FILED
11/19/2021 9:06 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2020CH07544

15682993

EXHIBIT 1

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

IYANA HUMPHRIES, on behalf of herself and all others similarly situated,

Plaintiff,

v.

ONNI CONTRACTING LTD.,

Defendant.

Case No. 2020-CH-07544

Judge: Hon. Neil Cohen

PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT & INCORPORATED MEMORANDUM OF LAW

Dated: September 29, 2021

Arun G. Ravindran*
HEDIN HALL LLP
1395 Brickell Avenue, Suite 1140
Miami, Florida 33131
fhedin@hedinhall.com
aravindran@hedinhall.com
Tel: (305) 357-2107
Fax: (305) 200-8801

**Pro Hac Vice*

Proposed Class Counsel

[LOCAL COUNSEL LISTED ON SIGNATURE PAGE]

Plaintiff Iyana Humphries respectfully moves on an unopposed basis for preliminary approval of the class-wide Settlement Agreement entered into between the Parties to this Action, a true and correct copy of which is attached as Exhibit 1 to the Declaration of Arun Ravindran ("Ravindran Decl.") filed concurrently herewith.[1]

I. INTRODUCTION

Plaintiff Iyana Humphries brought this class action lawsuit alleging that her employer, Onni Contracting LTD.[2] ("Defendant" or "Onni"), violated the Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1 *et seq.*, by collecting employee fingerprints without providing the requisite disclosures or obtaining informed written consent.

Following investigation and extensive negotiation, the Parties have reached a class-wide settlement that provides meaningful relief for the Settlement Class. Onni has agreed to create a non-reversionary SettlementFund of $99,200.00, equaling $800.00 gross per Settlement Class Member. After deductions from the Settlement Fund for Settlement administration expenses, attorneys' fees and costs and a service award (assuming those requests are granted), each Class Member will receive a cash payment of approximately $380.

Compared against other privacy cases, this Settlement provides both an exceptional amount of monetary relief to Class Members and does so with a unique, equitable process: each Class Member will automatically get a check in the mail (unless the Class Member files a request for exclusion from the Settlement) with no need to file a claim. Many privacy cases have historically been settled for very little meaningful monetary relief, if any is provided to the class at all, which

[1] Unless otherwise defined herein, all capitalized terms have the same force, meaning and effect as ascribed in Section 2 ("Definitions") of the Settlement Agreement.

[2] The parties stipulate that the named Defendant "Onni Contracting LTD." was incorrectly sued. The correct entity, as reflected in the Settlement Agreement, is Onni Properties (Chicago) Inc.

is a trend that unfortunately continues. *See e.g.*, *In re Google LLC Street View Elec. Commc'ns Litig.*, No. 10-md-02184-CRB, 2020 WL 1288377, at *11–14 (N.D. Cal. Mar. 18, 2020) (approving, over objections of class members and state attorney general, a settlement providing only *cy pres* relief for violations of Electronic Communications Privacy Act); *Adkins v. Facebook, Inc.*, No. 18-cv-05982-WHA, dkt. 314 (N.D. Cal. Nov. 15, 2020) (preliminary approval settlement for injunctive relief only, in class action arising out of Facebook data breach). Other BIPA settlements have required class members to make claims in order to receive relief that are capped at a certain amount, with the inevitable remaining settlement funds reverting to the defendant. *E.g.*, *Marshall v. Lifetime Fitness, Inc.*, 2017-CH-14262 (Cir. Ct. Cook Cty.) ($270 per claimant with credit monitoring, reverting funds to defendant). In this case, payments to Class Members will occur automatically, and no amount of the Settlement Fund will revert to the Defendant (and any uncashed check funds remaining in the Settlement Fund once the checks expire will be paid to a Court-approved *cy pres* recipient in Illinois).

Given the relief proposed by the Settlement Agreement, along with its equitable and transparent distribution, the parties respectfully submit that the Court should find that the Settlement is well within the range of possible approval. Accordingly, Plaintiff respectfully requests that the Court: (1) certify the proposed Settlement Class, (2) appoint his counsel as Class Counsel, (3) preliminarily approve the Settlement, (4) direct that Notice be disseminated to the Settlement Class, and (5) set a Final Approval Hearing.

II. ILLINOIS' BIOMETRIC INFORMATION PRIVACY ACT

Recognizing the "very serious need" to protect Illinois citizens' biometric data—which includes retina scans, fingerprints, voiceprints, and scans of hand or face geometry—the Illinois legislature unanimously passed BIPA in 2008 to provide individuals recourse when companies fail

to appropriately handle their biometric data in accordance with the statute. (*See* Comp., ¶ 11); 740 ILCS 14/5. Thus, BIPA makes it unlawful for any private entity to "collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifier or biometric information, unless it first:

> (1) informs the subject . . . in writing that a biometric identifier or biometric information is being collected or stored;
>
> (2) informs the subject . . . in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; and
>
> (3) receives a written release executed by the subject of the biometric identifier or biometric information ....."

740 ILCS 14/15(b).

BIPA also establishes standards for how companies must handle individuals' biometric data. For example, BIPA requires companies to develop a written policy establishing a retention schedule and guidelines for permanently destroying biometric data. 740 ILCS 14/15(a). To enforce the statute, BIPA provides a civil private right of action and allows for the recovery of statutory damages in the amount of $1,000 for negligent violations—or $5,000 for willful violations—plus costs and reasonable attorneys' fees. *See* 740 ILCS 14/20.

III. BACKGROUND

a. Plaintiff's Allegations[3]

Onni is a property management company with a facility in Chicago, Illinois ("the Chicago Facility"). (Comp., ¶8). Onni employed Plaintiff at the Chicago facility from approximately January 2019 through January 2020. (Comp., ¶17). Plaintiff alleges that during her employment

[3] This section includes allegations from Plaintiff's Complaint.

at the Chicago facility, Onni required her to place her finger on a fingerprint scanner, at which point Onni scanned, collected, and stored in an electronic database, digital copies of Plaintiff's fingerprints. (Comp., ¶18). Plaintiff and other workers were required to use the fingerprint scanner every day, each time they wished to clock in and clock out of work. (Comp., ¶19). Plaintiff further alleged that Defendant's sophisticated fingerprint matching technology compared Plaintiff's scanned fingerprint against the fingerprints previously stored in Defendant's fingerprint database, at which point Plaintiff, and all others similarly situated, were able to clock in and clock out of work at Defendant's Chicago Facility. (*Id.*). Plaintiff asserted that she never consented, agreed, or gave permission – written or otherwise – to Defendant for the collection or storage of her unique biometric identifiers or biometric information (Comp., ¶20), and further, that Defendant never provided Plaintiff with, nor did she ever sign, a written release allowing Defendant to collect or store her unique biometric identifiers or biometric information. (Comp., ¶21). Additionally, Plaintiff asserts that Defendant did not provide her with required statutory disclosures or an opportunity to prohibit or prevent the collection, storage or use of his unique biometric identifiers or biometric information. (Comp., ¶¶22-23).

Plaintiff alleged that by collecting her unique biometric identifiers or biometric information without her consent, written or otherwise, Onni invaded her statutorily protected right to maintain control over her biometrics. (Comp., ¶24).

b. Pre-Filing Investigation and Settlement

Plaintiff's counsel conducted a comprehensive pre-filing investigation concerning every aspect of the factual and legal issues underlying the claims alleged in this matter. (Ravindran Decl. ¶ 9.) These pre-filing efforts included:

- Researching the nature of Defendant's business, size, number of employees, and location;

- Interviewing Plaintiff to understand Defendant's timekeeping practices and whether such practices were BIPA compliant;
- Determining the appropriate measure of statutory damages;
- Assessing the factual and legal basis for any potential defenses to the claims alleged in the Complaint; and
- Reviewing Defendant's litigation history to determine whether Defendant had any pending claims on either an individual or class-wide basis.

(*Id.*, ¶ 9(A)-(E).)

As a result of this thorough pre-filing investigation, Plaintiff's counsel was able to develop multiple potentially viable theories of BIPA liability against Defendant, analyze the legal issues relevant to the merits of claims under each such theory, assess the likelihood of success of potential defenses, and ultimately prepare a complaint against Defendant aimed at maximizing the likelihood of certifying a class and recovering meaningful class-wide relief. (Ravindran Decl. ¶ 10.) Following this pre-filing investigation and analysis, on December 31, 2020, Plaintiff filed her Class Action Complaint in the Circuit Court of Cook County, Chancery Division.

c. Settlement Negotiations

The parties began their initial settlement negotiations in mid-March. (Ravindran Decl. ¶ 12.) To meaningfully advance those discussions, Defendant provided Plaintiff with discovery regarding the potential class size and availability of insurance coverage. *Id.* The Parties negotiated at arm's length for several months concerning various aspects of the relief and notice and distribution plan. (*Id.*, ¶ 13.) Plaintiff and Defendant executed the Settlement Agreement on September 29, 2021.

Additionally, after procuring estimates for the notice and distribution plan costs, the parties agreed to engage JND Legal Administration ("JND"), a nationally recognized class-action settlement administration company with prior experience administering BIPA employee class settlements, to administer the Settlement. (Ravindran Decl. ¶ 14.). Plaintiff's counsel and Defendant's counsel reviewed the quote, and upon determining the quote was reasonable and in

line with industry standards, agreed to engage JND as Settlement Administrator. (*Id*.) Plaintiff's counsel worked with Defendant's counsel to ensure that all notice-related materials comply with due process and applicable law and are easily understood by Settlement Class Members. (*Id.*)

IV. TERMS OF THE SETTLEMENT

A copy of the Settlement Agreement is attached as Exhibit 1 to the Ravindran Declaration, the key terms of which are summarized as follows:

a. Settlement Class Definition

Pursuant to the Settlement Agreement, Plaintiff requests that the Court provisionally certify the following Settlement Class:

> "All individuals who had their fingerprints collected, captured, received, or otherwise obtained, and/or stored, by Defendant in Illinois between December 31, 2015 and the date of the Court's order preliminarily approving the Settlement."[4]

Settlement Agreement §3.37.

b. Settlement Payments

The Settlement provides that Defendant will satisfy its monetary obligations by sending checks directly to Settlement Class Members, without the need for them to submit claim forms. (Agreement §5.41.) Defendant has agreed to pay a gross amount $800 per member of the Settlement Class into the Settlement Fund; because there are 124 members of the Settlement Class, Defendant will pay $99,200 to the Settlement Fund within thirty days of the entry of the Court's

[4] Excluded from the Settlement Class are (1) any Judge presiding over this action, members of his or her family, and the Judge's assigned court staff; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parent has a controlling interest; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendant's counsel; (6) and any individual whose fingerprints were collected, captured, received, or otherwise obtained, or stored, by Defendant only after executing Defendant's Biometric Information Privacy Employee Consent written release contained within Defendant's employment onboarding documents (attached as Exhibit D to the Settlement Agreement); and (7) the legal representatives, successors, and assigns of any such excluded persons." (Settlement Agreement §3.37)

entry of the Preliminary Approval Order. (*Id.* §5.40(a).) The settlement is non-reversionary. (*Id.* §5.40(f)). Each member of the Settlement Class who does not request exclusion will receive a *pro rata* share of the net Settlement Fund after Settlement Administration Expenses and any attorneys' fees and service award approved by the Court are first deducted. Each Settlement Class Member is estimated to receive a check for approximately $380. (Ravindran Decl.¶ 20). If any checks remain uncashed within ninety (90) days after the date of issuance, the check will be void, and such uncashed funds will be distributed to a *cy pres* recipient, mutually selected by the parties and subject to Court approval. (Agreement, §5.43(d))

c. Prospective Relief

Defendant has produced evidence that it has started using BIPA-complaint releases which its workers sign at onboarding. (Ravindran Decl., ¶ 17.) As such, as a material term of the Settlement Agreement, Onni agrees to destroy all biometrics in its possession, custody, or control that pertain to individuals who have not signed BIPA-compliant consent documents and implement procedures and systems to obtain the requisite consent from employees' in order to comply with BIPA should it continue to utilize the Time-Keeping System in Illinois. (Agreement, §6.44).

d. Release of Liability

In exchange for the relief described above, the Settlement Class Members will release Defendant and Releasees from any and all claims related to Plaintiff's allegations in the Action regarding Defendant's collection and possession of their biometric data through the use of a Time-Keeping System at Defendant's Illinois facilities, including any violation of BIPA. (Agreement, §§1.24; 1.34; 7.46-7.47)

e. Payment of Settlement, Notice and Administrative Costs

Defendant has agreed to pay from the Settlement Fund all expenses incurred by the Settlement Administrator in, or relating to, administering the Settlement, providing Notice, mailing checks, and any other related expenses. (Agreement, §§2.7; 5.41(a); 5.41(d).) The Settlement Administrator has estimated that it will incur $15,508.00 in fees and costs in connection with providing these services. (Declaration of Jennifer M. Keough ("Keough Decl.") filed concurrently herewith, ¶ 23).

f. Payment of Attorneys' Fees, Costs, and Service Award

Class Counsel has agreed to limit its request for fees to 35% of the Settlement Fund, and Defendant agrees not to challenge Class Counsel's fee request under that limit. (*Id* at §15.67.) Defendant has also agreed not to oppose the payment of a $2,000 Service Award from the Settlement Fund, subject to Court approval, to Plaintiff in recognition of his efforts as Class Representative. (*Id.* §15.71.) Plaintiff will file a motion for attorneys' fees and costs and a Service Award no later than 21 days prior to the Objection/Exclusion Deadline.

g. Exclusion and Objection Rights

Any Settlement Class Member who wishes to exclude him or herself or object to the Settlement must do so on or before the Objection/Exclusion Deadline, which the Parties propose be set for 60 days after the date of the Court's entry of the Preliminary Approval Order. (Agreement, §§2.20; 10.55; 11.57). Requests for exclusion must comply with the requirements set forth in Section 10 of the Settlement Agreement. Any Settlement Class Member who wishes to object must comply with all requirements set forth in Section 11 of the Settlement Agreement. The Class Notice will contain language consistent with the provisions of Sections 10 and 11 of the

Settlement Agreement concerning requests for exclusion and objections. *See* Settlement Agreement, Ex. A (proposed Class Notice).

h. Notice Plan

Within fourteen (14) days of the Preliminary Approval Date, the Settlement Administrator will disseminate the Class Notice to all potential Settlement Class Members by e-mail and U.S. Postal mail. (Agreement §9.45; *See generally* Keough Dec., ¶¶ 12-22.) The proposed Class Notice is attached as Exhibit "A" to the Settlement Agreement.

The Settlement Administrator will create and maintain the Settlement Website, to be activated in advance of the Notice Date, which will be located at the URL www.OnniBiometricsSettlement.com. (Agreement, §2.33; Keogh Dec. ¶¶18-19). The Settlement Website will provide information about the Settlement and make case-related documents available for download, such as the Settlement Agreement, Notice, Preliminary Approval Order, and the Fee and Expense Application. *Id.* The Settlement Administrator estimates the cost of the Notice Plan, including fees and costs, to be $15,508.00. (Keogh Dec. ¶ 24).

V. CLASS ACTION SETTLEMENT APPROVAL PROCESS

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); *Lebanon Chiropractic Clinic, P.C. v. Liberty Mut. Ins. Co.*, 2016 IL App (5th) 150111-U, ¶ 41; *Isby v. Bayh*, 75 F.3d 1191, 1198 (7th Cir. 1996); *see also* 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.41 (4th ed. 2002) (collecting cases) (hereinafter *Newberg*).

Courts review proposed class action settlements using a well-established two-step process. *Newberg* § 11.25, at 38-39; *see e.g.*, *Kaufman v. Am. Express Travel Related Servs. Co.*, 264 F.R.D. 438, 447 (N.D. Ill. 2009); *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 492 (1st Dist. 1992). The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is "within the range of possible approval." *Newberg*, § 11.25, at 38–39; *Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds*; *see e.g.*, *Lebanon*, 2016 IL App (5th) 150111-U, ¶ 11. The preliminary approval stage is an "initial evaluation" of the fairness of the proposed settlement based on the written submissions and informal presentation from the settling parties. *Manual for Complex Litigation,* § 21.632 (4th ed. 2004). 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: the final approval hearing. *Newberg*, § 11.25, at 38–39. This procedure safeguards the due process rights of unnamed Settlement Class Members and allows the Court to fulfill its role as the guardian of Settlement Class members' interests. 4 *Newberg* § 11.25.

Representative Plaintiff is presently at the first step of this two-step process.

VI. ARGUMENT

The Settlement is a fair, reasonable, and adequate resolution to this litigation, the Settlement Class satisfies each of the class certification requirements of Section 2-801, and the Notice Plan is the best practicable under the circumstances. Accordingly, the Court should (a) preliminarily approve the Settlement, (b) provisionally certify the Settlement Class, (c) approve the proposed Notice Plan, and (d) schedule the Final Approval Hearing.

a. The Settlement Should Be Preliminarily Approved

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); *see also Lane v. Facebook, Inc.,* 696 F.3d 811, 818 (9th Cir. 2012) ("[A] district court's only role in reviewing the substance of [a] settlement is to ensure that it is 'fair, adequate, and free of collusion.'") (citing *Hanlon v. Chrysler Corp.*,150 F.3d 1011, 1026 (9th Cir. 1998)).

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 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 v. Bd. Of Sch. Dir. Of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980).[5] "Although this standard and the factors used to measure it are ultimately questions for the fairness hearing that comes after a court finds that a proposed settlement is within approval range, a more summary version of the same inquiry takes place at the preliminary phase." *Kessler v. Am. Resorts Int'l*, 2007 U.S. Dist. LEXIS 84450, at *17 (N.D. Ill. Nov. 14, 2007) (citing *Armstrong*, 616 F.2d at 314).

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

[5] Because Section 2-801 is modeled after Federal Rule of Civil Procedure 23, "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).

i. The Settlement provides substantial relief

The first and most important factor in evaluating the fairness of a proposed class action settlement is the strength of the plaintiff's case on the merits balanced against the relief obtained in the settlement. *See City of Chicago*, 206 Ill. App. 3d at 972; *see also Steinberg v. Sys. Software Associates, Inc.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999); *Am. Int'l Grp., Inc. et al., v. ACE INA Holdings, et al.*, Nos. 07-cv-2898, 09-cv-2026, 2012 U.S. Dist. LEXIS 25265, at *17 (N.D. Ill. Feb. 28, 2012); *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006). In analyzing this factor, courts recognize that settlement is "an amalgam of delicate balancing, gross approximations and rough justice," *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982), such that "the question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court." *Lane,* 696 F.3d at 819.

In this case, the amount offered by the Settlement – a fund constituting $800 per person with checks sent directly to Settlement Class Members without the need for filing a claim, *and* strong prospective relief– is substantial. After deductions of administration expenses, and if approved, attorneys' fees and costs and a Service Award, each Settlement Class Member will be sent a check for approximately $380 – a sum that greatly exceeds the relief provided in many other statutory privacy class actions, which have commonly secured no relief to the class or only *cy pres* relief. *See*, *e.g.*, *Lane v. Facebook, Inc.*, 696 F.3d 811, 820–22 (9th Cir. 2012) (resolving tens of millions of claims under the Electronic Communications Privacy Act ["ECPA"] for a $9.5 million *cy pres*-only settlement—amounting to pennies per class member—where $10,000 in statutory damages were available per claim); *In re Google Buzz Privacy Litig.*, No. C 10-00672 JW, 2011 WL 7460099, at *3–5 (N.D. Cal. June 2, 2011) (resolving tens of millions of claims, again under

the ECPA, for $8.5 million *cy pres*-only settlement); *see also Frank v. Gaos*, 139 S. Ct. 1041, 1047–48 (2019) (Thomas, J., dissenting) ("Whatever role *cy pres* may permissibly play in disposing of unclaimed or undistributable class funds . . . *cy pres* payments are not a form of relief to the absent class members and should not be treated as such (including when calculating attorney's fees). And the settlement agreement here provided no other form of meaningful relief to the class.").

Settlement Class Members will also receive payments automatically, without the burden, expense, and delay of submitting a claim. Importantly, Defendant maintains contact information for each Settlement Class Member, ensuring checks will be delivered to the intended recipients.

Simply put: both the relief provided by this Settlement ($800 per person gross amount resulting in net payments of approximately $380 per person) and its structure (automatic distribution without requiring the filing of claim forms) place this case well within the heartland of BIPA settlements to date. *See, e.g.*, *Jones v. CBC Rest. Corp.*, 19-cv-06736 (N.D. Ill. Oct. 22, 2020) (fund equating to gross amount of $800 per person); *Johnson v. Rest Haven Illiana Christian*, 2019-CH-01813 (Cir. Ct. Cook Cty.) (fund equating to gross amount of $900 per person); *Marshall v. Life Time Fitness, Inc.*, 17-CH- 14262 (Cook Cnty. July 30, 2019) (non-employment case with fund equating to net amount of $270 with credit monitoring).

Finally, aside from the monetary relief, the non-monetary benefits created by the Settlement—Onni's agreement to destroy current and former employees' biometric data who have not signed BIPA-complaint documents, coupled with its compliance with BIPA in its present and future use of its biometrics timeclocks—is also meaningful relief that the Settlement provides to the Settlement Class. (*See* Agreement §6.44.)

This prospective relief aligns perfectly with both the goals of BIPA and those of this lawsuit, as it will ensure that Defendant's past, current, and future employees are protected as the legislature intended.

The reasonableness of the relief provided by the Settlement is underscored by the many substantial risks of non-recovery that continued litigation would have posed absent the Settlement. *See Smith v. CRST Van Expedited, Inc.*, No. 10-cv-1116, 2013 WL 163293, at *3 (S.D. Cal. Jan. 14, 2013) (where "the settlement avoids the risks of extreme results on either end, *i.e.,* complete or no recovery . . . it is plainly reasonable for the parties at this stage to find that the actual recovery realized and risks avoided here outweigh the opportunity to pursue potentially more favorable results through full adjudication," such that "[t]hese factors support approval"). Workplace BIPA claims implicate several potential defenses for defendants, the contours of which continue to work their way through the courts. For example, on just September 17, 2021, the First District Court of Appeals in *Tims v. Black Horse Carriers, Inc.*, No. 1-20-0562 (Ill. App. 1st Dist.) found the statute of limitations applicable to BIPA claims is five years, not one year as asserted by defendant. Here, the Parties' negotiations occurred while *Tims* was pending, and the Settlement Agreement reflected that litigation risk, among others, which are still unresolved. *E.g., McDonald v. Symphony Bronzeville Park LLC*, 2020 IL App (1st) (considering issue of whether BIPA claims are preempted by Illinois's Workers Compensation Act ("IWCA")). An adverse decision for plaintiffs on any of these issues could (or, in the case of *Tims*, could have) substantially narrow the class or absolve defendant from liability entirely. Additionally, Onni indicated that it would argue that the information captured by its handprint scanners were not actually "biometric identifiers" or "biometric information" subject to BIPA; although Plaintiff again puts little stock in this argument,

resolving the issue would present novel issues of law and require significant and lengthy expert discovery concerning the relevant technology.

The Settlement Class thus faced several real risks of total non-recovery, and at the very least the prospect of protracted and very expensive litigation, absent the Settlement. The Settlement avoids these risks and the delay inherent in complex litigation by providing meaningful, certain relief directly to Settlement Class Members in a timely and efficient manner. Accordingly, the first and most important factor weighs heavily in favor of granting preliminary approval of the Settlement. *See In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079-80 (N.D. Cal. 2007) (preliminarily approval warranted where a settlement is free of "obvious deficiencies" and within range of approval).

ii. A class-wide judgment would be devastating to Defendants

The second factor considers defendants' ability to satisfy a judgment at trial. *See City of Chicago*, 206 Ill. App. 3d at 972. Although Defendant operates a profitable business, its potential exposure at trial in this case ranged from approximately $124,000 to five times that sum if its violations were found to have been willful (and potentially much larger still if a violation is determined to accrue each time a class member scanned his or her hand on the device in question – an issue presently before the U.S. Court of Appeals for the Seventh Circuit). Based on Class Counsel's investigation into Onni's business, there was substantial concern that the company might be unable to satisfy a judgment on the high end of this potential range of recovery if violations are ultimately determined to accrue on a per-scan basis. Accordingly, the second factor weighs in favor of preliminary approval.

iii. Continued litigation would be complex, costly, and lengthy

The third factor asks whether the settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation. *See City of Chicago*, 206 Ill. App. 3d at 972; *see also Nat'l Rural Telecomm's Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) ("The Court shall consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation.").

This would be lengthy and very expensive litigation if it were to continue, involving extensive motion practice, including, *inter alia*, a motion for class certification, motions for summary judgment, and various pretrial motions, as well as the retention of experts, preparation of expert reports, and conducting fact and expert depositions. *See Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977) ("[C]lass action suits have a well-deserved reputation as being most complex."). The case would probably not go to trial for over a year. And even if Settlement Class Members recovered a judgment at trial greater than the up to $99,200 in cash that Defendants have agreed to make available under the Settlement, post-trial motions and the appellate process would deprive them of any recovery for years, and possibly forever in the event of a reversal.

Rather than embarking on years of protracted and uncertain litigation, Plaintiff and his counsel negotiated a Settlement that provides immediate, certain, and *meaningful* relief to all Settlement Class members. *See DIRECTV, Inc.*, 221 F.R.D. at 526. Accordingly, the third factor weighs in favor of finding the Settlement fair, reasonable and adequate. *See City of Chicago*, 206 Ill. App. 3d at 972; *see also Borcea v. Carnival Corp.*, 238 F.R.D. 664, 674 (S.D. Fla. 2006) (noting "[i]t has been held proper to take the bird in the hand instead of a prospective flock in the bush").

iv. There is presently no opposition to the settlement

The fourth and sixth factors consider the amount of opposition to the Settlement and the reaction of the Settlement Class to the Settlement. *See City of Chicago*, 206 Ill. App. 3d at 972.

Because the Representative Plaintiff is presently at the preliminary approval stage, Notice has not yet been distributed to the Settlement Class and the Settlement Class has accordingly not yet had an opportunity to voice any opposition to (or support for) the Settlement. Thus, Representative Plaintiff will address factors four and six in detail in his motion for final approval of the Settlement, after Notice has been disseminated and the Objection/Opt-Out Deadline has passed. Nonetheless, the Representative Plaintiff and Class Counsel strongly support the Settlement, which they believe is fair, reasonable, and adequate and in the best interest of the Settlement Class. *See infra* Section F (opinions of Class Counsel on Settlement's fairness).

Accordingly, even at this preliminary stage of the approval process, the fourth and sixth factors weigh in favor of finding the Settlement fair, reasonable, and adequate.

v. The settlement was negotiated free of any collusion

The fifth factor considers the presence of any collusion by the Parties in reaching the proposed settlement. *City of Chicago*, 206 Ill. App. 3d at 972.

Proposed class settlements which are the result of arm's length negotiations warrant approval. *See Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 21 (approval warranted where there was "no evidence that the proposed settlement was not the product of 'good faith, arm's-length negotiations'"). Such is the case here. The Settlement was achieved after arm's length negotiations over the course of several months concerning every aspect of the relief it would provide and its structure, followed by confirmatory discovery to confirm the size and scope of the Settlement Class. (Ravindran Decl. ¶¶ 11-15; ¶18-24).

Because the Settlement is thus the product of lengthy, arm's length, collusion-free negotiations between the Parties, Ravindran Decl. ¶13, ¶18, the fifth factor weighs in favor of finding the Settlement fair, reasonable, and adequate.

vi. Competent counsel strongly endorse the settlement

The seventh factor is the opinion of competent counsel as to the fairness, reasonableness, and adequacy of the proposed settlement. *See City of Chicago*, 206 Ill. App. 3d at 972. Courts rely on affidavits in assessing proposed class counsel's qualifications under this factor. ***Id.***

Plaintiff's counsel and proposed Class Counsel, Hedin Hall LLP, have extensive experience in complex class action litigation, including serving as class counsel in numerous other matters in state and federal courts throughout the country. *See* Ravindran Decl. ¶¶ 5-8 & Ex. 2 (Hedin Hall LLP firm resume).

Plaintiff's counsel strongly endorses the Settlement, which is believed to be in the best interest of the Settlement Class. *See* Ravindran Decl. ¶ 24. As explained by Plaintiff's counsel, numerous risks of total non-recovery would loom over this case absent the Settlement. *See Id.*, ¶ 19; *see also* Section VI(a)(i) *infra*. In light of the substantial benefits provided by the Settlement – including Defendant's agreement to establish a Settlement Fund in the amount of $99,200 equating to $800 per Class Member, from which each Settlement Class Member will receive a pro rata share automatically, as well as the meaningful prospective relief provided under the Settlement – Class Counsel considers this an excellent outcome for the Settlement Class. (Ravindran Decl., ¶ 20).

Accordingly, the seventh factor weighs in favor of finding the Settlement fair, reasonable and adequate. *See GMAC*, 236 Ill. App. 3d at 497 (experienced and competent counsel's support for a proposed class settlement weighs in favor of approving the settlement); ***Bellinghausen v.***

Tractor Supply Co., 306 F.R.D. 245, 257 (N.D. Cal. 2015) ("The trial court is entitled to, and should, rely upon the judgment of experienced counsel for the parties."); *see also, e.g., Smith*, 2013 WL 163293, at *3 (finding "class counsel's endorsement weighs in favor of final approval" given counsel's "experience and understanding of the strengths and weaknesses of cases such as this").

vii. The settlement is the product of extensive negotiation and supported by confirmatory discovery

The eighth and final factor considers the stage of the proceedings and the amount of discovery that has been completed at the time the settlement is reached. *City of Chicago*, 206 Ill. App. 3d at 972; *Lane,* 696 F.3d at 819.

Prior to commencing this litigation, Plaintiff's counsel investigated every aspect of the case. *See* Ravindran Decl. ¶ 9. This early investigation benefited the Class substantially, as Class Counsel was prepared to commence settlement discussions shortly after the filing of the Complaint. Negotiations took place over several months on an arm's length basis, and Defendant provided Plaintiff's counsel with confirmatory discovery establishing the number of individuals who were members of the putative class during the relevant time period and that the consent forms currently in place are compliant with the statute. *See id.* ¶¶ ¶¶ 11-15; ¶18-24. Armed with this information, Plaintiff and his counsel had "a clear view of the strengths and weaknesses" of the case, *see In re Warner Commc'ns Sec. Litig*., 618 F. Supp. 735, 745 (S.D.N.Y. 1985), *aff'd* 798 F.2d 35 (2d Cir. 1986), and were in a strong position to negotiate a fair, reasonable, and adequate settlement on behalf of the Settlement Class. *See* Ravindran Decl. ¶ 22, ¶ 24.

Where, as here, a proposed settlement is the product of arm's length negotiations between experienced counsel after confirmatory discovery has occurred, the Court may presume the settlement to be fair, adequate, and reasonable. *See Rodriguez v. W. Publishing*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution."); ("counsel had a good grasp on the merits of their case before settlement talks began"); *c.f. Newberg* § 11.41 (proposed class settlement may be presumed fair if it "is the

product of arm's length negotiations, sufficient discovery has been taken to allow the parties and the court to act intelligently, and counsel involved are competent and experienced.").

Accordingly, the eighth and final factor weighs in favor of finding the Settlement fair, reasonable and adequate, warranting its preliminary approval.

b. The Settlement Class Should be Provisionally Certified

The Court must next provisionally certify the Settlement Class for settlement purposes. *Manual for Complex Litigation* (Fourth) § 21.632; *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Provisional certification will allow the Settlement Class to receive notice of the Settlement and its terms and recover a Settlement Share upon final approval, to be heard on the Settlement's fairness at the Final Approval Hearing, and to opt out of or object to the Settlement.

A class may be certified under Section 2-801 of the Illinois Code of Civil Procedure if the following "prerequisites" are satisfied: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members; (3) the representative parties will fairly and adequately protect the interest of the class; and (4) the class action is an appropriate method for the fair and efficient adjudication of the controversy. 735 ILCS 5/2-801; *CE Design Ltd. v. C & T Pizza, Inc.*, 2015 IL App (1st) 131465, ¶ 10, *reh'g denied* (June 4, 2015), *appeal denied*, 39 N.E.3d 1001 (Ill. 2015); *Travel 100 Grp., Inc. v. Empire Cooler Serv. Inc.*, No. 03-CH-14510, 2004 WL 3105679, at *2 (Ill. Cir. Ct. Oct. 19, 2004).

The Settlement Class is defined in the Settlement Agreement and in the section above titled "Terms of the Settlement," Part I., *supra*, and satisfies all prerequisites to certification under Section 801-2, as explained below.

i. The Settlement Class is so numerous that joinder is impracticable

The first prerequisite to class certification is that "the class is so numerous that joinder of all members is impracticable." 735 ILCS 5/2-801(1). "Although there is no bright-line test for numerosity, a class of forty is generally sufficient[.]" *Hinman v. M & M Rental Center, Inc.*, 545 F. Supp. 2d 802, 805–06 (N.D. Ill. 2008).

The Settlement Class includes 124 individuals (*see* Ravindran Decl. ¶ 20), rendering joinder of all Settlement Class Members impracticable. Accordingly, the numerosity requirement is satisfied. *See, e.g., Kulins v. Malco, A Microdot Co., Inc.*, 121 Ill. App. 3d 520, 530 (1st Dist. 1984) (47 class members sufficient to satisfy numerosity in Cook County, Illinois).

ii. Common questions of law and fact predominate

Predominance of common questions, the second prerequisite to class certification, is met where there are "questions of fact or law common to the class" and those questions "predominate over any questions affecting only individual members." 735 ILCS 5/2-801(2). Such common questions of law or fact generally exist where the members of a proposed class have been aggrieved by the same or similar misconduct. *See Walczak v. Onyx Acceptance Corp.*, 365 Ill. App. 3d 664, 673–74 (2nd Dist. 2006); *Steinberg v. Chicago Med. Sch.*, 69 Ill. 2d 320, 340–42 (1977); *Ellerbrake v. Campbell-Hausfeld*, No. 01-L-540, 2003 WL 23409813, at *3 (Ill. Cir. Ct. July 2, 2003); *see also Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011).

Here, Plaintiff's and the proposed Settlement Class's claims are based upon the same common contention and course of conduct – namely, that Onni violated BIPA by collecting workers' fingerprints without obtaining informed written consent and without making required statutory disclosures. (*See* Comp. ¶¶ 35-37.).

This contention raises several issues of law and fact common to the Settlement Class that will predominate over any individualized issues, including: (1) whether Onni collected or otherwise obtained Plaintiff's and the Settlement Class's fingerprints; (2) whether Onni collected or otherwise obtained Plaintiff's and the Settlement Class's "biometric identifiers" or "biometric information," as defined by 740 ILCS 14/10 (collectively, "biometric data"); (3) whether Onni properly informed Plaintiff and the Settlement Class of its purposes for collecting, using, and storing their biometric data, 740 ILCS 14/15(b); (4) whether Onni obtained any written releases to collect, use, and store Plaintiff's and the Settlement Class's biometric data, *id.*; (5) whether Defendant developed a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of their last interaction, whichever occurs first; 740 ILCS 14/15(a); and (6) whether Onni's alleged violations of BIPA were committed negligently, 740 ILCS 14/20 (providing $1,000 in damages per negligent violation) or willfully (*Id.* (providing $5,000 in damages per willful violation)). (Comp., ¶ 27). Because answering each of these questions would resolve all class members' claims in one stroke, without any issues to resolve unique to particular class members, predominance is satisfied. *See* 735 ILCS 5/2-801(2); *See also Muir v. Nature's Bounty (DE), Inc.*, No. 15 C 9835, 2018 WL 3647115, at *9 (N.D. Ill. Aug. 1, 2018) (Pallmeyer, J.) (predominance requires that "the common, aggregation-enabling, issues in thecase are more prevalent or important than the non-common, aggregation defeating individualissues.") (internal quotation marks omitted).

iii. Plaintiff adequately represents the Settlement Class

The third prerequisite to class certification under Section 2-801 is that "[t]he representative parties will fairly and adequately protect the interest of the class." 735 ILCS 5/2-801(3). "The purpose of the adequate representation requirement is to ensure that all class members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim." *Walczak*, 365 Ill. App. 3d at 678 (citing *P.J.'s Concrete Pumping Service, Inc. v. Nextel West Corp.*, 345 Ill. App. 3d 992, 1004 (2nd Dist. 2004)); *Purcell & Wardrope Chtd. v. Hertz Corp*., 175 Ill. App. 3d 1069, 1078 (1st Dist. 1988). The class representative's interests must be generally aligned with those of the class members, and class counsel must be "qualified, experienced and generally able to conduct the proposed litigation." *See Miner v. Gillette Co.*, 87 Ill. 2d 7, 14 (1981); *CE Design Ltd.*, 2015 IL App (1st) 131465, ¶ 16 (citing *Miner*, 87 Ill. 2d at 56)).

Both prongs of the adequacy requirement are satisfied in this case. First, Plaintiff's interests in the litigation are aligned with, and not antagonistic to, those of the Settlement Class. Plaintiff challenges the same uniform course of conduct that each Settlement Class Member challenges and seeks the same monetary relief that is sought by each Settlement Class Member. Plaintiff has retained competent counsel, provided substantial assistance to his counsel in advance of and during the litigation, vigorously prosecuted the case on behalf of the Settlement Class, and assisted his counsel in reaching the proposed Settlement. *See generally* Ravindran Decl. ¶ 23. Representative Plaintiff strongly supports the Settlement and believes that it constitutes a fair, reasonable, and adequate result for the Settlement Class. *See id.* Second, Plaintiff's counsel has extensive experience in complex class action litigation; Hedin Hall, LLP has served as class counsel in similar statutory privacy cases, both in Illinois and throughout the country. *See* Ravindran Decl. ¶¶ 2-8. Accordingly, the Representative Plaintiff and his counsel are adequate representatives of

the Settlement Class. *See, e.g.*, *CE Design v. Beaty Const., Inc.*, No. 07-cv-3340, 2009 U.S. Dist. LEXIS 5842, *13 (N.D. Ill. Jan. 26, 2009); *CE Design Ltd.*, 2015 IL App (1st) 131465, ¶ 17; *Travel 100 Grp.*, 2004 WL 3105679, at *7.

iv. A class action promotes fairness and efficiency

The final prerequisite to class certification is that "the class action is an appropriate method for the fair and efficient adjudication of the controversy." 735 ILCS 5/2-801(4). "In applying this prerequisite, a court considers whether a class action: (1) can best secure the economies of time, effort and expense, and promote uniformity; or (2) accomplish the other ends of equity and justice that class actions seek to obtain." *Gordon v. Boden*, 224 Ill. App. 3d 195, 203 (1st Dist. 1991).

As a threshold matter, because the proposed Settlement satisfies the numerosity, commonality, and adequacy of representation requirements discussed above, it is "evident" that a class action is the appropriate method for the fair and efficient adjudication of this controversy. *See Gordon*, 224 Ill. App. 3d at 203 (explaining that a "holding that the first three prerequisites of section 2-801 are established makes it evident that the fourth requirement is fulfilled"); *Purcell & Wardrope Chtd*., 175 Ill. App. 3d at 1079.

Moreover, the U.S. Supreme Court has explained that a class action is the proper method for resolving a large-scale claim if the action will "achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Amchem*, 521 U.S. at 615. This is especially true in BIPA actions. *See Gordon*, 224 Ill. App. 3d at 203-04 (noting that a "controlling factor in many cases is that the class action is the only practical means for class members to receive redress – particularly where the claims are small"); *Eshaghi v. Hanley Dawson Cadillac Co.*, 214 Ill. App. 3d 995, 1004 (1st Dist.1991) ("In a large and impersonal society, class

actions are often the last barricade of consumer protection."). There is no indication any class member has brought an individual BIPA suit against Onni and, given Plaintiff's allegation that Onni did not institute any BIPA-specific policies or develop written materials for its employees addressing their statutory rights, (Compl. ¶4, 13, 16), it's likely that "many class members may be unaware of their rights under [BIPA]." *Bernal v. NRA Grp. LLC*, 318 F.R.D. 64, 76 (N.D. Ill. 2016). Both considerations support the notion that class members' interests in individual suits is minimal. *Id.* Further, while BIPA provides for liquidated damages, the relatively modest recovery ($1,000 or $5,000, depending on whether a violation is negligent or reckless) compared to the high costs of retaining adequate counsel "is not likely to provide sufficient incentive for members of the proposed class to bring their own claims." *Jackson v. Nat'l Action Fin. Servs., Inc.*, 227 F.R.D. 284, 290 (N.D. Ill. 2005) (discussing the FDCPA's $1,000 statutory damages provision); *see also In re Facebook Biometric Info. Privacy Litig.*, 326 F.R.D. 535, 548 (N.D. Cal. 2018) ("While not trivial, BIPA's statutory damages are not enough to incentivize individual plaintiffs given the high costs of pursuing discovery on Facebook's software and codebase and Facebook's willingness to litigate the case."). Accordingly, the final prerequisite to certification is satisfied.

c. The Notice Plan Should be Approved

Upon provisionally certifying the Settlement Class, notice of the proposed Settlement must be provided to the Settlement Class pursuant to Section 2-803, *see* 735 ILCS 5/2-803; *Cavoto v. Chicago Nat. League Ball Club, Inc.*, No. 1-03-3749, 2006 WL 2291181, at *15 (Ill. App. 1st Dist. 2006), and to comport with the constitutional requirements of due process. *Cavoto*, 2006 WL 2291181, at *15 (citing *Frank v. Tchr's Ins. & Annuity Ass'n. of Am.*, 71 Ill.2d 583, 593 (1978)); *see also* Fed. R. Civ. P. 23(d)(2) (advisory committee note). The Due Process clause to the U.S. Constitution mandates providing the "best practicable" notice to the Settlement Class, *Sabon, Inc.*,

2016 IL App (2d) 150236, ¶ 36 (citing *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985)) – which means notice that is "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," *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

In this case, the Settlement Agreement contemplates a multi-part Notice Plan designed to directly reach all Settlement Class Members. *See* Settlement Agreement §§9.51 *et. seq*. First, the Class Notice will be provided directly by e-mailed to all potential Settlement Class Members. *See* Settlement Agreement §9.53. Additionally, all Settlement Class Members will also receive a mailing via U.S. Postal Mail containing the Notice information. *Id.* The Settlement Administrator will also establish a Settlement Website where the same Notice information will be posted, along with a form where inquiries may be sent to the Settlement Administrator, and copies of important court documents, including the Settlement Agreement, Class Notices, the Court's Orders, and the Applications for Fee Award and Expenses may be downloaded. *See* Settlement Agreement §2.33. The proposed Class Notice (*see* Settlement Agreement, Ex. A), and the methods by which the Class Notices will be disseminated, readily comport with Due Process and the procedural requisites of Section 2-803.

Accordingly, Plaintiffs respectfully request that the Court, as set forth in the proposed order accompanying this Motion, find that the notice provided by the Settlement Class Notice Program: (i) is the best practicable notice; (ii) is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and of their right to object to or to exclude themselves from the proposed Settlement; (iii) constitutes due, adequate and sufficient notice to all Persons entitled to receive notice; and (iv) meets all requirements of applicable law.

d. The Court Should Set a Final Approval Schedule

The last step in the approval process, after completion of the Notice Plan, is the Final Approval Hearing, where the Court will consider the fairness, reasonableness, and adequacy of the Settlement and the requested Fee and Service Award. Plaintiffs respectfully request that the Court schedule the Final Approval Hearing and the other Settlement-related deadlines consistent with the following timetable (which assumes a Preliminary Approval Date of October 13, 2021, for the dates proposed in brackets):

1. **Notice Date:** Direct notice shall be sent to all Settlement Class Members, and the Settlement Website shall be created and operational, within fourteen (14) days from the Preliminary Approval Date [Proposed date: October 26, 2021];

2. **Submission of Papers in Support of Attorneys' Fees and Expenses:** must be filed no later than twenty-one (21) days before the Opt-Out/Objection Deadline [Proposed date: November 19, 2021];

3. **Opt-Out / Objection Deadline**: any requests to opt-out or object must be submitted/postmarked no later than sixty (60) days after the entry of the Preliminary Approval Order [Proposed date: December 11, 2021];

4. **Submission of Papers in Support of Final Approval of Settlement**: must be filed no later than fourteen (14) days prior to the date of the Final Approval hearing [Proposed date: December 29, 2021];

5. **Final Approval Hearing**: will occur approximately ninety (90) days after the Preliminary Approval Date [Proposed date: 1/12/2022]; and

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion and enter an order (in the form of the proposed order attached hereto) that: (1) preliminarily approves the Settlement; (2) provisionally certifies the Settlement Class; (3) approves the Class Notice, appoints JND as Settlement Administrator, and orders that Notice be effectuated by JND; (4) establishes a procedure and timetable, consistent with the procedure set forth in the Settlement Agreement, for Settlement Class members to object to or exclude themselves from the Settlement Class; and (5) sets the Final Fairness Hearing.

Dated: September 29, 2021

Respectfully submitted,

By: /s/ Carl Malmstrom

WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLC
Attorney No. 38819
Carl V. Malmstrom
111 W. Jackson Blvd., Suite 1700
Chicago, IL 60604
Tel: (312) 391-5059
Fax: (212) 686-0114
malmstrom@whafh.com

Local Counsel for Plaintiffs and the Putative Class

FRANK S. HEDIN*
fhedin@hedinhall.com
ARUN G. RAVINDRAN
aravindran@hedinhall.com
HEDIN HALL LLP
1395 Brickell Ave, Suite 900
Miami, Florida 33131
Tel: (305) 357-2107
Fax: (305) 200-8801

**Pro Hac Vice* Forthcoming

Counsel for Plaintiffs and Proposed Class Counsel