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

IRENE SIMMONS and RODELL SANDERS, individually and on behalf of similarly situated individuals,

Plaintiffs,

v.

MOTOROLA SOLUTIONS, INC. and VIGILANT SOLUTIONS, LLC,

Defendants.

No. 2024-L-010142

Hon. Joel Chupack

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

Dated: August 12, 2025

Mike Kanovitz
Jon Loevy
Thomas M. Hanson
LOEVY & LOEVY (Firm ID: 41295)
311 N. Aberdeen, 3rd Floor
Chicago, Illinois 60607
Tel: (312) 243-5900
jon@loevy.com
mike@loevy.com

Counsel for Plaintiffs and proposed Class Counsel

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Plaintiffs Irene Simmons and Rodell Sanders ("Named Plaintiffs") on behalf of themselves and the Settlement Class, by and through Class Counsel Loevy & Loevy, hereby request final approval of the proposed Settlement in this case. The Motion, which is unopposed, should be granted for the reasons set for the below.

I. **INTRODUCTION**

On April 9, 2025, your Honor granted Plaintiffs' Unopposed Motion for Preliminary Approval of the Settlement Agreement[1] for this class action and ordered notice to be provided the class members according to the approved Notice Plan. The Settlement Administrator has implemented the Notice Plan, successfully delivering over 116,000 direct mailings, providing notice in traditional print publications, and providing a comprehensive digital ad campaign that resulted in more than 300,000 visits and over one million page views of the Settlement Website.

The response to the Settlement has been overwhelmingly positive: *not a single class member requested to be excluded from the Settlement nor filed an objection*.[2] This unanimous show of support by the Class demonstrates that the Settlement – a $47.5 million-dollar common fund, all cash with no reversion – represents a fantastic result, and of which the Court should grant final approval pursuant to 735 ILCS 5/2-806.

Approving the Settlement will bring certainty and closure in the form of cash monetary

[1] Unless otherwise defined herein, capitalized terms used in the Settlement Agreement, attached hereto as Exhibit 1, have the same meaning when used herein.

[2] The Court-approved notice required objections to be filed with the Court by July 8, 2025. On August 4, 2025, almost a month after that deadline, Epiq received a letter from a single class member voicing a cursory objection. It is unfiled, belated, and for those reasons alone, invalid. Ex. 2, Attachment 9. As explained below, the letter also offers no substantive criticism of the Settlement Agreement nor the requested Fee and Incentive Awards so there would be nothing to consider, even if it had been it timely and validly filed. Plaintiffs nonetheless address the letter below.

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relief to what has been and would continue to be contentious litigation with significant risk of loss to the Class. As discussed in more detail below, there remains a fully-briefed pending motion for summary judgment in the Federal Action based upon, among other things, Defendants' assertion of the "government contractor" exemption under Section 25(e) of BIPA, the First Amendment to the United States Constitution, the Dormant Commerce Clause, and the Supremacy Clause, any one of which would be grounds for denying relief to the Class if Plaintiffs were unable to prevail. In light of the risks and length of litigation, the terms of this all-cash Settlement meet and exceed the applicable standards for fairness and adequacy. Accordingly, the Court should grant final approval so that the Settlement Fund can be established and then paid out to the Settlement Class Members.

II. <u>THE LAWSUIT</u>

A. The Illinois Biometric Information Privacy Act

BIPA is an Illinois statute that regulates the collection, use, storage, and disclosure of biometric data. BIPA was enacted to protect individuals' biometric privacy, provide them with a means of enforcing their statutory rights, and to regulate the actions of private entities subject to the statute.

B. The Case and Procedural History

1. The Claims and Defenses

Class Counsel brought this case, more than five years ago, because of a facial recognition technology called "FaceSearch" created by Defendants Motorola Solutions, Inc. ("Motorola Solutions") and Vigilant Solutions, LLC ("Vigilant," and together with Motorola Solutions, "Defendants"). Plaintiffs and the Settlement Class Members are individuals whose facial

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biometrics were processed using the FaceSearch technology, primarily in a booking photo database assembled by Defendants.[3]

The operative Complaint alleges that Defendants' development, operation, and sale of FaceSearch and the booking photo gallery violated multiple sections of BIPA, including that: Defendants collected the biometric data of Plaintiffs and Settlement Class Members without complying with the written notice and release provisions of Section 15(b) of BIPA, possessed biometric data without having a publicly-available biometric data retention and destruction policy in violation of Section 15(a), profited from biometric data in violation of Section 15(c), disclosed biometric data in violation of Section 15(d), and failed to adequately protect biometric data in violation of Section 15(e). Compl., ¶¶ 34-47, 63-93.

Defendants deny these allegations and also assert a number of defenses. For example, Defendants assert that their actions relating to the booking photo gallery and FaceSearch are not regulated under BIPA because they fall within BIPA's exemption for "a contractor, subcontractor, or agent of a State agency or local unit of government, when working for that State agency or local unit of government." 740 ILCS § 14/25(e). Defendants also assert that their gathering of information from publicly-available booking photographs is protected by the First Amendment to the United States Constitution, and also assert additional challenges to BIPA's application here under the Dormant Commerce Clause and the Supremacy Clause. Defendants further contend that, even if the government contractor exemption and the First Amendment did not bar Plaintiffs' claims, Defendants' alleged conduct did not violate BIPA and that Plaintiffs' claims are otherwise barred.

[3] In their pending summary judgment motion, Defendants assert that the undisputed facts show that they made the booking photo databases available only to government customers; Plaintiffs contend that factual disputes exist on that issue.

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2. Procedural History

On February 14, 2020, original plaintiffs Johnny Flores, Ariel Gomez, and Derrick Lewis filed suit in the United States District Court for the Northern District of Illinois, Case No. 20-cv-01128 (the “Federal Acton”) against Defendants, alleging claims for violation of BIPA and for unjust enrichment, and seeking damages, disgorgement, injunctive relief, and attorneys’ fees. The Federal Action was assigned to the Honorable Charles R. Norgle Sr.

Plaintiffs filed an amended complaint in the Federal Action on February 18, 2020. On June 17, 2020, Defendants filed a motion to dismiss the amended complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). On January 18, 2021, Judge Norgle granted in part and denied in part Defendants’ motion to dismiss. Judge Norgle dismissed Plaintiffs’ Section 15(a) claim for lack of federal subject matter jurisdiction but denied Defendants’ motion to dismiss the remaining claims. Defendants filed their Answer and Affirmative Defenses on February 16, 2021.

Thereafter Plaintiffs and Defendants conducted extensive written discovery, giving rise to discovery disputes including the filing of multiple discovery motions by both sides. On December 1, 2021, Plaintiffs filed a motion to file a Second Amended Complaint to remove certain allegations related to reputational damages and to substitute as named plaintiffs Irene Simmons and Rodell Sanders in place of Johnny Flores, Ariel Gomez, and Derrick Lewis.

On December 8, 2021, Defendants moved for summary judgment on Plaintiffs’ individual claims under Federal Rule of Civil Procedure 56. Plaintiffs moved to stay the summary judgment motion until all discovery was completed. Honorable Judge Jeffrey I. Cummings, then the assigned Magistrate Judge, denied Plaintiffs’ motion to stay and supervised the completion of discovery relating to the summary judgment motion. On December 17, 2021, Judge Cummings granted Plaintiffs leave to file the Second Amended Complaint, which Plaintiffs filed the same day.

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Defendants filed their Answer to the Second Amended Complaint and their affirmative defenses on January 3, 2022.

Extensive written and oral discovery related to Defendants' motion for summary judgment ensued. Plaintiffs sought and reviewed over 50,000 pages of documents and analyzed additional numerous databases, and there was additional written discovery as well as oral depositions of a corporate representative under Fed. R. Civ. P. 30(b)(6) and two individual depositions.

On August 5, 2022, Judge Norgle issued an Order granting Defendants leave to file an amended motion for summary judgment. On August 12, 2022, Defendants filed their amended motion for summary judgment with respect to Plaintiffs' individual claims. On October 3, 2022, Plaintiffs filed their response in opposition to Defendants' amended motion for summary judgment. On October 4, 2022, Judge Norgle assumed inactive senior status, and the Federal Action was reassigned to Judge John J. Tharp, Jr. On November 14, 2022, Defendants filed their reply in support of their amended motion for summary judgment.

3. Settlement Discussions and Implementation to Date

The case continued and, after evaluating the fully briefed summary judgment motion, the Parties began to discuss potential mediation. After several rounds of discussion, the Parties agreed to jointly request Judge Tharp to stay his ruling on Defendants' motion for summary judgment. Judge Tharp granted that request and the Parties began prework towards a mediation. The prework was extensive and included meetings with the mediator, evaluation of data on class size, damages, and analysis of potentially available insurance.

On March 11, 2024, the Parties conducted the formal mediation with Judge Schenkier (Ret.) of JAMS. The mediation, attended by authorized representatives and insurance carriers, lasted almost twelve hours and long into the night. As with all phases of the case, the negotiation

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was hard fought by both sides. As a result of Judge Schenkier's efforts guiding the arm's length negotiation, the Parties were able to reach an agreement in principle on the terms of a class action settlement.

Even after the agreement in principle was reached, there was much work to be done in hammering out the details and language, eventually requiring an additional round of mediation with Judge Schenkier. Additional steps that needed to be done were to interview, hire, and work with a claims administrator to understand the dynamics of providing notice for this class, which, as explained below, involved its own challenges.

There was also the issue of obtaining resolution of the Section 15(a) claim, in light of Judge Norgle's jurisdictional dismissal. To address this issue and accomplish complete resolution of the class claims, the Parties agreed on the filing of this state court action containing both the claims remaining in the Federal Action as well as the Section 15(a) claims.

To that end, on September 13, 2024, Plaintiffs filed this action in the Circuit Court of Cook County, Illinois pursuant to the Parties' agreement in principle. That action originally was assigned to the Law Division. Plaintiffs moved to transfer the State Action to the Chancery Division on September 20, 2024. The Presiding Judge of the Chancery Division granted that motion on September 23, 2024, and this action subsequently was assigned to this Court. On October 30, 2024, the Parties engaged in an additional mediation with Judge Schenkier to finalize the Settlement Agreement.

III. THE PROPOSED SETTLEMENT

A. The Settlement Class

The proposed Settlement would establish a Settlement Class defined as follows:

> "All persons whose faces appeared in images that were processed using the FaceSearch technology, including but not limited to images that are or were

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> included in the booking photo databases that Motorola Solutions and/or Vigilant created and made available for law enforcement customer searches, images uploaded by law enforcement customers, and images used to train or test the FaceSearch technology, at any time up through the entry of the Preliminary Approval Order who either: (a) are or were Illinois residents; or (b) were present in Illinois at the time the images were taken or processed."[4]

B. The Settlement Fund and Settlement Payments

The proposed Settlement will establish a $47,500,000.00 (forty-seven million five hundred thousand dollars) Settlement Fund.[5] After payment of Settlement Administration Expenses to the Settlement Administrator, Fee Award to Class Counsel, and Incentive Awards to the Class Representatives, each Settlement Class Member who submits an Approved Claim will be entitled to an equal share of the Settlement Fund.[6] The Settlement Administrator will distribute these equal *pro rata* shares of the Settlement Fund directly to Class Members who have submitted an Approved Claim.[7]

C. Release

In exchange for the relief described above, the Settlement Class Members who did not exclude themselves (there were no requests for exclusion) will provide Defendants and other Released Parties with a release of all Released Claims (as more fully described in Paragraph 1.24 of the Settlement Agreement), including BIPA claims, that arise out of or relate in any way to images that were processed using the FaceSearch technology.[8]

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[4] Ex. 1, ¶ 1.30.
[5] *Id.*, ¶ 1.32.
[6] *Id.*, ¶ 1.33.
[7] *Id.*, ¶ 2.2(e).
[8] *Id.*, ¶¶ 1.24-1.26; 3.1

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D. Attorneys' Fees and Incentive Awards

Subject to Court approval, attorneys' fees are to be paid out of the Settlement Fund.[9] Class Counsel filed their Motion for Attorneys' Fees and Incentive Awards (the "Fee Petition") on June 17, 2025, seeking attorneys' fees in the amount of 34% of the Settlement Fund as well as Incentive Awards to the Class Representatives of up to $7,500 each for their contributions to the Litigation. These are the sums allowable under the Settlement Agreement and which were included in the short form and long form Notice to the Class.[10] Although Class Counsel was entitled to seek its out of pocket expenses under the Settlement Agreement, Class Counsel elected not to do so, thereby increasing the recovery available to the Class. With the exception of the untimely, non-substantive letter received by Epiq, there have been no objections filed to the requested attorneys' fees or Incentive Awards.[11]

E. Implementation of the Notice Plan

The Settlement Agreement also provides for the payment of Settlement Administration and Notice costs to the Settlement Administrator.[12] In the Preliminary Approval Order, the Court appointed Epiq Class Action & Claims Solutions, Inc. ("Epiq") as the Settlement Administrator and ordered the implementation of the Notice Plan detailed in Plaintiffs' Motion for Preliminary Approval. Epiq is an industry leader in class administration, having implemented more than a thousand successful class action notice and settlement administration matters, including some of the most complex and significant notice programs in recent history. As set forth in detail in the Declaration of Cameron Azari submitted with Plaintiffs' Motion for Preliminary Approval, Epiq

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[9] *Id.*, ¶ 8.1.
[10] *Id.*, ¶¶ 8.1 & 8.3; Ex. 2, Attachments 1 & 3.
[11] Ex. 2, ¶ 29 & Attachment 9.
[12] Ex. 1, ¶¶ 1.32 & 2.2(h).

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has particular expertise in privacy class actions and has the necessary privacy and security protocols to ensure data and personal privacy of the class members.

Upon preliminary approval, Epiq promptly implemented the court-approved Notice Plan designed to address the unique circumstances of this case.[13] Defendants' records include names and dates of birth for the vast majority of the individuals included in the booking photo gallery created by Defendants and made available to customers. Epiq engaged a third-party vendor to perform "reverse lookups" for these individuals to attempt to determine an associated physical address. For those potential class members for whom an address can be identified, a postcard notice was sent via First Class U.S. Mail.[14] Epiq ultimately sent over 158,000 notice postcards via direct mail, of which nearly 117,000 were delivered.[15]

To reach potential class members who were not identified in Defendants' records and/or for whom address information could not be located, Epiq also undertook a media notice campaign, including media digital internet notice plan, a publication notice in prominent newspapers in Illinois and the surrounding states, internet sponsored search listings, and an informational release.[16] The Notice Plan was designed to reach the greatest practicable number of Settlement Class Members. Epiq estimates that the Notice Plan reached approximately 71% of the Settlement Class.[17]

The executed Notice Plan included targeted digital advertising on the selected advertising networks and social media platforms Google Display Network, Yahoo Audience Network,

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[13] Ex. 2, ¶¶ 8-28.
[14] *Id.*, ¶¶ 10-13.
[15] *Id.*, ¶ 12.
[16] *Id.*, ¶¶ 14-28.
[17] *Id.*, ¶ 6.

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LinkedIn, Facebook, and Instagram in Illinois and the surrounding states.[18] Digital notices were also targeted (remarketed) to people who clicked on a digital notice.[19] Combined, more than 54.7 million targeted impressions were generated by the digital notices, which ran from May 27, 2025 through July 7, 2025 in Illinois and the surrounding states.[20] The digital notices linked directly to the Settlement Website, www.SimmonsBIPASettlement.com, which included relevant pleadings, deadlines, answers to frequently asked questions ("FAQs"), contact information for the Settlement Administrator, and information on how to opt out or object to the proposed Settlement.[21] Epiq recorded over 300,000 sessions on the Settlement Website and more than 1.1 million page hits.[22]

IV. ARGUMENT

A. Standard for Class Action Settlement Approval

Strong judicial and public policies favor the settlement of complex class action litigation, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Quick v. Shell Oil Co.*, 404 Ill. App. 3d 277, 282 (3rd Dist. 2010); *see also* Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.41 (4th ed. 2002) (hereinafter *Newberg*).

Courts review proposed class action settlements using a well-established two-step process. *Newberg*, § 11.25, at 38–39; *see e.g.*, *GMAC Mortgage Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 492 (1st Dist. 1992); *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶¶ 4, 7, 15. The first step is a preliminary, pre-notice hearing to determine whether the proposed settlement is "within the range of possible approval." *Newberg*, § 11.25, at 38–39; *Sabon*,

[18] *Id.*, ¶¶ 14-19. Surrounding states include WI, IA, MO, KY, OH, IN, and MI.
[19] *Id.*, ¶ 17.
[20] *Id.*, ¶ 19.
[21] *Id.*, ¶ 15.
[22] *Id.*, ¶ 26.

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2016 IL App (2d) 150236, ¶ 4; *Armstrong v. Board of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds*.[23] If the Court finds the settlement proposal is "within the range of possible approval," the case proceeds to the second step in the review process: a final approval hearing. Newberg, § 11.25, at 38–39. The Parties' settlement is presently at the second step of this two-step process.

Because the essence of every settlement is compromise, courts should not reject a settlement solely because it does not provide a complete victory, given that parties to a settlement "benefit by immediately resolving the litigation and receiving some measure of vindication for [their] position[s] while foregoing the opportunity to achieve an unmitigated victory." *In re AT&T Mobility Wireless Data Services Sales Litig.*, 270 F.R.D. 330, 347 (N.D. Ill. 2010) (internal quotations and citations omitted); *GMAC*, 236 Ill. App. 3d at 493 ("The court in approving [a class action settlement] should not judge the legal and factual questions by the same criteria applied in a trial on the merits.")

Section 2-801 provides that a court may approve a proposed class settlement "on a finding that it is fair, reasonable, and adequate." 735 ILCS 5/2-801; see also Fed. R. Civ. P. 23(e)(2). In assessing the fairness, reasonableness, and adequacy of a proposed class settlement, Illinois courts consider the following factors: "(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

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

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the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed." *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990); *see also Armstrong*, 616 F.2d at 314. The first factor – i.e., the strength of the plaintiff's case on the merits balanced against the relief obtained in the settlement – is the most important consideration in evaluating the fairness of a proposed class action settlement. *See Steinberg v. Sys. Software Associates, Inc.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999); *Korshak*, 206 Ill. App. 3d at 972.

Upon final approval, the Settlement reached in this matter will provide Class Members with substantial financial compensation that they otherwise would not have obtained. Because the Settlement reached by the Parties is fair, reasonable, and provides adequate compensation to the Class, and because the Notice Program effectively notified class members of their rights under the Settlement Agreement, the Settlement warrants final approval by the Court.

B. The Terms of the Settlement are Fair and Reasonable and Warrant Final Approval

In this case, the eight factors weigh overwhelmingly in favor of finding the Settlement fair, reasonable, and adequate, warranting its final approval.

1. Strength of Plaintiffs' Claims and the $47.5 Million Settlement Fund

The first and most important factor weighs heavily in favor of preliminary approval. The consideration to the Plaintiffs – a $47.5 million, all cash, non-reversionary fund – is a fantastic result on behalf of Settlement Class Members who faced various serious litigation risks. While Class Counsel believe that their work on behalf of Plaintiffs puts the claims in a strong position to survive summary judgment, obtain certification, and prevail at trial, Counsel also recognize that Defendants' pending motion for summary judgment presents very real risks in uncertain and evolving areas of law (including not only statutory defenses but also constitutional First

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Amendment issues), that Defendants have substantial defenses to class certification, and that a trial always involves risks for all parties.

Moreover, in addition to the inherent uncertainty in any jury trial, recent *dicta* from the Illinois Supreme Court in *Cothron v. White Castle Systems, Inc.*, 2023 IL 128004, ¶ 42, has led to a still-unresolved argument as to whether the statutory damages in BIPA are mandatory (as Plaintiffs contend) or discretionary (as Defendants contend), and the courts have not yet definitively interpreted an August 2024 amendment to BIPA, much less its retroactive effect. It is unlikely those issues would have been resolved prior to trial in this matter, leaving significant risk and uncertainty for the Class.

Moreover, the scope of the Section 25(e) government contractor exemption – the subject of Defendants' fully-briefed motion for summary judgment in the Federal Action – is unresolved. Accordingly, no matter the trial court's ruling on Defendants' motion for summary judgment, the losing side would almost certainly have taken the issue up on appeal for a precedent-setting determination. In short, the risks for both Plaintiffs and Defendants loomed large, and the only certainty was years of costly litigation before any final determination was made. Against these uncertainties, a Settlement that will net the Settlement Class members more than $30 million cash after payment of settlement administration expenses, attorneys' fees and incentive awards is a fantastic result.

2. Ability to Pay

The second factor, Defendants' ability to pay, is neutral here. As courts recognize in the analysis of this factor, "financial ability to withstand a larger judgment is offset by the relative strengths and weaknesses of the parties' litigation positions and the uncertainty of a more positive result for the Class had the litigation continued to conclusion." *Glaberson v. Comcast Corp.,* 2015

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WL 5582251, at *8 (E.D. Pa. Sept. 22, 2015) (citing numerous cases for similar proposition). As Defendants have demonstrated throughout their vigorous, years-long defense of this case, Defendants are in a financial position to continue to defend themselves against Plaintiffs' claims indefinitely should they choose to do so. This weighs in favor of approving the Settlement. *See Dryer v. Nat'l Football League*, 2013 WL 5888231, at *4 (D. Minn. Nov. 1, 2013) (reasoning that "there is no issue with the NFL's financial condition," that defendant is "fully able to pay what it has committed to pay" and "is also fully able to continue to litigate this matter vigorously and defend itself against the class's claims should it be necessary," and concluding that "[t]his factor [defendant's ability to pay] is neutral in the Court's analysis").

3. Further Litigation

With respect to the third factor, in the absence of settlement, it is certain that the expense, duration, and complexity of the continued, protracted litigation would be substantial. Assuming Plaintiffs' claims survived summary judgment, the Parties will have to undertake significant additional litigation before any trial on the merits, including significant fact and expert discovery that remains to be conducted, briefing a contested motion for class certification, and potentially additional motions for summary judgment and motions directed against experts. Further, given the complexity of the issues – in particular the uncertainty regarding the application of the government contractor exemption to this case – 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. As such, the immediate and considerable relief provided to the Settlement Class under the Settlement Agreement weighs heavily in favor of its approval compared to the inherent risk and delay of a drawn-out litigation, trial, and appellate process.

4. The Lack of Opt Outs and Objections

Factors four and six weigh heavily in favor of final approval. The Settlement generated

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great interest, with hundreds of thousands of website visitors and tens of thousands of valid claims submitted. Yet no one opted out and the one objection (not filed or timely) is without substance.

The deadline for Settlement Class Members to submit a Claim Form was July 29, 2025. As of August 11, 2025, Epiq has received 272,453 Claim Forms (262,688 online and 9,765 paper).[24] Since the July 29, 2025, deadline has just recently passed, these numbers are preliminary and are subject to change. As standard practice, Epiq is in the process of conducting a complete quality control review of Claim Forms received. As of August 11, 2025, Epiq was able to associate 35,975 Claim Forms with a Settlement Class Member record.[25] It appears some Settlement Class Members filed multiple Claim Forms using a different date and/or email address. Epiq is in the process of reviewing these Claim Forms.[26]

In addition, Epiq is in the process of conducting a detailed analysis of all Claim Forms received by looking at numerous known indicators of indicia of fraud.[27] Fraudulent claim filing is an unfortunate reality in many class action settlements. Given the current trends Epiq has observed in its industry, some level of fraudulent claim filing is suspected for the Claim Forms filed in this Settlement.[28] Based on Epiq's initial analysis of the online Claim Forms some level of indicia of fraud are present and will likely result in a substantial percentage of Claim Forms being rejected.[29]

Moreover, no Class Member has requested to be excluded.[30] The one invalid and untimely letter that Epiq received offers no specific critique other than that lawyers should receive the same

[24] Ex. 2, ¶ 31.
[25] *Id.*
[26] *Id.*
[27] *Id.*, ¶ 32.
[28] *Id.*
[29] *Id.*
[30] *Id.*, ¶ 29.

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amount that he receives.[31] There are no further grounds stated. The invalid letter aside, no Settlement Class member or third party has objected. The Plaintiffs themselves have approved of the Settlement and believe that it is a fair and reasonable settlement in light of all the circumstances.

5. The Settlement was the Result of Arms'-Length Negotiations Mediated by Hon. Sidney Schenkier (ret.)

With respect to factor five, 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 Coy v. CCN Managed Care, Inc.*, 2011 IL App (5th) 100068-U, ¶ 31 (finding that there was no collusion where the settlement agreement was reached because of "an arm's-length negotiation . . . entered into after years of litigation and discovery, resulting in a settlement with the aid of an experienced mediator"). Here, the Settlement was reached as a result of contested, arm's-length negotiations requiring the enduring assistance of Judge Schenkier, a former long-serving Magistrate Judge in the Northern District of Illinois. Moreover, given the excellent result for the Settlement Class in terms of the significant monetary relief, this Settlement was reached as a result of good-faith negotiations rather than any collusion between the Parties.

6. The Settlement has the Support of Experienced Class Counsel

With respect to factor seven, Class Counsel believe that the proposed Agreement is in the best interest of the Settlement Class Members because Settlement Class Members who have submitted Approved Claims will each receive an immediate and substantial payment, compared to the possibility of waiting years for the litigation and any subsequent appeals to run their course and potentially receiving no benefit whatsoever.[32] Given Plaintiffs' counsel's extensive experience litigating similar class action cases in federal and state courts across the country, including having

[31] *Id.*, Attachment 9.
[32] Declaration of Michael I. Kanovitz ("Kanovitz Decl."), attached as Exhibit 3, ¶ 7.

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successfully tried the only BIPA class action to have proceeded to trial,[33] this factor also weighs in favor of granting preliminary approval. *See GMAC*, 236 Ill. App. 3d at 497.

7. *The Parties Exchanged Information Sufficient to Assess the Adequacy of the Settlement*

Finally, as to factor number eight and as stated above, this Settlement was reached only after substantial litigation and significant discovery among the Parties and after contentious negotiations over a period of months. Had the Parties not reached settlement, this case would have proceeded to a ruling on Defendants' pending motion for summary judgment, then either on to the Seventh Circuit or to additional discovery (including experts), class certification, and trial, with the Parties being required to expend substantial resources to go forward and face extensive risk regarding any decision on the merits of the case and whether a class should be certified.

Accordingly, the relief provided by the Parties' proposed settlement is fair, reasonable, and adequate, and warrants this Court's final approval.

C. The Implemented Notice Plan Comported with Due Process

Under 735 ILCS 5/2-803, the Court may provide class members notice of any proposed settlement. *See Cavoto v. Chicago Nat. League Ball Club, Inc.*, No. 1-03-3749, 2006 WL 2291181, at *15 (1st Dist. 2006). Notice of a proposed class action settlement must be provided to absent class members to protect the interests of the class and to satisfy requirements of Due Process. 735 ILCS 5/2-803; *see also Cavoto v. Chicago Nat. League Ball Club, Inc.*, No. 1-03-3749, 2006 WL 2291181, at *15 (1st Dist. 2006). Due Process requires that the notice be the "best practicable, 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections'" as well as "'describe the action and the plaintiffs' rights in it.'" *Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 36 (citing *Phillips*

[33] *Rogers v. BNSF Railway Co.*, N.D. Ill. No. 19-CV-03083; *see also* Kanovitz Decl., Ex. 3, ¶ 6.

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Petroleum Co. v. Shutts, 472 U.S. 797, 812 (1985)).

Here, the court-approved Notice Plan implemented by Epiq included direct delivery of notice by U.S. Mail to those Settlement Class Members who were identified in Defendants' records and for whom address information could be located.[34] In addition, Epiq utilized both digital and traditional publication notice, which, when combined with the direct mail notice, reached approximately 71%of the identified Settlement Class Members.[35] In any form, the notice directed potential class members to the Settlement Website, which explained options and deadlines, including how Settlement Class Members could exclude themselves from, or object to, the Settlement if they chose.[36] As detailed above, Epiq ultimately sent out over 158,000 direct notice postcards, of which nearly 117,000 were delivered.[37] Moreover, the digital and traditional media campaigns resulted in more than 330,000 sessions on the Settlement Website, with over 1.1 million page hits.[38] While Epiq's ongoing fraud detection process will ultimately determine the number of Approved Claims, the results of the implemented Notice Plan plainly comported with 735 ILCS 5/2-803 and Due Process.

D. The Unopposed Motion for Attorneys' Fees and Incentive Awards Should be Approved

The Court should also approve the requested Incentive Awards to Plaintiffs, and the Fee Award to Class Counsel (the "Fee Petition"). Like the Settlement Agreement itself, neither the 34% attorneys fee nor the $7,500 class representative bonus drew any timely or valid objection from any Class Member.[39] The lack of any opposition is appropriate because the Settlement

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[34] Ex. 2, ¶ 10.
[35] *Id.*, ¶ 6 & 14-19.
[36] *Id.*, Attachments 1-7.
[37] *Id.*, ¶ 12.
[38] *Id.*, ¶ 26.
[39] As noted above, after the objection deadline Epiq received a belated and unfiled letter stating:

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provides an all-cash benefit and fee is well in line with other approved settlements.[40] Moreover, as Plaintiffs explained in Fee Petition, Class Counsel's dedication to the case over its five-year course and their acceptance of substantial risk in pursuing a case with multiple novel defenses, completely on contingency, further demonstrate the correctness of the fee and incentive bonuses sought.[41] For the reasons stated in the unopposed Fee Petition, and because no Class Member has voiced any substantive opposition or objection to the requested Fee Award or Incentive Award, Plaintiff and Class Counsel respectfully request that the Court approve the requested Incentive Award and Fee Award.

V. CONCLUSION

For the foregoing reasons, Plaintiffs Irene Simmons and Rodell Sanders respectfully request that the Court enter an Order granting final approval of the Settlement. A proposed Final Order and Judgment is attached hereto as Exhibit 4.

Dated: August 12, 2025

Respectfully submitted,

IRENE SIMMONS and RODELL SANDERS, individually and on behalf of similarly situated individuals

By: /s/ *Mike Kanovitz*
One of Plaintiff's Attorneys

"Lawyers aren't supposed to get more than me. I am the victim, they are supposed to get a small percentage of the lawsuit from each person." *Id.*, Attachment 9 (cleaned up). The letter makes no reference to any benchmark for challenging the fee percentage, which, as explained in the Fee Petition, is appropriate and well within the range of awards in similar cases. *See, e.g. Gumm v. Vonachen Svcs., Inc.*, No. 2019-CH-12773 (Cir. Ct. Cook Cnty., Ill. Aug. 24, 2024) (Chupack, J.) (approving 40% fee award in BIPA class action); *Taylor v. 815 Pallets, Inc.*, No. 2020-CH-3013 (Cir. Ct. Cook Cnty., Ill. (Aug. 29, 2024) (Chupack, J.) (approving 38% fee award in BIPA class action); *see also* Fee Petition, pp. 13-14 (collecting cases approving fee awards of 35-40% in BIPA class action settlements).

[40] Id.

[41] *See* Fee Petition, p. 14 (collecting cases approving similar high value BIPA settlements).

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Michael I. Kanovitz
Jon Loevy
Tom Hanson
LOEVY & LOEVY
311 N. Aberdeen St., 3rd Floor
Chicago, Illinois 60607
Tel: (312) 243-5900
jon@loevy.com
mike@loevy.com
hanson@loevy.com

Counsel for Plaintiffs and the Settlement Class

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on August 12, 2025, a copy of *Plaintiffs' Unopposed Motion and Memorandum of Law in Support of Final Approval of Class Action Settlement* was filed electronically with the Clerk of Court, with a copy sent by electronic mail to all counsel of record.

/s/ Mike Kanovitz