IN THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT
SALINE COUNTY, ILLINOIS

D'LISA WILLIAMS, individually, and on behalf of all others similarly situated, *Plaintiff,* *v.* **JRN, INC.,** *Defendant.*	Case No. 2024LA34

PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT

I. INTRODUCTION

The class action settlement reached in this case has been a success. In accordance with the Court's Preliminary Approval Order, notice of the settlement was sent to the Settlement Class, and the response has been overwhelmingly positive. No Settlement Class Members have requested exclusion or objected to the Settlement. This is not surprising given the strong result achieved in this case: Settlement Class members who filed claims are set to receive checks in the amount of $750. Additionally, the Settlement provides meaningful going-forward business assurances which ensure that Defendant JRN will comply with BIPA in the future as it does business in Illinois. Such benefits are demonstrably fair, reasonable, and adequate and worthy of final approval.

As such, and as explained further below, the Court should find that the Settlement is fair, reasonable, and adequate and grant final approval. (*See* Proposed Final Approval Order, attached hereto as Ex. A.)

II. THE FACTS, THE LAW, AND THE LITIGATION HISTORY

Prior to analyzing the Settlement, it is helpful to review the statute, the history of Williams's claims, and the litigation and process that culminated in the Agreement.

A. Legal Background

Illinois enacted BIPA in 2008 to regulate "the collection, use, safeguarding, handling, storage, retention, and destruction" of biometric identifiers and biometric information. 740 ILCS 14/5(g). These protections are necessary because biometric identifiers are biologically unique and cannot be changed and individuals have no recourse if their identifiers are compromised; one cannot buy new fingerprints.

BIPA creates a privacy interest in biometric data and gives individuals the right to control when private entities collect their data. *Rosenbach v. Six Flags Entm't Corp.*, 2019 IL 123186, ¶¶ 34-35 (Ill. 2019). Among other things, BIPA prohibits private entities from collecting, possessing, or storing biometric data unless they first inform the subject person in writing of: (1) the collection itself; (2) the purpose of collection; and (3) the length of time the information will be kept. 740 ILCS 14/15(b). The entity must also obtain a written release from the subject authorizing collection of the biometric information. *Id.* If an entity commits negligent, reckless, or intentional violations of BIPA, it faces liquidated or actual damages, whichever are higher—$1,000 per negligent violation, and $5,000 per reckless or intentional violation. 740 ILCS 14/20.

B. Procedural History

JRN is an operator of fast-food franchises, specifically Kentucky Fried Chicken ("KFC") franchise locations. This case challenges JRN's implementation of a finger scan timekeeping system at its Illinois locations, which Williams alleges was done without complying with BIPA's

requirements as to the capture and collection of biometric information or identifiers. One of JRN's employees was Plaintiff Williams, who was employed by JRN from approximately 2008 until April 2021. During her employment, beginning around 2014 or 2015, she was instructed to use the finger scan timeclock to clock in and out of work. She alleges that she was not provided with any disclosures related to the timeclock or the collection of biometric information, and she likewise did not consent to the collection of biometric information.

After filing her complaint in federal court on June 13, 2022, Defendant sought a stay, which was granted over Plaintiff's objection, pending the resolution of certain Illinois appellate cases related to BIPA. Following a lift of the stay, JRN filed a motion to dismiss the complaint, which was granted in part and denied in part on June 5, 2024. The Court dismissed Williams' claim for declaratory or injunctive relief, but rejected JRN's other arguments and permitted Plaintiff's claim for damages to proceed. JRN filed its Answer on July 16, 2024.

The Parties then agreed to participate in a mediation session on August 12, 2024 overseen by the respected mediator Hon. James Epstein (Ret.) of JAMS in Chicago.[1] The mediation was productive, but the case did not settle that day. However, the Parties remained in contact via the mediator in the days and weeks following the mediation and, with Judge Epstein's diligent assistance, reached an agreement in principle approximately two (2) weeks later.

III. KEY TERMS OF THE SETTLEMENT

The complete terms of the Settlement are set forth in the Settlement Agreement. (Ex. A to the Motion for Preliminary Approval.) A brief summary follows:

[1] Judge Epstein was a Circuit Judge in Cook County from 1999-2010 and a Justice of the Illinois Appellate Court from 2010-2015.

A. Class Definition

The "Settlement Class" or "Class" is defined as "All persons who appear on the list of individuals which JRN's records reflect are current or former employees who used the finger scan time clock at issue to clock in and out for work at JRN from June 13, 2017 to present. The Parties understand that the Settlement Class includes 1,280 persons." (Settlement Agrmt. at § 1.6.) In reality, the Parties were off by one and the Class included 1,279 persons.

B. Monetary Relief

The Settlement provides Class Members with substantial monetary relief. Specifically, JRN must establish a Max Settlement Fund of $960,000 (*Id.* at § 1.36), which will be used to pay all valid Class Member claims, settlement administration costs, and payment of an award of attorneys' fees, costs to Plaintiff's Counsel and a service award to Williams. Each timely and valid claim submitted results in a payment of $750 per Settlement Class Member.

Under BIPA, liquidated damages are up to $1,000 per person for a negligent violation of the statute, and $5,000 for a reckless or intentional violation—no such liquidated damages amount is attributable to violations that do not qualify as negligent. 740 ILCS 14/20. Moreover, the Illinois Supreme Court has noted that courts have discretion to fashion damage awards so as not to "destroy[] defendant's business." *See Cothron v. White Castle Sys., Inc.*, 2023 IL 128004, ¶ 42, 216 N.E.3d 918, 929.

The recovery of $750 per class member who submits a valid and timely claim exceeds amounts that have been approved by courts in similar cases throughout the state of Illinois. Accordingly, the monetary relief provided to the Class is undoubtedly favorable.

C. Release of Liability

In exchange for the benefits to the Class, JRN will receive a full release of any claims relating to JRN's purported collection of biometric information through its finger-scan timekeeping system, under BIPA or any similar law. (Settlement Agrmt. § 3.) The Release includes unknown claims, which are limited to claims that could have been brought in this litigation.

D. Notice

The Settlement also calls for the dissemination of notice to Class Members, which, as explained in Section IV below, has been effectuated.

IV. THE NOTICE COMPORTS WITH DUE PROCESS

It is critical to any class action settlement that class members are effectively informed of the settlement and their rights and options thereunder. Thus, "[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.

In this case, notice was effective. JRN timely provided the Class List to the settlement administrator, RG/2 Claims. The administrator ensured that notice was disseminated in accordance with the Agreement and the Court's preliminary approval Order. Notice has been successful, with the administrator reporting that only 206 notices were returned undeliverable, with 1,073 notices delivered successfully. (*See* Decl. of Patrick Peluso, attached hereto as Exhibit B.). This results in an 83.9% reach, which far exceeds the requirements for approval. *See* FEDERAL JUDICIAL CENTER, *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* 3 (2010). ("A notice plan that reaches at least 70% of the class is reasonable"); *Hand v. Beach Entm't KC,*

LLC, 2021 U.S. Dist. LEXIS 9900, at *3 (W.D. Mo. Jan. 19, 2021) (citing the 70% rule and stating that "[i]ndividual notice must be sent to class members whose names and addresses may be ascertained through reasonable effort.")

Here, JRN provided the administrator with the last-known names and addresses it had on file, and the administrator conducted new address searches and re-mailings as necessary. Ultimately every person is not going to be found, but the efforts were reasonable and, with nearly 84% of the Class successfully notified via direct mail, the notice plan was a success.

V. THE SETTLEMENT WARRANTS FINAL APPROVAL

The Court may approve a class settlement if it finds that it is "fair, reasonable, and adequate." *People ex rel. Wilcox v. Equity Funding Life Ins. Co.*, 61 Ill. 303, 316 (1975).

In analyzing whether a settlement is fair, reasonable, and adequate, courts consider the following list of factors: "(1) the strength of the case for Plaintiff 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." *GMAC Mrtg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 493 (1st Dist. 1992).

As explained below, because each of these factors supports a finding that the Settlement is "fair, reasonable, and adequate," the Court should grant final approval.

A. The relief achieved by the settlement is excellent when weighed against the strength of Plaintiff's case and the complexity, length, and expense of further litigation [Factors 1 and 3].

The first factor, often considered the most important factor in determining settlement approval, weighs the strength of Plaintiff's against the value that the settlement achieves. *See Steinberg v. Sys. Software Associates, Inc.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999). This analysis balances the "amount of the proposed settlement and the immediacy of a prospective recovery…against the continuing risks of litigation." *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990). The third factor, which considers the complexity, length, and expense of further litigation, likewise balances consideration of the risks associated with continuing absent settlement. Here, both factors favor approval of the Settlement.

Plaintiff maintains that while her claim is strong, it is not without obstacles. BIPA allows for statutory damages of $1,000 for any negligent violation and $5,000 for any intentional or reckless violation. 740 ILCS 14/20. Accordingly, Plaintiff's entitlement to damages would depend upon her ability to demonstrate a negligent, reckless, or intentional violation of the Act (with an intentional violation not being supported by the facts in this case). Further, Plaintiff recognizes that trial courts have the discretion to fashion a damages award that will fairly compensate class members and deter future violations. *See Cothron*, 2023 IL 128004 at ¶ 42. The expense and duration of continued litigation certain to occur in the absence of this Settlement would be considerable, and time and money would be expended on both sides to brief motions related to class certification and summary judgment.

Exacerbating the inherent risk of pursuing and litigating the merits of any case is the unavoidable risk attendant to seeking adversarial class certification, as well as maintaining class status through the remainder of the action. Not only would Plaintiff need to move for and obtain class certification, she may also be faced with efforts and motions practice by JRN to decertify. In

addition to motions practice, significant labor and expenses would be required of both parties in preparation for dispositive motions and trial. Likewise, the uncertainty of the outcome presents risk for both parties, and given the potential for a statutory award, the losing party may appeal the decision as a matter of course, resulting in the expenditure of even more time and money.

On the other hand, the relief achieved by the settlement agreement is strong, and it compares favorably to similar settlements reached in BIPA class actions around the state. The relief achieved in this settlement is decidedly favorable to members of the Settlement Class. Again, each person who filed a valid claim receives a check for $750. This is a significant percentage of the $1,000 available for a negligent violation even if Plaintiff pursued the case all the way to trial and won.

In light of the expenses and risk involved in continued litigation, the first factor weighs in favor of approval. The Parties have agreed to a Settlement that provides substantial monetary relief to the class members, which would not be guaranteed in the absence of the Settlement. As such, the Court should find the decision to settle at this stage a reasonable one and supportive of the fairness of the Settlement.

B. Defendant's potential inability to pay a BIPA statutory judgment weighs in favor of approval. [Factor 2].

The second factor considers the Defendant's ability to pay. Here, as explained above, statutory damages for violation of BIPA amount to $1,000 for any negligent violation and $5,000 for any intentional or reckless violation. 740 ILCS 14/20. Further, the amount of damages available is arguably calculated *per violation*—in the instance of a finger-scan timeclock that allegedly captures biometric information each time an employee scans their finger, this could mean multiple violations per Class Member per day. *Cothron v. White Castle Sys., Inc.*, 2023 IL 128004, ¶ 1, 216

N.E.3d 918, 920, *as modified on denial of reh'g* (July 18, 2023). As such, the Supreme Court has recognized how significant damage awards can be under BIPA, which is why *Cothron* emphasized that courts have discretion to fashion damage awards without "destroying [a] defendant's business." 216 N.E.3d at 929. Indeed, in recognizing the potential for annihilative damages, the Illinois legislature recently amended BIPA to cap statutory damage recovery at one violation. While Plaintiff contends that the amendment applies prospectively only (though some courts have held that it applies retroactively), this factor likely would have been considered in this case were the Court to have determined a damages award.

Given that the potential statutory liability under BIPA can be so high, it is likely that JRN would be unable to pay such a large judgment, at least not without great difficulty. JRN may operate KFC franchises, but it isn't KFC, an international corporation with near limitless financial means. Further, the express discretion that *Cothron* reminded courts to exercise injects further uncertainty as to the total award that may be available if Plaintiff were to proceed to a judgment. These considerations weigh in favor of granting approval to the Settlement Agreement reached here, which will provide certain relief to class members that JRN will be able to and has agreed to pay.

C. Settlement Class Members overwhelmingly support the Settlement

Looking at the fourth and sixth factors, which are closely related, it is clear that final approval is overwhelmingly supported by the Settlement Class.

No Settlement Class Member has filed an objection, opted out, or complained to Class Counsel about the relief provided or the attorneys' fees sought. The comprehensive scope of the notice plan and the fact that there is not a single objection or opt out demonstrates that the Class

supports this settlement. Indeed, the lack of objectors challenging the Settlement strongly supports finding that the settlement is fair and reasonable. *See Am. Civil Liberties Unionv. United States Gen. Servs. Admin*., 235 F. Supp. 2d 816 (N.D. Ill. 2002). "[T]he absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1043 (N.D. Cal. 2008) The fact that zero class members opted-out or objected speaks resoundingly in support of final approval here. *See Stoetzner v. U.S. Steel Corp*., 897 F.2d 115 (3d Cr. 1990) (holding that "only" 29 objections in a 281-member class "strongly favors settlement").

The claims rate is also on par with or exceeds comparable consumer settlements. With 60 timely and valid claims and 1,073 people receiving notice, the claims rate is 5.59%.[2] This is in line with or exceeds typical claims rates in consumer class actions. Courts around the country have approved settlements even "where the claims rate was less than one percent." *Pollard v. Remington Arms. Co., LLC*, 320 F.R.D. 198, 214 (W.D. Mo. 2017 (collecting cases); *Schneider v. Chipotle Mexican Grill, Inc*., 336 F.R.D. 588, 599 (N.D. Cal. 2020 (finding 0.83% claims rate "on par with other consumer cases"); *Desue v. 20/20 Eye Care Network, Inc.*, 2023 WL 4420348, at *9 (S.D. Fla. July 8, 2023 (approving claims rate of 0.66%); *In re Cal. Gasoline Spot Mkt. Antitrust Litig*., 2025 U.S. Dist. LEXIS 47537 (N.D. Cal. Mar. 14, 2025) (concluding that claims rate of 2.55% for business class members and 0.12% for consumer class members is "on par with other consumer

[2] The administrator has identified 5 additional claims submitted by the deadline, but submitted by persons who did not appear on the class list provided to the administrator by JRN. The administrator is investigating these claims with JRN's counsel to determine whether the 5 persons who submitted these claims meet the definition of the settlement Class. If these claims are ultimately confirmed as valid, the claims rate would rise to 6.05%.

cases, and does not otherwise weigh against approval."); *In re TJX Cos. Retail Sec. Breach Litig*., 584 F. Supp. 2d 395, 397, 406 (D. Mass. 2008) (approving settlement with response rate of slightly more than 3%); *In re Compact Disc Minimum Advertised Price Antitrust Litig*., 370 F. Supp. 2d 320, 321 (D. Me. 2005) (noting prior approval of settlement with 2% claim rate); *see also Strong v. BellSouth Telcoms., Inc*., 173 F.R.D. 167, 169, 172 (W.D. La. 1997) (4.3% claim rate); *see also Forcellati v. Hyland's Inc*., No. CV 12-1983-GHK (MRWx), 2014 WL 1410264, at *6 (C.D. Cal. Apr. 9, 2014) ("[T]he prevailing rule of thumb with respect to consumer class actions is [a claims rate of] 3-5 percent."); *see also Ferrington v. McAfee, Inc*., No. 10-CV-01455-LHK, 2012 WL 1156399, at *4 (N.D. Cal. Apr. 6, 2012) (same).

In sum, the number of claims filed—especially when compared to the lack of any opt-outs or objections—supports approval of this settlement. *See In re Cendant Corp. Litig*., 264 F.3d 201 (3d Cir. 2001) (class reaction favored approval where "the number of objectors was quite small in light of the number of notices sent and claims filed"). Accordingly, the reaction of the Class strongly supports final approval. Not a single class member has objected or asked to be excluded.

D. There is no risk of fraud or collusion—the instant Settlement was reached through fair and honest negotiation [Factor 5].

The fifth factor—the presence of collusion—weighs in favor of granting final approval. In general, "[c]ourts presume the absence of fraud or collusion in class action settlements unless there is evidence to the contrary." *Thacker v. Chesapeake Appalachia, L.L.C.*, 695 F.Supp.2d 521, 531 (E.D. Ky. 2010) (quotation omitted). Negotiations that are overseen by third-party mediators are generally considered to be non-collusive. *See Bert v. AK Steel Corp.*, 2008 WL 4693747, at *2 (S.D. Ohio Oct. 23, 2008) ("The participation of an independent mediator in settlement negotiations virtually insures that the negotiations were conducted at arm's length and

without collusion between the parties."); *see also Satchell v. Fed. Express Corp.*, 2007 WL 1114010, at *4 (N.D. Cal. Apr.13, 2007) ("The assistance of an experienced mediator . . . confirms that the settlement is non-collusive.").

This case was mediated with the Honorable James Epstein of JAMS, a respected mediator and former judge in Illinois with substantial experience in BIPA litigation. Only through Judge Epstein's assistance were the Parties able to reach the agreement that they did. The Settlement achieved by the Parties is a result free of collusion—the negotiations always stayed at arm's length, and the lack of collusion or fraud here supports granting final approval.

E. The judgment of counsel supports approval [Factor 7].

As to the seventh factor, the opinion of competent counsel—in this case, counsel for the Parties who achieved the settlement with assistance from a mediator—also supports approval. The Settlement was achieved through hard bargaining at an all-day mediation and for the days and weeks after the mediation, and with the assistance of a third-party neutral who is deeply respected and experienced in BIPA class actions. It was the best result available through the bargaining process. When viewed against the risks of continued litigation—including the possibility of no recovery at all—the Settlement presents a favorable outcome for members of the class.

F. The case has sufficiently advanced through discovery to enable informed negotiation and a reasonable settlement [Factor 8].

The eighth factor—the state of the proceedings and amount of discovery completed—also favors granting approval. This factor "indicates the extent to which the trial court and counsel were able to evaluate the merits of the case and assess the reasonableness of the settlement." *Korshak,* 206 Ill. App. 3d at 974. Here, Plaintiff's claims survived a motion to dismiss in federal court, and the Parties exchanged necessary discovery. The matter was ripe for settlement; all parties sought,

and disclosed, ample evidence related to class and merits issues as well as damages so as to allow all Parties to make an informed decision during the negotiations. The level of information disclosed has enabled the Parties to evaluate the size and scope of the Settlement Class as well as the claims and defenses at issue. And ultimately the settlement discussions were adversarial, arms-length, and conducted before a respected retired jurist, who also believed he had ample information to guide the resolution of this case.

VI. CONCLUSION

For the foregoing reasons, the Settlement is fair, reasonable, and adequate, and Plaintiff respectfully requests that the Court grant this Motion and approve the Settlement in full.

Respectfully submitted,

D'LISA WILLIAMS, individually and on behalf of all others similarly situated,

Dated: April 25, 2025

/s/ Patrick H. Peluso

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the above titled document was served upon counsel of record by filing such papers via the Court's electronic filing system on April 25, 2025.

/s/ Patrick H. Peluso