, and an Incentive Award. A proposed Final Approval Order is provided herein.

s/ James M. Dore

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IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS, CHANCERY DIVISION

MANUEL MARTINEZ, individually and on behalf of themselves and all other similarly situated persons, known and unknown, Plaintiff,	)	
v.	)	Case No. **2023CH000053**
C STUDIO MANUFACTURING, LLC, Defendant.	)	

Notice of Motion

To: **LATHAM & WATKINS LLP**
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On March 21, 2024 at 10:00 am, or as soon thereafter as counsel may be heard, Manuel Martinez individually, and on behalf of themselves and all other similarly situated persons, known and unknown, will appear in person before the Honorable Judge Kappas, or any Judge sitting in her stead in COURTROOM 2020 of the DuPage County Circuit Court Chancery Division, 505 N. County Farm Road, Wheaton, Illinois 60187, and request the attached **Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement**, copies of which are hereby served upon you.

The grounds for said motion are set forth in the attached motion, which is incorporated herein by reference.

The information to remotely access this hearing is made available after 12 pm one business day prior to the hearing at the following address:

https://18thjudicial.org/18thjudicial/Remote-Court-Hearings .

/s/ James M. Dore

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Certificate of Service by Email

I, James M. Dore, an attorney, certify that I served this Notice and Motion referred to above by mailing copies to the attorneys/parties of record at their listed addresses and/or pursuant to Supreme Court Rule 11(c), serving the above parties through the ECF electronic filing system, on March 6, 2024.

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