

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JORGE GONZALEZ, on behalf of himself)	
and all other persons similarly situated,)	
known and unknown,)	
)	Case No. 1:20-cv-04354
Plaintiff,)	
)	Judge Thomas M. Durkin
v.)	
)	Magistrate Judge Heather K. McShain
RICHELIEU FOODS, INC.,)	
)	
Defendant.)	

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT
OF HIS UNOPPOSED MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

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I. Introduction

On July 20, 2021, this Court granted preliminary approval of the Parties' \$876,750.00 non-reversionary class action Settlement¹ under the Biometric Information Privacy Act ("BIPA"). ECF No. 31. Following preliminary approval, the Settlement Administrator notified Settlement Class Members of their rights in the Settlement, including the right to submit a claim for payment, request exclusion, or submit an objection. In response, nearly 30 percent of Settlement Class Members submitted claims for payment. To date, not a single Settlement Class Member objected to the Settlement or requested exclusion from it. If the Court grants final approval of the proposed Settlement as presented, each Settlement Class Participant will receive an estimated \$2,474.60. The successful notice process, high claims rate, and absence of objections and exclusions support final approval of the Settlement.

II. Legal Background and Procedural History

Plaintiff set forth the legal background and procedural history of this case in his previous Settlement approval filing, ECF No. 27 at § II., and in Section I. of the Parties' Settlement Agreement, which is attached here as Exhibit 1.

III. Summary of Settlement Terms

The terms of the Settlement are briefly summarized here:

A. Class Definition (Ex. 1, Settlement Agreement, § III)

The Settlement Class Representative seeks final approval of the following class:

All of Defendant's workers, including direct employees and temporary staffing agency workers, who, without first executing a written release, enrolled in or used a finger-scan timekeeping system while working for Defendant in Illinois between June 5, 2015 and preliminary approval, excluding Defendant's employees who are or were union members ("the Settlement Class" or "Settlement Class Members").

¹ Capitalized terms not defined here are defined in the Parties' Settlement Agreement, which is attached here as Exhibit 1.

See ECF No. 31, Preliminary Approval Order ¶ 4; *see also* Ex. 1, Settlement Agreement, § III. There are 777 Settlement Class Members.² Ex. 2, Declaration of Due Diligence (“Settlement Administrator Decl.”) ¶ 6.

B. Settlement Fund; Allocation of the Fund; Payments to Class Members
(Ex. 1, Settlement Agreement, § IV.2)

While denying all liability and wrongdoing, Defendant has agreed to pay a “Gross Fund” of \$876,750.00 to resolve the claims in this case on a class action basis. None of the Gross Fund shall revert back to Defendant. The “Net Fund” is the Gross Fund minus the following deductions, which are subject to Court approval: Settlement Class Counsel’s attorney fees and costs; the Settlement Administrator’s costs; and the Settlement Class Representative’s Service Award. Plaintiff requested these deductions from the Gross Fund by separate filing during the Notice period. *See* ECF No. 35. The Net Fund shall be distributed pro rata to Settlement Class Members who timely return valid claim forms (“Settlement Class Participants”). If the Settlement is approved as presented, each Settlement Class Participant will receive an estimated \$2,74,60.

C. Uncashed Checks Will Be Distributed to the Unclaimed Property Division
(Ex. 1, Agreement, § IV.9)

Settlement Class Participants will have 150 days to cash their settlement payments. Funds from checks not cashed by the deadline will be distributed to the Unclaimed Property Division of the Illinois Treasurer’s Office. This will enable Settlement Class Participants to request their settlement payments if they miss the check cashing deadline. *See* <https://icash.illinois.treasurer.gov/app/faq-general> (last visited Dec. 14, 2021) (Illinois “serves as a custodian of the assets [of unclaimed property] and never takes ownership of them.”).

² Initially, Defendant estimated there were 835 Settlement Class Members, but the final class size, after the Settlement Administrator received the class lists and removed duplicates, decreased to 777. Ex. 2, Settlement Administrator Decl. ¶ 6. The Gross Fund is unaffected by the class-size reduction.

D. Defendant's Representations of Compliance with BIPA
(Ex. 1, Settlement Agreement, § IV.16)

Defendant represents that since July 29, 2020, Defendant has maintained BIPA consents and policies and does not retain any finger scan data for separated Illinois employees.

E. Release of Claims (Ex. 1, Settlement Agreement, § IV.3)

Subject to final approval by the Court of the Settlement, Settlement Class Members who do not timely and validly exclude themselves from the Settlement will release the Released Parties³ from all claims reasonably arising out of allegations in the Class Action Complaint in this lawsuit, including but not limited to allegations that Defendant improperly collected, stored, disclosed, or used Illinois employees' biometric identifiers and/or information obtained from its time clocks, including but not limited to claims arising under the BIPA, and all other federal, state, and local law, including the common law, as well as related claims for liquidated damages, penalties, attorneys' fees and costs, expenses, and interest.

F. Settlement Administration (Ex. 1, Settlement Agreement, § IV.4.)

Analytics Consulting, LLC ("Settlement Administrator") has administered the Notice and claims process and will administer the remainder of the Settlement. The Settlement Administrator's costs are \$14,278. Ex. 2, Settlement Administrator Decl. ¶ 18. Plaintiff previously requested that the Court award the Settlement Administrator these costs. ECF No. 35.

G. Attorney Fees, Costs, and Service Award

Consistent with the Settlement Agreement and Notice to Settlement Class Members, on November 5, 2021, Plaintiff filed a motion for attorney fees (\$284,991), litigation costs

³ The term "Released Parties" means Defendant and its current and former owners, affiliates, parents, subsidiaries, divisions, officers, directors, shareholders, agents, employees, attorneys, insurers, benefit plans, predecessors, successors, and Defendant's timekeeping vendor, Ceridian HCM, Inc. and its affiliates.

(\$5,772.28), and Plaintiff's Service Award (\$7,500). ECF No. 35. Consistent with Rule 23(h) of the Federal Rules of Civil Procedure, Plaintiff filed this motion during the Notice period and the Settlement Administrator posted the filing at the settlement website so that Settlement Class Members could review it when deciding whether to object, request exclusion, submit a claim, or do nothing. *See* <https://richelieufingerscansettlement.com/important-case-documents/>.

H. The Notice and Claims Process Was Successful
(Ex. 2, Settlement Administrator Decl.)

The Settlement Administrator implemented Plaintiff's robust class notice program to ensure that Settlement Class Members learned of their rights in the Settlement.

Of the 777 Settlement Class Members, the Settlement Administrator was provided or obtained mailing addresses for 635. Ex. 2, Settlement Administrator Decl. ¶¶ 6-7. Of these, the Settlement Administrator successfully mailed Notice, including after skip tracing and re-sending undeliverable Notices, to all but 72. *Id.* at ¶ 12. The Settlement Administrator was provided or obtained email addresses for 473 Settlement Class Members. *Id.* at ¶ 7. Of these, the Settlement Administrator successfully delivered email notice communications to 420. *Id.* at ¶ 11. The Settlement Administrator was provided 650 phone numbers for Settlement Class Members. *Id.* Of these, the Settlement Administrator successfully delivered text message notice communications to 518. *Id.* Of the 638 Settlement Class Members⁴ with a mailing address, email address, or a phone number, the Settlement Administrator delivered at least one form of Notice to each. *Id.* at ¶ 12.

⁴ The Settlement Class Members without contact information (and also without social security numbers) are individuals who worked for Defendant through third-party temporary staffing agencies. Ex. 3, Werman Decl. ¶ 13. Settlement Class Counsel obtained names of these workers from Defendant and then served subpoenas on the staffing agencies. *Id.* One agency was no longer operating and corporate entity under which it operated was revoked. Although Settlement Class Counsel still attempted to serve a subpoena on that agency, it was unsuccessful and so no contact information was obtainable. *Id.* While the remaining four agencies provided subpoena responses, they were still unable to provide contact information for each Settlement Class Member identified. *Id.*

Because the Notice process resulted in direct notice to 82% of Settlement Class Members (638 of 777), it was reasonable. *See* Federal Judicial Center, Judges' Class Action Notice & Claims Process Checklist & Plain Language Guide, at 3 (2010), available at <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf> (a class notice plan that reaches at least 70% of the class is reasonable).

Thirty days before the ninety-day deadline for claims, objections, and exclusions, the Settlement Administrator also delivered reminder email and text message notice communications to Settlement Class Members who had not yet returned a claim form. *Id.* at ¶ 16. The Settlement Administrator also established a settlement website, www.RichelieuFingerScanSettlement.com, with the Notice and Claim Form, a mechanism to submit electronic claims, answers to frequently asked questions, case documents, important dates, and information for how to contact the Settlement Administrator and Settlement Class Counsel. *Id.* at ¶ 10.

Prior to the Notice distribution, the Settlement Administrator engaged a professional translation service to translate into Spanish the Notice, claim form, toll free phone message, settlement website, notice emails, and text messages to Settlement Class Members. *Id.* at ¶¶ 9-10.

The objection and exclusion deadline was December 5, 2021. *Id.* at ¶¶ 14-15. To date, the Settlement Administrator has received no objections or exclusions. *Id.* The claims deadline was also December 5, 2021. *Id.* at ¶ 13. By the deadline, 225 Settlement Class Members submitted timely valid claims. *Id.* After the deadline, three additional Settlement Class Members submitted otherwise valid claims, which the Parties agreed to accept. *Id.* Of the 777 Settlement Class Members, 29.34% of them submitted claims. *Id.* This claims rate far exceeds the median rate in class settlements. *See* Federal Trade Commission, Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns, p. 11 (Sept. 2019), available at <https://www.ftc.gov/>

system/files/documents/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns/class action fairness report 0.pdf (median claims rate for settlements studied was 9%). Plaintiff requests, with no objection from Defendant, that the Court accept the 3 late claims that are otherwise valid, except for being submitted after the deadline.

IV. The Court Should Grant Final Approval

Federal Rule of Civil Procedure 23(e) governs court approval of class action settlements and mandates that “claims, issues, or defenses of a certified class...may be settled...only with the court’s approval . . . after a hearing and only on finding that it is fair, reasonable, and adequate[.]” Fed. R. Civ. P. 23(e); *Am. Int’l Grp., Inc. v. ACE INA Holdings, Inc.*, No. 07 CV 2898, 2012 WL 651727, at *1 (N.D. Ill. Feb. 28 2012); *Uhl*, 309 F.3d at 986. Rule 23(e)(2) sets out that a court must consider whether (1) the class representative and class counsel have adequately represented the class; (2) the settlement was negotiated at arm’s length; (3) the settlement treats class members equitably relative to each other; and (4) the relief provided for the class is adequate. Fed. R. Civ. P. 23(e)(2) (eff. Dec. 1, 2018); *see, e.g., Snyder v. Ocwen Loan Servicing, LLC*, No. 14 c 8461, 2019 WL 2103379, at *4 (N.D. Ill. May 14, 2019).

As the Advisory Committee for the 2018 amendments to Rule 23 recognized that “each circuit has developed its own vocabulary for expressing these concerns[.]” the Court should also take into account the factors set out by the Seventh Circuit. These factors are: “(1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to the settlement; (5) the opinion of competent counsel; and (6) stage of the proceedings and the amount of discovery completed.” *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863 (7th Cir. 2014) (“*Wong* factors”).

Courts in the Seventh Circuit continue to analyze the *Wong* factors in tandem with the Rule 23(e)(2) factors to ensure that a settlement is fair, reasonable, and adequate. *See, e.g., In re NCAA Student-Athlete Concussion Injury Litig.*, 332 F.R.D. 202, 217 (N.D. Ill. 2019); *Charvat v. Valente*, No. 12-CV-05746, 2019 WL 5576932, at *5 (N.D. Ill. Oct. 28, 2019); *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 WL 6606079, at *2 (S.D. Ill. Dec. 16, 2018). “The most important factor relevant to the fairness of a class action settlement is the strength of plaintiff’s case on the merits balanced against the amount offered in the settlement.” *Wong*, 773 F.3d at 863-64 (7th Cir. 2014) (quoting *In re Gen. Motors Corp. Engine Interchange Litig.*, 594 F.2d 1106, 1132 n.44 (7th Cir. 1979)). The following discussion, beginning with the *Wong* factors, demonstrates that the Settlement is fair, reasonable, adequate, and deserving of final approval.

A. *Wong* Factors 1 & 2: Strength of the Case for Plaintiff and the Settlement Class on the Merits, Balanced Against the Extent of the Settlement Offer, As Well As the Complexity, Length, and Expense of Further Litigation

Plaintiff claims that he and potential class members are entitled to \$1,000 per violation if they are able to prove Defendant’s alleged violations of BIPA were “negligent.” 740 ILCS 14/20(1).⁵ Plaintiff alleged three violations of BIPA. ECF No. 1-2, Compl. ¶¶ 41-62; 740 ILCS 14/15(a), (b), and (d). The Settlement represents a gross recovery of approximately \$1,128 per Settlement Class Member and a net recovery of approximately \$2,474.60 per Settlement Class Participant, if the Court permits payment of late claims. The recovery compares favorably with other similar BIPA class settlements where Illinois state and federal courts have granted preliminary and final approval:

⁵ While BIPA allows recovery of \$5,000 for “intentional” or “reckless” violations, 740 ILCS 14/20(2), Plaintiff does not believe he had a reasonable chance of proving intentional or reckless conduct. Defendant did not have actual knowledge of BIPA’s obligation until this lawsuit was filed. Defendant began complying with BIPA promptly after Plaintiff sued Defendant.

BIPA SETTLEMENT CHART

Case	Judge	Class Size	Per Class Member	Attorney Fees	Service Award
<i>Jones v. CBC Rest. Corp.</i> , 1:19-cv-06736 (N.D. Ill. Oct. 22, 2020)	Alonso	4,053	\$800 gross; no claims process	\$1,054,966 (32.5% fund)	\$7,500
<i>Dixon v. The Wash. & Jane Smith Home</i> , 1:17-cv-8033 (N.D. Ill. Aug. 20, 2019)	Kennelly	1,378	\$1,085 or \$768 gross; no claims process ⁶	\$451,548 (1/3rd of fund)	\$10,000
<i>Martinez v. Nando's Rest. Grp., Inc.</i> , 1:19-cv-07012 (Oct. 27, 2020 N.D. Ill.)	Ellis	1,787	\$1,000 gross; no claims process	\$595,666.67 (1/3rd of fund)	\$7,500
<i>Lane v. Schenker, Inc.</i> , 3:19-cv-00507-NJR (Nov. 17, 2020 S.D. Ill.)	Rosenstengel	316	\$1,000 gross; no claims process	\$105,333.33 (1/3rd of fund)	\$7,500
<i>Thome v. NovaTime Tech., Inc.</i> , 1:19-cv-06256 (March 8, 2021 N.D. Ill.)	Kennelly	68,213	\$365 net per claimant ⁷	\$1,365,300 (1/3rd of fund)	\$7,500
<i>Lopez-McNear v. Superior Health Linens, LLC</i> , 19-cv-2390 (Apr. 27, 2021 N.D. Ill.)	Pallmeyer	790	\$1,000 gross; no claims process	\$265,717.22 (35% of fund after admin. deduction)	\$5,000
<i>Bedford v. Lifespace Communities, Inc.</i> , 1:20-cv-04574 (May 12, 2021 N.D. Ill.)	Shah	851	\$1,150 gross; no claims process	\$328,954.05 (33.3% of fund)	\$10,000

⁶ A total of 837 class members in the potential two-year potential limitations period received the larger number (\$1,085.00 gross) and a total of 541 class members outside of the potential two-year but inside the potential five-year limitations period received the smaller award (\$768.12 gross).

⁷ In the final approval motion, Plaintiff reported the claims rate was 10 percent. The settlement also allows Plaintiff to seek additional settlement funds based on an insurance policy assignment that the Defendant provided Plaintiff.

Case	Judge	Class Size	Per Class Member	Attorney Fees	Service Award
<i>Burlinski v. Top Golf USA Inc.</i> , 1:19-cv-06700 (Oct. 13, 2021 N.D. Ill.)	Chang	2,602	\$1,012 gross; no claims process	\$865,345 (1/3rd of fund after <i>Redman</i> deductions)	\$7,500 each
<i>Davis v. Heartland Employment Services, LLC</i> , 19-cv-00680 (Oct. 25, 2021 N.D. Ill.)	Valderrama	11,048	At least \$689 per claimant	\$1,777,110 (1/3rd of fund after <i>Redman</i> deductions)	\$10,000 each

The Settlement also represents a meaningful recovery when compared against average recoveries in class action settlements. *See In re Ravisent Techs., Inc. Sec. Litig.*, 2005 WL 906361, at *9 (E.D. Pa. Apr. 18, 2005) (approving settlement, which amounted to 12.2% of damages, and citing a study by Columbia University Law School, which determined that “since 1995, class action settlements have typically recovered between 5.5% and 6.2% of the class members’ estimated losses.”) (internal citations omitted).

The Settlement here is also strong because Defendant could have obtained a victory or greatly reduced the potential class recovery based on its defenses in the lawsuit, including:

- (1) that Plaintiff’s damages claims were barred by the exclusivity provisions of the Workers’ Compensation Act, an issue which is currently on appeal before the Illinois Supreme Court;⁸
- (2) that Defendant’s biometric timekeeping system does not collect biometric identifiers or biometric information as defined by BIPA;
- (3) that any biometric data collected from Defendant’s timekeeping system was in the sole possession of Defendant’s timekeeping vendor and so Defendant could never have

⁸ *McDonald v. Symphony Bronzeville Park, LLC*, Case No. 126511 (Ill.) (petition for leave to appeal accepted on January 26, 2021).

collected, possessed, or disclosed the data;

(4) that the statute of limitations under BIPA is one year instead of five years;⁹ and

(5) that any liquidated damages imposed would be excessive in light of the alleged harm and so would violate Defendant's due process rights.

Regardless of the outcome of the above defenses, if the litigation had continued, it would have been complex, expensive, and protracted. The Parties would have completed written discovery and taken depositions of party witnesses. Plaintiff also would have obtained third-party discovery from the vendor of Defendant's timekeeping system. After that, Plaintiff would have served an expert witness report about how Defendant's timekeeping system collected biometric identifiers and/or biometric information covered by BIPA. This likely would have resulted in Defendant hiring its own expert witness. Following that additional discovery, Plaintiff would have filed a motion for class certification and Defendant likely would have moved for summary judgment. If the case proceeded through a judgement, the losing party likely would have appealed given the lack of controlling precedent on the key legal disputes.

B. Wong Factors 3 & 4: Amount of Opposition to the Settlement and Reaction of Class Members to the Settlement

The lack of opposition to a class action settlement "indicates that the class members consider the settlement to be in their best interest." *Am. Int'l Grp., Inc.*, 2012 WL 651727, at *6. The objection deadline was December 5, 2021. Not a single person objected to the Settlement by that deadline or afterwards.¹⁰ See Ex. 2, Settlement Administrator Decl. ¶ 15. This is powerful

⁹ After the Parties reached their settlement, the First District Appellate Court held that the five-year limitations period applies to BIPA claims under Sections 15(a), (b), and (e) and the one-year limitations period applies to claims under Section 15(c) and (d). *Tims v. Black Horse Carriers, Inc.*, Case No. 1-20-0563 (1st Dist) (Sept. 17, 2021). But given another ongoing appeal over the same issue, the Illinois Supreme Court is likely to be the ultimate decision-maker on this issue.

¹⁰ If a Settlement Class Member submits a late objection before the final approval hearing, Settlement Class Counsel will file it with the Court.

evidence of the Settlement Class's support for the Settlement. *McDaniel v. Qwest Commc'ns Corp.*, No. CV 05 C 1008, 2011 WL 13257336, at *4 (N.D. Ill. Aug. 29, 2011) (finally approving settlement with no objections and noting that “[a]n absence of objection is a ‘rare phenomenon[.]’ and ‘indicates the appropriateness of the request[.]’”) (citations omitted); *see also Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97 C 7694, 2001 WL 1568856, at *3 (N.D. Ill. Dec. 10, 2001).

C. Wong Factor 5: Opinion of Competent Counsel

Plaintiff's counsel recommends this Settlement without hesitation. *See* Ex. 3, Werman Decl. ¶ 17. That recommendation is based on Settlement Class Counsel's substantial experience in class litigation, including dozens of similar BIPA class actions. *Id.* That knowledge and experience were applied in analyzing the possible recovery against the risk, cost and delay explained above. *Id.* Therefore, this factor weighs strongly in favor of approval. *See Gautreaux v. Pierce*, 690 F.2d 616, 631 (7th Cir. 1982) (“The court also was entitled to ‘rely heavily on the opinion of competent counsel’ advanced by the proponents”) (citation omitted).

D. Wong Factor 6: Stage of Proceedings and the Amount of Discovery Completed

This case settled after initial written discovery and an additional informal exchange of information prior to mediation. The case was sufficiently advanced for Settlement Class Counsel to form a realistic assessment of the potential recovery against the risk of loss. In addition, because the Parties primarily disagreed over legal issues, not factual ones, additional discovery would not have enabled a more precise case valuation. *In re AT & T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 350 (N.D. Ill. 2010) (“the focus of this litigation appears to be more on legal than factual issues, and there is no indication that formal discovery would have assisted the parties in devising the Proposed Settlement Agreement”).

E. Alternatively, or Cumulatively, Approval Should Be Granted According to the Fed. R. Civ. P. 23(e)(2) Factors

1. Class Representative and Class Counsel have Adequately Represented the Class

The first Rule 23(e)(2) factor, whether the class representative and class counsel have adequately represented the class, focuses on class counsel's and the class representatives' performance as it relates to the "conduct of the litigation and of the negotiations leading up to the proposed settlement." Fed. R. Civ. P. 23(e), Advisory Committee's Note to 2018 Amendment. This factor is generally satisfied where the named plaintiff participated in the case diligently, and class counsel fought vigorously in the litigation. *Snyder*, 2018 WL 4659274, at *3. In considering this factor, courts are to examine whether the plaintiff and class counsel had adequate information to negotiate a class-wide settlement, taking into account the nature and amount of discovery completed, whether formally or informally. *Id.* at *4. This inquiry is coextensive with the Seventh Circuit's direction to consider the "stage of the proceedings and the amount of discovery completed." *See Wong*, 773 F.3d at 863.

The knowledge and negotiating position, vigor, participation, and conduct of Plaintiff and Settlement Class Counsel have not changed since this Court granted preliminary approval. Plaintiff's interests have remained aligned with the Settlement Class through the Notice process and preparation for the final approval hearing. Without Plaintiff stepping up to represent the class and taking on these tasks as the lead plaintiff, including answering written discovery, the relief secured for the Settlement Class likely wouldn't have been possible. Given his efforts and aligned interest with the class, there can be no doubt that he has acted in the best interest of the Settlement Class and has adequately represented them.

Likewise, Settlement Class Counsel worked vigorously to protect the interests of the Settlement Class and ensure that the Settlement Class was represented. The considerable amount

of investigation and discovery completed by Settlement Class Counsel ensured that they had adequate information to assess the strength of the case and resolve the case through private mediation.

2. The Settlement Is the Product of Arm's-Length, Non-Collusive Negotiations

Under Rule 23(e)(2), a proposed settlement is fair and reasonable when it is the result of arm's-length negotiations. *See Wong*, 773 F.3d at 864. The Parties reached a Settlement through mediation with retired Judge Stuart Palmer, an experienced BIPA mediator. The Settlement was as the result of non-collusive negotiations.

3. The Settlement Treats Members of Respective Settlement Class Equally

Next, Rule 23(e)(2) requires the proposed settlement to treat class members “equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D). Given that the Settlement Class here has the same BIPA claims, the Settlement treats each of them identically and provides pro rata settlement payments to all Settlement Class Participants. *See Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 855 (1999) (where class members are similarly situated with similar claims, equitable treatment is “assured by straightforward pro rata distribution of the limited fund”).

4. Relief Secured for the Settlement Class Warrants Final Approval

The final and most important factor under Rule 23(e)(2) examines whether the relief provided for the class is adequate. Fed. R. Civ. P. 23(e)(2)(C). In making this determination, Rule 23 instructs courts to take into account several sub-factors, including (i) the cost, risks, and delay of trial and appeal; (ii) the effectiveness of the proposed method of distributing relief to the class; and (iii) the terms of any proposed award of attorneys' fees, including timing of payment. *Id.* This analysis necessarily encompasses two of *Wong* factors. The first Seventh Circuit factor “[is the] most important factor relevant to the fairness of a class action settlement[,]” it is critically

important for a settlement to meet this standard. *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d at 958 (internal quotations omitted).

Defendant raised significant defenses in the lawsuit, which Plaintiff outlined in Section IV.A of this Memorandum, *supra*. Based on those defenses, Defendant could have defeated or greatly reduced any recovery in this lawsuit. Apart from the merits of Defendant's defenses, additional litigation would have carried expense and delay. Instead of further risks and delay, this Settlement offers substantial value relative to the strength of Plaintiff's claims.

The "effectiveness of [the]...method of distributing relief to the class" weighs strongly in favor of the adequacy of this Settlement under Rule 23(e)(2)(C)(ii) and the first Seventh Circuit factor. An effective distribution method "get[s] as much of the available damages remedy to class members as possible and in as simple and expedient a manner as possible." William B. Rubenstein, 4 *Newberg on Class Actions* § 13:53. This Settlement requires full distribution of the Net Fund directly to Settlement Class Members who submit valid claim forms, with no reversion. This is an optimal method of distributing relief to the class and fully satisfies Rule 23(e)(2)(C)(ii). The alternative – direct distribution to Settlement Class Members without a claims process – would result in distribution of less than the entire Net Fund since no contact information or social security numbers are available for 139 Settlement Class Members.

The final relevant sub-factor considers the adequacy of the relief provided to the class taking into account "the terms of [the] proposed award of attorney's fees, including timing of payment[.]" Fed. R. Civ. P. 23(e)(2)(C)(iii). As Settlement Class Counsel explained in their request for fees and costs, ECF No. 35, their request for one-third of the Gross Fund, after deducting administration costs and the Service Award, is in-line with the Seventh Circuit precedent and is equal to or below the fees awarded in other class settlements, including similar BIPA class

settlements. *See* BIPA Settlement Chart, at 8-9, *supra*. And the Settlement provides for payment of any attorney fees after final approval at the same time as payments to Settlement Class Members. Ex. 1, Settlement Agreement § IV.5.(m). Settlement Class Counsel received no special priority. As a result, Rule 23(e)(2)(C)(iii) supports final approval.

VI. Conclusion

Because the Settlement makes significant monetary relief available to Settlement Class Members who might have recovered nothing without the Settlement, the Court should grant final approval and enter the proposed Final Approval Order, which will be submitted to the Court via its proposed order email address. The undersigned class counsel has met and conferred with counsel for Defendant, who does not oppose the relief sought herein.

Dated: January 14, 2022

Respectfully submitted,

/s/Douglas M. Werman
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true and correct copy of the foregoing was filed with the Court's CM/ECF filing system on January 14, 2022, which will serve a copy on all counsel of record.

/s/ Douglas M. Werman