FILED
Saline Co. Circuit Court
1st Judicial Circuit
Date: 12/13/2024 4:30 PM
Mary Kuczynski
2024LA34

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
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiff D'Lisa Williams ("Williams" or "Plaintiff"), individually and on behalf of a class of similarly-situated individuals, moves the Court, in accordance with 735 ILCS 5/2-806, for an Order granting preliminary approval of the proposed class action Settlement Agreement ("Settlement Agreement" or "Settlement," attached hereto as Exhibit A) agreed to by the Parties. In support, Williams states as follows:

1. Plaintiff brought this proposed class action lawsuit against Defendant JRN, Inc. ("JRN" or "Defendant") challenging JRN's alleged violations of the Illinois Biometric Information Privacy Act ("BIPA" or "the Act"), 740 ILCS 14/1 *et seq.*

2. Williams alleged that JRN violated BIPA by collecting biometric information from employees using a finger-scan timekeeping system without first obtaining express consent or informing the employees that their biometric information was being collected.

4. JRN denies all claims asserted against it in this action and denies that its timekeeping system collected biometric information, among other defenses.

5. Notwithstanding their disagreements as to the merits of their respective claims and defenses, the Parties have entered into a Settlement Agreement, subject to Court approval, that provides relief to the proposed class, including: (i) the establishment of a settlement fund of $960,000 from which class members may receive $750 after submitting a simple claim form; (ii) payment by JRN of settlement administration expenses; (iii) payment by JRN of any incentive award approved by the Court not to exceed $5,000; and (iv) payment of an attorney fee award to be approved by the Court, as well as Plaintiff's Counsel's unreimbursed litigation costs. Plaintiff's Counsel intends to request 35% of the Fund for attorneys' fees, plus reimbursement of reasonable costs such as filing fees, service of process fees, pro hac vice admission fees, and mediation costs.

The Settlement is fair, reasonable, and adequate and worthy of preliminary approval. As such, and as set forth more fully below, Williams respectfully requests that the Court grant preliminary approval of this class action Settlement and order that Notice be disseminated to the proposed Settlement Class.

I. Introduction

As stated above, this case concerns JRN's alleged violations of BIPA—in particular, the requirement that employers, prior to capturing or collecting biometric information from employees, must obtain express consent from the employees and inform them of the purpose and term of collection. This case was previously pending in federal court in the Southern District of Illinois, where the Parties briefed and argued a motion to stay, motion to dismiss, conducted preliminary discovery, and agreed to participate in a mediation session.

The mediation session was successful in bringing the Parties together to discuss their

respective claims and defenses, and the Parties reached a settlement to resolve the claims at issue and provide relief to Williams and the Class. The result is a strong Settlement that fairly, reasonably, and adequately compensates the Class.

The Settlement Agreement is undeniably impressive. In addition to requiring JRN to use best-efforts to comply with BIPA going forward, the Agreement creates a Settlement Fund totaling $960,000 from which all Class Members will have an opportunity to complete a simple claims form and receive $750. The process is straightforward—all Class Members who are on the Class List (approximately 1,280 individuals) will receive direct mail notice advising of the settlement and their respective rights thereunder, including the right to complete and return the claim form and receive payment. Each timely and valid claim will entitle the Class Member to a check in the amount of $750.

The results achieved by the Settlement—which compare favorably to settlements that have received final approval by courts throughout Illinois—demonstrate the propriety of granting preliminary approval. As such, Williams respectfully moves the Court for an Order: (1) granting preliminarily approval to the Settlement Agreement, and (2) ordering that Notice be disseminated to the Settlement Class in accordance with the Settlement Agreement.

II. 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—individuals have no recourse if their identifiers are compromised. 740 ILCS 14/5(c). 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 aggrieved person, and $5,000 per aggrieved person. 740 ILCS 14/20.

III. 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 subject 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 following the mediation and, with Judge Epstein's diligent assistance, reached an agreement in principle approximately two (2) weeks later on the present settlement.

As set forth below, the Parties' efforts and negotiations have produced settlement terms that clearly fall within the range of what this Court, or any court, would ultimately adjudicate as fair, reasonable, and adequate on final approval.

IV. Key Terms of the Settlement

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

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.)

B. Monetary Relief

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

The Settlement provides Class Members with substantial monetary relief. Specifically, JRN must establish a 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 any 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.

As demonstrated below, 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. This plan

features direct mail notice as well as the establishment of a settlement website which will house important case documents for Class Members to review. The Administrator will attempt to re-mail notices to any forwarding addresses received. The Notices explain the key terms of the Settlement, the rights of Settlement Class Members to request exclusion or object, and instructions as to the method to submit a valid claim. *See* Notice Documents, attached hereto as Exhibit B.

Such terms are decidedly favorable to the Settlement Class, and the Court should grant preliminary approval to the instant Settlement.

V. The Proposed Settlement Class Should Be Approved.

The first step for a court faced with a Motion for Preliminary Approval is to certify the proposed settlement class for settlement purposes. The Parties have agreed to define the Settlement Class 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." To the extent any additional class members are discovered, the Agreement provides that the Settlement Fund will increase by $750 for any additional class members.

Under the settlement, only persons who appear on the Class List will receive notice of the settlement and have an opportunity to submit a valid claim, but they also are the only persons who will be releasing claims against JRN. Thus, there is no prejudice to anyone not appearing on the Class List to limit the Settlement Class to those on the List.

The Court should therefore approve the agreement and, for the purposes of settlement,

certify the Settlement Class of 1,280 individuals as defined in the Agreement.

VI. The Proposed Settlement is Fundamentally Fair, Reasonable, and Adequate, and Thus Warrants Preliminary 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, these factors weigh in favor of approval of the Settlement.

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 per person for any negligent violation and $5,000 per person 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. 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 Defendant 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 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 table below illustrates a variety of BIPA class action settlements that have been approved:

Case Name	County	Class Size	Gross Recovery Per Class Member
Cordova v. Thomson Linear, LLC, No. 2023LA000195	McHenry	389	$725 ($595 cash)[2]
Gonzalez v. ERA Industries, Inc., No. 2023LA000703	DuPage	374	$725 ($595 cash)
Hodges v. Sutton Transport, No. 2023LA000803	DuPage	345	$725 ($595 cash)
Jimenez v. Battaglia Dist. Corp., No. 2023LA000797	DuPage	132	$725 ($595 cash)
Patino v. Eco Brite Linens, LLC, No. 2023LA000811	DuPage	261	$725 ($595 cash)
Pearl v. Federal Envelope Co., No. 2022 CH 09967	DuPage	165	$725 ($595 cash)
Ralph v. Colony Hardware, No. 2023LA000803	Will	116	$750 ($620 cash)
Reyes v. Accord Carton, No. 2023CH03359	DuPage	176	$725 ($595 cash)
Solis v. GSF USA, Inc., No. 2023LA000788	DuPage	141	$725 ($595 cash)
Vazquez v. Midwest Poultry Servs. LLC, No. 2023LA10	Iroquois	355	$725 ($595 cash)

In light of similar cases, the relief achieved in this settlement is decidedly favorable to members of the Settlement Class. First, the gross recovery for each of the estimated 1,280 class members who submit valid claims is $750—this amount is obviously above gross recoveries of $725 that are frequently approved in various courts throughout Illinois. Second, the gross

[2] In many of these cases, the gross recovery calculation included the provision of a service called "dark web monitoring" to class members, valued at $130.

recovery is entirely monetary; a number of the cases above included "dark web monitoring" as part of the gross recovery calculation, meaning that the gross cash recovery for class members was only $595 or $620. By contrast, the recovery of $750 here is entirely monetary.

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, for all of the reasons discussed above, 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. Thus, if Williams were to succeed in certifying a class in this case and ultimately win on the merits and establish a negligent or reckless violation of BIPA, liability to the class could range from $1,280,000 to $6,400,000. Though the settlement in this case provides meaningful monetary relief, a judgment in the mid-7 figures would likely come with risk that JRN would be unable to pay such a judgment. 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 and substantial relief to class members that JRN will be able and obligated to pay.

C. 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 preliminary 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 R. Epstein (Ret.) of JAMS, a respected mediator in Illinois with deep experience in BIPA litigation. Only through Judge Epstein's assistance were the Parties able to reach the agreement that they did, which provides considerable relief to the Class Members in exchange for a class-wide release of claims against JRN. 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 preliminary approval.

D. 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. This case challenges JRN's purported failure to adequately notify or obtain consent from

employees before requiring them to use a finger-scan timekeeping system. Notwithstanding any individuals that may elect to opt out, all of the class members—approximately 1,280 affected individuals—will have the opportunity to submit a simple claim form and receive $750 in compensation. The Settlement was achieved through mediated negotiation, hard bargaining, and with the assistance of a third-party neutral. 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.

E. 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 sufficient discovery informally prior to mediating the case. 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.

F. The remaining factors are not yet relevant [Factors 4 and 6].

The remaining factors weigh the amount of opposition to the Settlement and the reaction of class members. *Steinberg*, 306 Ill. App. 3d at 163. The Court will be able to evaluate these factors following the dissemination of Notice. Accordingly, consideration of these facts should be reserved for final approval.

VII. The Proposed Notice Plan is the Best Practicable in this Case.

Under Illinois law, "[u]pon a determination that an action may be maintained as a class

action," the court "in its discretion may order such notice that it deems necessary to protect the interests of the class and the parties." 735 ILCS 5/2–803. The court's discretion, however, is limited by the requirements of due process, and "[t]he question of what notice must be given to absent class members to satisfy due process necessarily depends upon the circumstances of the individual action." *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 35, 52 N.E.3d 427, 437 (quoting *Miner v. Gillette Co.*, 87 Ill.2d 7, 15, 56 Ill.Dec. 886, 428 N.E.2d 478 (1981).

As evidenced by the proposed notices attached as Exhibit B, the Notice Plan represents the best notice practicable under the circumstances. Using the class list, the settlement administrator will send direct notice to each Class Member, via first class mail. The settlement administrator is also required to re-mail notice to any forwarding address as noted on any notices returned as undeliverable. The Notice will provide information explaining the lawsuit and the Settlement and the ability to file a claim to receive $750. The Notice will further advise Class Members of their rights, including the right to be excluded from, comment upon, and object to the Agreement and the procedures for taking such actions.

VIII. Conclusion

For the foregoing reasons, Plaintiff respectfully asks that the Court grant preliminary approval of the Settlement Agreement, approve the form and manner of notice described above, and schedule a Final Approval hearing.

Respectfully submitted,

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

Dated: December 13, 2024

/s/ Patrick H. Peluso

Patrick H. Peluso
ppeluso@pelusolawfirm.com
Peluso Law LLC
865 Albion Street, Suite 250
Denver, Colorado 80220
Tel: 720-805-2008

Attorneys for Plaintiff and the Settlement Class

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 December 13, 2024.

/s/ Patrick H. Peluso