EXHIBIT A

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

SERGIO VILLAGOMEZ, individually and on behalf of all others similarly situated, Plaintiff, v. ISOLVED HCM, LLC, a Delaware Corporation, Defendant.	Case No. 19 CH 12932 Honorable Allen Price Walker Calendar 3

PLAINTIFF'S MOTION AND MEMORANDUM IN SUPPORT OF
FINAL APPROVAL OF CLASS ACTION SETTLEMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Supreme Court Cases

State Supreme Court Cases

State Appellate Court Cases

State Circuit Court Cases

United States Appellate Court Cases

United States District Court Cases

Miscellaneous Authority

I. INTRODUCTION

Employment-related class actions brought under the Biometric Information Privacy Act ("BIPA), 740 ILCS 14/1, *et seq*., typically fall into one of two categories: (1) cases brought against employers who required their employees to use biometric timeclocks to monitor their working hours, and (2) cases against the vendors who provided the biometric timeclocks and separately hosted their customers' employees' biometric data. This case falls into the latter category of vendor BIPA cases, where Plaintiff Sergio Villagomez ("Plaintiff" or "Villagomez") alleges that Defendant iSolved HCM, Inc. ("Defendant" or "iSolved")—the vendor of a cloud-based timeclock system with a finger scanner attached—violated BIPA by collecting and storing his and other Illinois workers' fingerprints without their consent, and by failing to create and abide by a publicly-available retention and deletion policy for biometric data. After nearly three years of litigation, which included briefing two motions to dismiss and defeating iSolved's arguments on the pleadings, exchanging formal and informal discovery, and engaging in months of arm's-length negotiations, the Parties reached a class-wide Settlement.[1] Since then, the Court granted preliminary approval of the Settlement on November 7, 2022, notice has been disseminated to the Settlement Class, and Plaintiff now requests that this Court grant final approval to this exceptional Settlement.

Under the Settlement, iSolved has agreed to create a non-reversionary $2,486,750.00 Settlement Fund for the benefit of 7,636 Settlement Class members. This represents the highest monetary relief per-person in a vendor BIPA case to date. The fund will be split *pro rata* among those who submit Approved Claims, after any fees and costs are paid. The Settlement further

[1] The capitalized terms used in this motion are those used in the Class Action Settlement Agreement (the "Settlement" or "Agreement"), attached hereto as Exhibit 1.

provides non-monetary benefits: iSolved has agreed that, if it continues to store or host finger scan data, it will establish and maintain a publicly-available retention and deletion policy for biometric data, destroy biometric data pursuant to that policy, and obtain prior informed written consent from persons who use a finger scanner on iSolved timeclocks in Illinois prior to the collection and storage of their fingerprint data, including via on-screen consent deployed on the timeclocks. (Agreement § 2.2.) Finally, the Settlement explicitly preserves Plaintiff's and the Settlement Class's claims against their employers (i.e., iSolved's customers), including any separate BIPA claims. (*Id.* § 1.22.) That means Class Members stand to recover additional monetary relief for their employer's separate collection of the same biometric data, should they choose to pursue those claims, either on their own or as part of separate class litigation.

In accordance with the Court's Preliminary Approval Order, the Settlement Administrator disseminated direct notice to the Settlement Class via U.S. Mail and email, which successfully reached 98.4% of the Settlement Class. The Settlement Administrator then sent two rounds of reminder notices via mail and email on March 10, 2023 and March 28, 2023 to members of the Settlement Class who, at those points, had not yet submitted a claim. By the Objection/Exclusion Deadline of April 11, 2023, not a single class member submitted an opt-out request or objection.

Unsurprisingly, given the comprehensive notice and outstanding relief available, the Settlement has also seen an extraordinary participation rate: 43.98% of Class Members have submitted Approved Claims, which means each of those Class Members will receive a Settlement Payment of approximately $455, after any fees and costs are deducted. Although part of a growing trend of increased participation, this far exceeds historical claims rates in consumer class actions which rarely see claim rates in the double digits, let alone approaching 50%.

For these reasons, and as detailed below, this Settlement is exceptional and should be finally approved as exceedingly fair, reasonable, and adequate.

II. BACKGROUND

A complete explanation of the history of the case appears in Plaintiff's Motion and Memorandum of Law for Attorneys' Fees, Expenses and Incentive Award. For ease of reference, Plaintiff again provides a summary of the litigation and negotiation history below.

A. Nature of the Litigation

The Biometric Information Privacy Act was passed after the bankruptcy of a company called Pay By Touch, which had partnered with gas stations and grocery stores in Illinois to install checkout terminals that used fingerprint scanning to authenticate purchases. (Pl. First Amended Compl. ("FAC"), ¶¶ 11-12.) When Pay By Touch's parent company declared bankruptcy at the end of 2007, it began shopping its Illinois consumers' fingerprint database as an asset to its creditors. (*Id.* ¶ 12.) This decision was met with public backlash, and while a bankruptcy court ordered the destruction of the database, the Illinois legislature recognized the "very serious need" to protect Illinois citizens' biometric data. *See* Ill. House Transcript, 2008 Reg. Sess. No. 276. Therefore, in 2008, the Illinois legislature passed BIPA, which makes it unlawful for any private entity to collect and store consumers' biometric data unless it first (i) obtains their informed written consent, (ii) provides details related to the data's purpose and storage, and (iii) establishes a publicly-available retention and destruction policy. *See* 740 ILCS 14/15. If a company fails to comply with BIPA's provisions, the statute provides for a civil private right of action allowing consumers to recover $1,000 for negligent violations or $5,000 for willful violations. *See id.* § 14/20.

B. The Claims

Plaintiff claims that his former employer, OMET Americas, Inc., used iSolved's cloud-based biometric time and attendance system, called iSolved Time (formerly TimeForce), to authenticate and monitor his and other Illinois employees' working hours. (FAC ¶¶ 21, 30-31, 49.) Employers across Illinois use iSolved's time and attendance system to track their employees' working hours and, as part of that system, require employees to clock in and out of work by scanning their fingerprints on timeclocks provided by iSolved. (*Id.* ¶¶ 2, 21-23, 49.) Unbeknownst to Plaintiff and other workers, each time they scanned their fingerprints on an iSolved timeclock, Plaintiff alleges that the timeclock automatically sent their fingerprint data to iSolved's servers to be collected and stored. (*Id.* ¶¶ 22-23.) In doing so, Plaintiff claims that iSolved violated section 15(b) of BIPA by collecting his and other employees' fingerprints without first obtaining their informed, written consent, and also alleges that iSolved violated section 15(a) of BIPA by failing to establish and abide by a publicly-available retention and destruction policy for permanently destroying biometric data. (*Id.* ¶¶ 5, 25-26, 35-36.) iSolved denies that it has engaged in any wrongdoing.

C. Litigation, Negotiation, and Settlement

On November 7, 2019, Plaintiff filed this putative class action against iSolved in this Court. iSolved, a Delaware corporation, removed the case to the United State District Court for the Northern District of Illinois under the Class Action Fairness Act, where it moved to dismiss Plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). *See Villagomez v. iSolved HCM, LLC,* 19-cv-08205 (N.D. Ill.). However, the very next day, a court in the Northern District found that a defendant could not establish Article III standing for a plaintiff to pursue a Section 15(a) BIPA claim in federal court. *See Bryant v. Compass Grp. USA, Inc.*, 436 F. Supp.

3d 1087 (N.D. Ill. 2020).[2] In the wake of that decision, iSolved agreed to a joint stipulation remanding the case back to this Court to avoid litigating the Section 15(a) and Section 15(b) claims in different fora. After the case was remanded, Plaintiff served his first set of interrogatories and requests for production to iSolved, to which iSolved responded and supplemented in October 2020, beginning document production shortly thereafter. (Declaration of Schuyler Ufkes ("Ufkes Decl.") ¶ 3, attached hereto as Exhibit 2.)

In the meantime, iSolved moved to dismiss pursuant to Illinois Code of Civil Procedure Rules 2-615 and 2-619.1, arguing that it was not liable under section 15(a) or (b) of BIPA because it did not "interact" with its customers' employees, and that BIPA is unconstitutional "special legislation" under Article IV, Section 13 of the Illinois Constitution. Plaintiff opposed, arguing that BIPA applies to any entity that directly collects and stores biometric data, including third-party vendors like iSolved, and that BIPA's narrow exceptions do not make it unconstitutional. After full briefing, the Court stayed discovery pending ruling and, after hearing oral argument, granted iSolved's motion pursuant to 735 ILCS 2-615 only. The Court also granted Plaintiff leave to amend the complaint to add specific allegations regarding how iSolved collected the biometric data and its ability to access any such data. The Court refrained, at that point, from deciding iSolved's constitution arguments brought under 735 ILCS 2-619.

Plaintiff promptly filed his First Amended Complaint ("FAC"), which added allegations that iSolved's biometric timeclocks automatically uploaded his biometric data to iSolved's cloud-based servers, and that iSolved can access and manipulate his fingerprint data, including

---

[2] The Seventh Circuit later reversed the *Bryant* decision. *See Bryant v. Compass Grp. USA, Inc.*, 958 F.3d 617, 619 (7th Cir. 2020), *as amended on denial of reh'g and reh'g en banc* (June 30, 2020).

by deleting it. (*See* FAC ¶¶ 21-24.) iSolved again moved to dismiss pursuant to 735 ILCS 2-619.1, reasserting that BIPA is unconstitutional legislation, and arguing that Plaintiff still failed to state a claim under Sections 15(a) or (b). After full briefing and argument, the Court denied iSolved's motion pursuant to 735 ILCS 2-615, but entered and continued its constitutional argument pursuant to 735 ILCS 2-619. The Court ultimately denied iSolved's 735 ILCS 2-619.1 motion to dismiss in full on May 10, 2022 after hearing and oral argument.

The Parties then resumed the discovery process with the Parties first holding a Rule 201(k) conference on June 29, 2022 regarding deficiencies Plaintiff identified in iSolved's first written discovery responses and document production. (Ufkes Decl. ¶ 4.) On July 1, 2022, iSolved served its first set of written discovery requests to Plaintiff, and Plaintiff served his second set of written discovery requests to iSolved. (*Id.* ¶ 5.)

During this time, the Parties began exploring the potential for class-wide resolution, which included iSolved providing informal discovery regarding the size and composition of the class. (*Id.* ¶ 6.) With this informal discovery in hand, the Parties engaged in considerable arm's-length negotiations before ultimately reaching agreement on the material terms of a class-wide settlement, which the Parties memorialized in a binding Memorandum of Understanding on July 29, 2022. (*Id*. ¶¶ 6-7.) The Parties then spent the following several months preparing and negotiating the terms of the final, written settlement agreement, which was fully executed on October 10, 2022. (*Id*. ¶ 8.) Plaintiff then promptly moved for preliminary approval of the Settlement, which was granted on November 7, 2022. Most recently, Plaintiff and Class Counsel moved for an award of attorney's fees, expenses, and Plaintiff's incentive award on March 28, 2023 to be considered along with this Motion at the final approval hearing.

III. TERMS OF THE SETTLEMENT AGREEMENT

The terms of the Settlement are set forth in the Class Action Settlement Agreement, Exhibit 1, and are briefly summarized here:

A. Settlement Class Definition

In its order granting preliminary approval, the Court certified a Settlement Class of "[a]ll individuals who scanned their finger(s) in Illinois on a timeclock issued, leased or sold by iSolved, and for whom any alleged biometric data relating to that scan was shared with or stored by iSolved, between November 7, 2014 and November 7, 2022," (Prelim. Approval Order ¶ 3; Agreement § 1.26.) Excluded from the Settlement Class are: "(1) any Judge or Magistrate presiding over this action and members of their families, (2) Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, (3) persons who properly execute and file a timely request for exclusion from the Settlement Class, (4) the legal representatives, successors or assigns of any such excluded persons, and (5) persons who have released Defendant from claims brought in this Action." (Prelim. Approval Order ¶ 4; Agreement § 1.26.) The Settlement Class includes 7,636 individuals.[3]

B. Monetary Relief

Pursuant to the Settlement, iSolved has agreed to create a non-reversionary Settlement Fund in the amount of $2,486,750.00 for the benefit of the Settlement Class. From this fund,

[3] Prior to filing Plaintiff's motion for attorneys' fees, expenses, and incentive award, the Settlement Administrator mistakenly reported to Class Counsel that there were 7,998 unique individuals in the Settlement Class, as opposed to the 8,575 that Defendant reported prior to Plaintiff's motion for preliminary approval. However, the Settlement Administrator reported the 7,998 number before the class list had been deduplicated and otherwise processed. The final deduplicated class size is 7,636. (Declaration of Jacob Kamenir ("Kamenir Decl.") ¶ 4.) This discrepancy does not affect the Settlement in any way.

each Class Member who submits an Approved Claim will receive a *pro rata* share of the Settlement Fund, after payment of Settlement Administration Expenses, any incentive award to Plaintiff, and any attorneys' fee award. (Agreement §§ 1.24, 1.29, 2.1(a).) Should the Court approve Plaintiff's requested attorneys' fees and incentive award, and given the remarkable 43.98% claims rate, each Class Member who submitted an Approved Claim can expect to receive a Settlement Payment for approximately $455, which will be delivered via check or, if selected by the Class Member, by Venmo, Zelle, or PayPal. (*Id.* § 2.1(f).) Any uncashed checks or electronic payments unable to be processed within 180 days of issuance will, subject to Court approval, first be re-distributed to Class Members who cashed their checks or successfully received their electronic payments. If redistribution is not feasible or if residual funds remain in the Settlement Fund after redistribution, such funds shall be distributed as *cy pres* to Legal Aid Chicago or any other or additional *cy pres* recipient selected by the Court pursuant to 735 ILCS 5/2-807(b). (*Id.* § 2.1(i).)

C. Prospective Relief

Pursuant to the Settlement, iSolved has agreed to establish and maintain a publicly-available retention schedule and guidelines for permanently destroying any biometric data if it continues to store or host finger scan data, and has agreed to destroy biometric data in its possession pursuant to that policy. (*Id.* § 2.2.) iSolved has also agreed that, if it continues to store or host finger scan data, it will obtain written releases before individuals scan their finger on an iSolved timeclock, including via an on-screen release deployed automatically on the clocks. (*Id.*)

D. Payment of Settlement Notice and Administrative Costs

iSolved has and will continue to pay from the Settlement Fund all expenses incurred by the Settlement Administrator in, or associated with, administering the Settlement, providing

Notice, creating and maintaining the Settlement Website, receiving and processing Claim Forms, disbursing Settlement Payments by mail and electronic means, and any other related expenses. (*Id.* § 1.24.)

E. Payment of Attorneys' Fees, Costs, and Incentive Award

iSolved has agreed to pay Plaintiff's reasonable attorneys' fees and unreimbursed expenses to Class Counsel, subject to Court approval. (*Id.* § 8.1.) Class Counsel agreed, with no consideration from Defendant, to limit their request for fees to 35% of the Settlement Fund. (*Id.*) iSolved has also agreed to pay Plaintiff an incentive award in the amount of $5,000 from the Settlement Fund, subject to Court approval, in recognition of his efforts on behalf of the Settlement Class. (*Id.* § 8.2.) Class Counsel made these requests by separate motion filed on March 28, 2023, which is posted on the Settlement Website for Class Members to review.

F. Release of Liability

In exchange for the relief described above, iSolved and its related companies will be released from any and all claims relating to its alleged collection, possession, capture, purchase, receipt through trade, obtaining, sale, profit from, disclosure, re-disclosure, dissemination, storage, transmittal, and/or protection from disclosure of biometric information through the use of iSolved's timeclocks at its customers' Illinois facilities. (*Id.* §§ 1.21-1.23, 3.1.) iSolved's customers—including the Settlement Class's employers who used the iSolved timeclocks at issue—are explicitly excluded from the Settlement's release, meaning Class Members retain any separate BIPA claims they have against their employers for collecting the same biometric data. (*Id.* § 1.21.)

IV. THE CLASS NOTICE FULLY SATISFIED DUE PROCESS

Prior to granting final approval to this Settlement, the Court must consider whether the Class Members received the best notice practicable under the circumstances. *Lee v. Buth-Na-Bodhaige, Inc.*, 2019 IL App (5th) 180033, ¶ 80; *see Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). The "best notice practicable" does not necessarily require receipt of actual notice by all class members in order to comport with the requirements of due process. In general, a notice plan that reaches at least 70% of class members is considered reasonable. Federal Judicial Center, *Judges' Class Action Notice & Claims Process Checklist & Plain Language Guide*, at 3 (2010), available at https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf. Given that 98.4% of the Settlement Class received individual direct notice, the effectuation of the Court-approved notice plan readily satisfies due process. *See Carrao v. Health Care Serv. Corp.*, 118 Ill. App. 3d 417, 429-30 (1st Dist. 1983) (noting that while due process may require individual notice to class members whose identities and addresses can be readily obtained from defendant's files, it does not require individual notice in all circumstances).

The Court-approved notice plan here called for a thorough, individual direct notice plan. To start, Plaintiff moved the Court for and obtained an order compelling iSolved to provide the Settlement Administrator the Settlement Class members' names, mailing addresses, and personal email addresses ("Contact Information"), since iSolved was prohibited by contract from disclosing it without the consent of the customer or a court order directing iSolved to disclose the information. (Agreement § 4.1.) iSolved then provided the Settlement Administrator the class list, which after deduplication and further processing, contained the names of 7,636 unique Settlement Class members, 7,525 of which had a mailing address, and 5,666 of which had an email address. (Kamenir Decl. ¶ 4.) The Settlement Administrator updated the U.S. Mail

addresses through the National Change of Address database to ensure the most up-to-date addresses as possible. (*Id.* ¶ 5.) The Settlement Administrator then sent the Court-approved Notice via U.S. Mail and email to every Settlement Class member for whom an address or valid email address was available, which was successfully delivered via U.S. Mail to 7,505 class members and via email to 4,833 class members—only 122 class members were unable to be reached by either method. (*Id.* ¶ 15; Agreement § 4.2(a), (b).) Accordingly, direct notice was successfully delivered to 98.4% of the Settlement Class. (Kamenir Decl. ¶ 15.)

The Settlement Administrator also sent two rounds of reminder notices to Settlement Class members who, at each point, had not yet submitted a claim. The first round was sent on March 10, 2023 (i.e., 32 days prior to the Claims Deadline) via mail to 5,469 Settlement Class members and via email to 3,305 Settlement Class members. (*Id.* ¶ 16.) The second round was sent on March 28, 2023 (i.e., 14 days prior to the Claims Deadline) via mail to 4,918 Settlement Class members and via email to 2,895 Settlement Class members. (*Id.* ¶ 17.)

The original Notice and both reminder notices directed class members to the Settlement Website, www.iSolvedBIPASettlement.com, which has been and continues to be available 24/7. (*Id.* ¶ 8.) On the website, Settlement Class members could and are still able to access the "long form" notice, access important court filings—including Plaintiff's Motion and Memorandum of Law for Attorneys' Fees, Expenses, and Incentive Award—see deadlines and answers to frequently asked questions, and see instructions for attending the Final Approval Hearing via Zoom. (*Id.*; Agreement §§ 1.30, 4.2(d), 5.1(e).) The website also allowed Class Members to submit a Claim Form online up until the April 11th Claims Deadline.

Overall, the Notice program was highly successful, as direct Notice reached 98.4% of the Settlement Class and those notices have been supplemented with two rounds of reminder notices.

This greatly exceeds what is required for due process. *See Carrao*, 118 Ill. App. 3d at 429-30.

V. THE SETTLEMENT WARRANTS FINAL APPROVAL

The procedural and substantive standards governing final approval of a class action settlement are well settled in Illinois. *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 493 (1st Dist. 1992). The proposed settlement "must be fair and reasonable and in the best interest of all those who will be affected by it." *Id.* Because a proposed settlement is the result of compromise, "the court in approving it should not judge the legal and factual questions by the same criteria applied in a trial on the merits . . . [n]or should the court turn the settlement approval hearing into a trial." *Id.*

"Although review of class action settlements necessarily proceeds on a case-by-case basis, certain factors have been consistently identified as relevant to the determination of whether a settlement is fair, reasonable and adequate." *Id.* These factors—known as the *Korshak* factors—are:

> (1) The strength of the case for 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.

Id. (citing *City of Chi. v. Korshak*, 206 Ill. App. 3d 968, 971-72 (1st Dist. 1990)); *see also McCormick v. Adtalem Glob. Educ., Inc.*, 2022 IL App (1st) 201197-U ¶ 14 (reaffirming the standards for approval in this District).

Here, examination of each of the *Korshak* factors demonstrates that the Settlement is exceedingly fair, reasonable, adequate, and thus deserving of final approval.

A. The Relief Offered in the Settlement Weighs Strongly in Favor of Final Approval.

The first *Korshak* factor—the strength of plaintiff's case on the merits balanced against the relief offered in settlement—"is the most important factor in determining whether a settlement should be approved." *Steinberg v. Sys. Software Assocs., Inc.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999). While Plaintiff is confident that he ultimately would have prevailed had he continued to litigate, there were material obstacles to doing so. In light of those obstacles, the Settlement's substantial cash relief available to Class Members and prospective relief regarding iSolved's compliance with BIPA are exceptional, all while preserving Class Members' ability to bring separate BIPA claims against their employers. This factor thus weighs strongly in favor of approval.

1. *The relief provided by the Settlement is excellent.*

This Settlement provides outstanding relief to the Settlement Class. To start, iSolved has agreed to create a $2,486,750.00 Settlement Fund which, after fees and costs, will be distributed directly to Class Members with Approved Claims via check or an electronic payment method, with no reversion of any remaining monies to iSolved or any other Released Parties. Based on the current 43.98% claims rate, each Class Member with an Approved Claim is going to get a substantial payment—approximately $455 if this Settlement is approved.

The history of privacy class actions is unfortunately one in which settlements often secure minimal or no cash relief to class members, and—in some cases—still happens to this day. *See, e.g.*, *In re Google Plus Profile Litig.*, No. 5:18-cv-06164, dkt. 110 (N.D. Cal. Jan. 25, 2021) (approving $7.5 million fund that capped payments at $12 per claimant); *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 attorneys

general, a settlement providing only *cy pres* relief for violations of Electronic Communications Privacy Act); *Adkins v. Facebook, Inc.*, No. 18-cv-05982-WHA, dkts. 350, 369 (N.D. Cal. May 6, 2021 and July 13, 2021) (approving settlement for injunctive relief only, in class action arising out of Facebook data breach and granting $6.5 million in attorneys' fees and costs).

Many BIPA settlements have not fared better, providing only credit monitoring or reverting unclaimed funds back to defendants. *See, e.g.*, *Carroll v. Crème de la Crème, Inc.*, No. 2017-CH-01624 (Cir. Ct. Cook Cnty. June 6, 2018) (credit monitoring only); *Zhirovetskiy v. Zayo Grp., LLC*, No. 2017-CH-09323 (Cir. Ct. Cook Cnty. Apr. 8, 2018) ($900,000 fund for 2,200 class members, which capped payments at $400 and reverted up to $490,000 of unclaimed funds back to defendant); *Marshall v. LifeTime Fitness, Inc.*, No. 2017-CH-14262 (Cir. Ct. Cook Cnty. July 30, 2019) (providing credit monitoring and capping class member payments at $270 per claimant, with unclaimed funds reverting to defendant).

Even when compared to the other BIPA vendor cases that have settled, this one excels—the $2,486,750.00 fund for 7,636 class members represents the highest per person relief ever secured in a BIPA vendor case. *See Thome v. NOVAtime Tech., Inc.*, No. 19-cv-6256, dkt. 90 (N.D. Ill. Mar. 8, 2021) ($4.1 million fund for 62,000 class members); *Kusinski v. ADP LLC*, No. 2017-CH-12364 (Cir. Ct. Cook Cnty. Feb. 10, 2021) ($25 million fund for approximately 320,000 class members); *Figueroa v. Kronos Inc.*, No. 19-cv-01306, dkt. 380 (N.D. Ill. Dec. 20, 2022) ($15,276,227 fund originally negotiated for 171,643 class members); *Neals v. ParTech, Inc.*, No. 19-cv-05660, dkt. 140 (N.D. Ill. July 20, 2022) ($790,000 fund for 3,560 class members); *LaBarre v. Ceridian HCM, Inc.*, No. 2019-CH-06489 (Cir. Ct. Cook Cnty. Nov. 30, 2022) ($3,493,0740 fund for 14,142 class members); *see also Bryant v. Compass Grp. USA, Inc.*, No. 19-cv-06622, dkt. 125 (N.D. Ill. Sept. 8, 2022) (approving $6.8 million settlement for 63,455

class members, which releases both the vendor of the biometric technology and all of its customers). This monetary relief is even more remarkable considering that BIPA claims against vendors are commonly released for nothing in BIPA cases brought against employers, with no separate payment for the vendor's separate BIPA violations or promise of injunctive relief. *But see Fluker v. Glanbia Performance Nutrition, Inc.*, No. 2017-CH-12993 (Cir. Ct. Cook. Cnty.) (carving out third-party vendor, ADP, from release in BIPA settlement secured by Class Counsel from Edelson PC); *Abusalem v. The Standard Mkt., LLC*, No. 2019-L-000517 (Cir. Ct. DuPage Cnty.) (carving out third-party vendor, Ceridian, from release in BIPA settlement secured by Class Counsel from Fish Potter Bolaños, P.C.).

To that end, the Settlement also preserves Class Members' BIPA claims against their employers—Class Members will retain all their rights to pursue claims against their respective employers and can seek damages and injunctive relief against their employers for BIPA violations for the same biometric data at issue here. (Agreement § 1.22 (the Released Parties definition does not include "Defendant's customers (including, specifically, employers that used an iSolved timeclock in Illinois)").) This carve-out enables Class Members to pursue the full scope of their privacy rights under BIPA. As discussed above, in some BIPA cases against employers, class members are forced to release the third-party vendor for nothing. And, in some BIPA cases against vendors, class members lose the opportunity to sue their employer as part of the settlement with the vendor. This Settlement allows Class Members to pursue both sets of BIPA claims.

And the Class Members' employer BIPA claims are valuable: on average, class settlements between employees and their employers who used biometric timeclocks settle for over $1,000 per class member before fees and costs are deducted. *E.g.*, *Martinez v. Nando's Rest.*

Grp., Inc, No. 19-cv-07012, dkt. 63 (N.D. Ill. Oct. 27, 2020) (fund constituting $1,000 per person with direct checks sent to all class members); *Edmond v. DPI Specialty Foods, Inc.*, No. 2018-CH-09573 (same); *Watts v. Aurora Chicago Lakeshore Hosp. LLC*, No. 2017-CH-12756 (Cir. Ct. Cook Cnty.) (same); *Mazurkiewicz v. Mid City Nissan*, No. 2018-CH-09798 (Cir. Ct. Cook Cnty.) (fund constituting $1,250 per person with direct checks sent to all class members); *Fluker*, 2017-CH-12933 (fund constituting $1,300 per person with direct checks sent to all class members). Not only are the Class Members here receiving significant monetary relief in light of the defenses in vendor cases that are not present in employer casers, but they are maintaining their claims that fall into this employer-employee category.

Finally, the non-monetary benefits created by the Settlement—iSolved's promise to establish and maintain a retention and deletion policy and obtain proper consent on its behalf, including via on-screen consent—support approval. (Agreement § 2.2.) In sum, the monetary and prospective relief provided by the Settlement is excellent and merits approval.

2. *Plaintiff and the Settlement Class faced serious obstacles to relief, both inside and outside the courtroom.*

When Plaintiff filed this case, BIPA was rife with issues of first impression. Had this case progressed to further motion practice and trial, iSolved would have raised numerous arguments that could have substantially or fully deprived the Settlement Class of relief. When the Parties settled in September 2022, there were several issues pending at the appellate level that seriously threatened Plaintiff's and the class's recovery. Considering those risks, the relief obtained for the Settlement Class is even more outstanding.

At the time the Parties reached a deal, it was still unclear (1) whether a one- or five-year statute of limitations applies to BIPA claims, and (2) whether BIPA claims start to accrue, for limitations purposes, after the first collection of biometric data or after the last collection. When

the Parties settled, there were two appeals pending in the Illinois Supreme Court on these two issues (in *Tims v. Black Horse Carriers, Inc.*, 2023 IL 127801, and *Cothron v. White Castle System, Inc.*, 2023 IL 128004, respectively) that if decided in iSolved's favor, would have extinguished many of the Class Members' claims in this case or denied them relief altogether. Although the Illinois Supreme Court ultimately decided these issues in Plaintiff's favor just a few months ago—finding in *Tims* that a five-year limitations period applies to all BIPA claims and finding in *Cothron* that BIPA claims start to accrue after the last collection of biometric data—settling when the Parties did eliminated the risk of an unfavorable ruling.

Though the *Cothron* decision went on to find that plaintiffs can recover damages for *every* scan and transmission of biometric data in violation of Section 15(b) and 15(d) of BIPA, *see* 2023 IL 128004 ¶ 40, the Illinois Supreme Court also suggested that any award of damages under BIPA is discretionary, not mandatory, *id.* ¶ 42. Thus, while there was a chance of obtaining an astronomical per-scan damages award for the class (assuming further discovery revealed that a biometric template was transmitted to iSolved each time Plaintiff and the class scanned their finger), there was also a chance the Court would dramatically reduce the damages, even if Plaintiff certified the class and won on the merits. *Id.* ("[T]here is no language in the Act suggesting legislative intent to authorize a damages award that would result in the financial destruction of a business."). As such, the compromised result here, which will provide every Class Member about $455 after fees and costs, is an excellent result for the class and allows iSolved to walk away from the litigation without threatening the existence of its business.

Further, on the merits, iSolved would have asserted—like nearly every other BIPA defendant—that the fingerprint data collected by its scanners are neither "biometric identifiers" nor "biometric information" as defined by BIPA, but some other type of information not covered

by the statute. Rather, the argument goes, the scanner merely scans a person's fingertip and creates an alphanumerical representation of the fingerprint (known as a "template" or "blob"), and any image of the fingerprint is immediately discarded. While Plaintiff seriously questions the merit of this argument, given that the definition of "biometric information" in the statute includes "any information, regardless of how it is captured, converted, stored, or shared" based on a fingerprint, *see* 740 ILCS 14/10, but no court has ruled on this issue yet at summary judgment or trial. *See Howe v. Speedway LLC*, No. 19-cv-01374, dkts. 125, 140, 149 (N.D. Ill. Oct. 28, 2021, Dec. 14, 2021, and Jan. 11, 2022) (fully briefed motion for summary judgment on this issue in fingerprint scan case). Given the significant exposure that iSolved faced, Plaintiff expects that iSolved would have appealed these issues, further delaying relief.

Moreover, the attacks on BIPA in the legislature have been relentless,[4] and it is not unprecedented for legislation to be amended retroactively while a class action is pending in a way that threatens the class's entire recovery. *See Perlin v. Time Inc.*, 237 F. Supp. 3d 623, 629-30 (E.D. Mich. 2017) (considering defendant's argument that an amendment to Michigan's Video Rental Protection Act was retroactive). With the Illinois Supreme Court's recent decisions in *Tims* and *Cothron* adopting interpretations of BIPA that could lead to large statutory damage awards in BIPA class actions, these attacks will likely only increase. Were BIPA to be gutted—as tech companies, timeclock vendors, and the Chamber of Commerce have advocated in nearly every legislative session—the class might be deprived of *any* monetary relief.

[4] *E.g.*, H.B. 1230, 103rd Gen. Assembly (Ill. 2023); H.B. 4692, 102nd Gen. Assembly (Ill. 2022); S.B. 3874, 102nd Gen. Assembly (Ill. 2022); S.B. 3782, 102nd Gen. Assembly (Ill. 2022); H.B. 559, 102nd Gen. Assembly (Ill. 2021); H.B. 560, 102nd Gen. Assembly (Ill. 2021); H.B. 1764, 102nd Gen. Assembly (Ill. 2021); H.B. 3112, 102nd Gen. Assembly (Ill. 2021); H.B. 3304, 102nd Gen. Assembly (Ill. 2021); H.B. 3414, 102nd Gen. Assembly (Ill. 2021); S.B. 56, 102nd Gen. Assembly (Ill. 2021); S.B. 300, 102nd Gen. Assembly (Ill. 2021).

Finally, even if Plaintiff had succeeded at summary judgment and/or trial, Plaintiff recognizes that, due to the aggregate statutory damages in play, iSolved would likely argue for a reduction in damages based on due process concerns. *See, e.g.*, *Golan v. FreeEats.com, Inc.*, 930 F.3d 950, 962-63 (8th Cir. 2019) (statutory award in TCPA class action of $1.6 billion reduced to $32 million); *Wakefield v. ViSalus, Inc.*, 51 F.4th 1109, 1125 (9th Cir. 2022), *cert. denied*, No. 22-920, 2023 WL 2959423 (U.S. Apr. 17, 2023) (in TCPA case, vacating district court's denial of defendant's post-trial motion challenging the constitutionality of $925 million statutory damages award under TCPA and remanding for further proceedings); *but see U.S. v. Dish Network L.L.C.*, 954 F.3d 970, 980 (7th Cir. 2020), *cert. dismissed*, 141 S. Ct. 729 (2021) (statutory award of $280 million for violating various telemarketing statues over 65 million times did not violate due process). Ultimately, failure at any one of these points could strip Plaintiff and the class of all recovery, making further litigation a risky endeavor.

Plaintiff has factored in both the significant risks that would necessarily accompany continued litigation, as well as the significant delay that would case. This Settlement provides an excellent result now and is by any measure a sound resolution of these claims. Consequently, the first and most important *Korshak* factor weighs strongly in favor of finally approving the Settlement.

B. Defendant's Ability to Pay Supports the Settlement.

The second *Korshak* factor considers the defendant's ability to pay. Here, a full victory at trial for the Class Members would result in a substantial aggregate judgment against iSolved, even if it were not found reckless or willful in its actions. *See Kleen Prods. LLC v. Int'l Paper Co.*, No. 1:10-CV-05711, 2017 WL 5247928, at *2 (N.D. Ill. Oct. 17, 2017) (finding that "the size of the potential recovery weighs in favor of the [s]ettlement[,]" even though defendants had

substantial ability to pay). And even if iSolved could have somehow, if pressed, paid a larger amount, that is irrelevant when the proposed Settlement is otherwise fair, reasonable, and adequate and a judgment would represent a significantly greater negative impact on the company's financials. *See Glaberson v. Comcast Corp.*, No. CV 03-6604, 2015 WL 5582251, at *7 (E.D. Pa. Sept. 22, 2015) (collecting cases). Thus, given iSolved's willingness to pay the substantial Settlement amount now, with no risk of non-recovery to the class, this factor is thus favorable in approving the Settlement. *Id.* at *8.

C. The Complexity, Length, and Expense of Further Litigation Weighs in Favor of Settlement.

The third *Korshak* factor—the complexity, length, and expense of further litigation—also weighs in favor of final Settlement approval. "As courts recognize, a dollar obtained in settlement today is worth more than a dollar obtained after a trial and appeals years later." *Goldsmith v. Tech. Sols. Co.*, No. 92 C 4374, 1995 WL 17009594, at *4 (N.D. Ill. Oct. 10, 1995). The Settlement here allows Class Members to receive immediate relief, avoiding lengthy and costly additional litigation.

This case has been pending for over three years. Had the parties continued to litigate, iSolved would have fought tooth and nail to preclude class certification and defeat Plaintiff's claims at summary judgment. The losing party at either stage would likely have appealed the determination. Assuming that the class would ultimately have been certified (and that Plaintiff would have defeated a summary judgment motion), the case would have proceeded to trial where the parties are likely to litigate a number of complex issues that, in light of BIPA's relative infancy, are either still being resolved by the courts or are matters of first impression. *See, e.g.*, *Douglas v. W. Union Co.*, 328 F.R.D. 204, 215-16 (N.D. Ill. 2018) (approving TCPA class action settlement where, at the time of settlement, there were unsettled legal questions that could have

defeated plaintiff's and the class's claims outright). Again, although Plaintiff believes in the strength of his claims—a risk that iSolved evidently appreciated in light of the Settlement it agreed to—further litigation posed risk on both sides.

Protracted litigation would also consume significant resources, including the time and costs associated with oral discovery, securing expert testimony on complex biometric and data storage issues, and, again, motion practice, trial, and any appeals. It is possible that "this drawn-out, complex, and costly litigation process . . . would provide [c]lass [m]embers with either no in-court recovery or some recovery many years from now . . . ." *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 964 (N.D. Ill. 2011). On the other hand, "[s]ettlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation." *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011). Continued litigation would have caused greater delay and expense with no guarantee of recovery for the Settlement Class, and thus, this *Korshak* factor strongly weighs in favor of approval. *See Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 19 (affirming trial court's finding that third *Korshak* factor was satisfied where further litigation would have "require[d] the parties to incur additional expense, substantial time, effort, and resources").

D. The Positive Reaction to the Settlement Supports Final Approval.

The fourth and sixth *Korshak* factors—the amount of opposition to the Settlement and Class Members' reaction to the Settlement—are closely related and often examined together. *See, e.g., Korshak*, 206 Ill. App. 3d at 973. Here, the Settlement Class's reaction to the Settlement has been overwhelmingly positive and weighs strongly in favor final approval.

As stated above, after the Court-approved Notice plan was enacted, an astounding 3,358 Class Members—or 43.98% of the Settlement Class—have submitted Approved Claims.

(Kamenir Decl. ¶ 20.) This is an incredibly positive reaction from the Settlement Class. *See Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns*, FED. TRADE COMM'N, 11 (Sept. 2019) ("Across all cases in our sample requiring a claims process, the median calculated claims rate was 9%, and the weighted mean (*i.e.*, cases weighted by the number of notice recipients) was 4%."). Indeed, the rate at which Class Members are participating in this Settlement far exceeds the participation rates of previous BIPA settlements. *See Prelipceanu v. Jumio Corp.*, 2018-CH-15883 (Cir. Ct. Cook Cnty. July 21, 2020) (5% claims rate); *Thome*, No. 19-cv-6256, dkt. 90 (10% claims rate); *Rottner v. Palm Beach Tan, Inc.*, 2015-CH-16695 (10.6% claims rate); *Kusinski*, No. 2017-CH-12364 (12.7% claims rate); *Sekura v. L.A. Tan Enters., Inc.*, No. 2015-CH-16694 (Cir. Ct. Cook Cnty. Dec. 1, 2016) (15% claims rate); *Bryant*, No. 19-cv-06622, dkt. 123 (16.94% claims rate); *Crumpton v. Octapharma Plasma, LLC*, No. 19-cv-08402, dkt. 92 (N.D. Ill. Feb. 16, 2022) (22% claims rate); *Neals*, No. 19-cv-05660, dkt. 140 (23.86% claims rate); *LaBarre*, No. 2019-CH-06489 (26.2% claims rate).

Conversely, not a single individual has requested to opt out or objected. *GMAC Mortg.*, 236 Ill. App. 3d at 497 ("The fact that only 26 of 590,000 members elected to opt-out is testimony . . . that the class believes the settlement is fair"); *Shaun Fauley*, 2016 IL App (2d) 150236, ¶ 20 (affirming trial court's finding that where opposition to class settlement was "*de minimis*," this fact weighed in favor of settlement approval).

Altogether, the Settlement's outstanding claims rate, coupled with not a single opt out or objection, provide strong evidence of the Settlement's favorability. *See In re Mexico Money Transfer Litig. (W. Union & Valuta)*, 164 F. Supp. 2d 1002, 1021 (N.D. Ill. 2000), (acceptance rate of 99.9% of class members "is strong circumstantial evidence in favor of the settlement[]"). These two *Korshak* factors thus strongly support granting final approval to the Settlement.

E. There Was Absolutely No Collusion Between the Parties.

The next *Korshak* factor—the presence or absence of collusion in reaching a settlement—also weighs in favor of final approval, as there was absolutely no collusion here. *See Korshak*, 206 Ill. App. 3d at 972. Where the record shows "good-faith, arm's-length negotiation," there was no collusion. *Shaun Fauley*, 2016 IL App (2d) 150236, ¶¶ 21, 50; *see also Korshak*, 206 Ill. App. 3d at 973 (affirming trial court's finding of no collusion where case "was hard fought by both counsel . . . and . . . settlement was reached after vigorously contested litigation and hard bargaining"). That is what occurred here.

The Parties here litigated the case for three years before reaching a settlement, which required briefing and arguing two motions to dismiss and engaging in significant written discovery. iSolved also produced informal discovery regarding the approximate size and composition of the putative class to inform settlement discussions. After several months of arm's-length negotiations, the Parties ultimately reached agreement on the material terms of a settlement and executed a binding Memorandum of Understanding. (Ufkes Decl. ¶ 7.) Even after the principal terms were determined, however, it took several months of considerable negotiation to reach the detailed terms of the Settlement Agreement now before the Court. (*Id.* ¶ 6.) The Court should not hesitate to find that this factor weighs strongly in favor of settlement approval as no collusion occurred.

F. It Is Class Counsel's Opinion That the Settlement is in the Best Interest of All Settlement Class Members.

The seventh *Korshak* factor, which weighs the opinion of competent counsel, also favors final approval of this Settlement. First, Class Counsel are more than competent to give their opinion on this Settlement. The attorneys at Edelson PC are seasoned class action litigators, with extensive experience handling BIPA claims. (*See* Firm Resume of Edelson PC, attached as

Exhibit 2-A to the Wade-Scott Decl.); *see McCormick*, 2022 IL App (1st) 201197-U, ¶ 30 (citing the trial judge's findings that Edelson PC is "highly experienced and more than competent," that they had performed "an extraordinary job to secure the amount of money for the class," and that the settlement was "truly an extraordinary resolution to the great benefit of the class"); *see also Licata v. Facebook, Inc.*, No. 2015-CH-05427 (Cir. Ct. Cook Cnty. Apr. 1, 2015) (first-ever filed class action under BIPA); *Sekura v. L.A. Tan Enters.*, Inc. No. 2015-CH-16694 (Cir. Ct. Cook Cnty. Dec. 1, 2016) (first-ever BIPA settlement); *In re Facebook Biometric Info. Priv. Litig.*, 522 F. Supp. 3d 617, 621 (N.D. Cal. 2021) (securing the largest-ever BIPA settlement, with the court noting "the settlement is a major win for consumers in the hotly contested area of digital privacy.")

The firm has also achieved many of the seminal appellate rulings on the matters of first impression under BIPA. *See Patel v. Facebook, Inc.*, 932 F.3d 1264, 1277 (9th Cir. 2019) (defending class certification and standing on appeal); *Sekura v. Krishna Schaumburg Tan, Inc.*, 2018 IL App (1st) 180175, ¶ 84 (holding, pre-*Rosenbach*, that a person did not need to plead additional harm to be "aggrieved" within the meaning of BIPA's damages provision); *Rottner v. Palm Beach Tan, Inc.*, 2019 IL App (1st) 180691-U (holding that a violation of BIPA is sufficient to claim liquidated damages); *McDonald v. Symphony Bronzeville Park LLC*, 2022 IL 126511 (holding that the exclusivity provisions of the Illinois Workers' Compensation Act do not bar employee BIPA claims against employers); *Sosa v. Onfido, Inc.*, 8 F.4th 631 (7th Cir. 2021) (affirming district court's denial of motion to compel arbitration).

Class Counsel Fish Potter Bolaños, P.C. is a deeply experienced class action and employment law firm. Its attorneys have been involved in dozens of BIPA cases—primarily in the employment context—and have helped recover tens of millions of dollars for Illinois

workers. *See, e.g.*, *O'Sullivan v. WAM Holdings, Inc.*, No. 2019-CH-11575 (Cir. Ct. Cook Cnty.) ($5.85 million); *Davis v. Heartland Emp. Servs.*, No. 19-cv-00680 (N.D. Ill.) ($5.4 million); *Johnson v. Resthaven/Providence Life Servs.*, No. 2019-CH-1813 (Cir. Ct. Cook Cnty.) ($3 million); *Burlinski v. Top Golf USA Inc.*, No. 19-cv-06700, dkt. 103 (N.D. Ill. Oct. 13, 2021) ($2.6 million); *Diller v. Ryder Integrated Logistics*, No. 2019-CH-3032 (Cir. Ct. Cook Cnty.) ($2.25 million); *Jones v. Rosebud Rests., Inc.*, No. 2019-CH-10620 (Cir. Ct. Cook Cnty. Aug. 17, 2020) ($2.1 million); *Martinez*, No. 19-cv-07012, dkt. 63 ($1.78 million). They, too, are more than competent to provide their opinion on the strength of the Settlement. *See GMAC Mortg.*, 236 Ill. App. 3d at 497 (noting class counsel's competency due to class action experience and familiarity with the litigation).

Put simply, Class Counsel believe that the Settlement is certainly in the best interests of the Settlement Class. (*See* Ufkes Decl. ¶ 11.) (*See* Declaration of David Fish ("Fish Decl.") attached as Exhibit 4, at ¶ 8.) First, the monetary relief provided far exceeds the relief in many statutory privacy class settlements and sets a new bar for similar BIPA cases, as it provides the highest per-person relief in a BIPA settlement with a vendor to date. Second, a recovery for the Settlement Class now is preferable to years of litigation and inevitable appeals with no guarantee of recovery. Third, and finally, the injunctive and prospective measures provided for in the Settlement ensure that Class Members are protected going forward. For these reasons, the opinion of Class Counsel weighs in favor of final approval.

G. The Stage of Proceedings Supports Final Approval of the Settlement.

The final factor looks to the state of proceedings and the amount of discovery completed before the parties entered into the settlement. *See Korshak*, 206 Ill. App. 3d at 972. To start, the proceedings here are well-advanced as the parties litigated this case for over three years. The

Parties fully briefed two motions to dismiss, exchanged significant written discovery, and iSolved provided informal discovery on the approximate number of individuals who scanned their fingers on iSolved's timeclock system in Illinois during the relevant time period. Class Counsel's pre-suit investigation, as well as their experience litigating similar BIPA cases against timeclock vendors, also shed light on the more technical details of how the iSolved Time timeclocks allegedly collected biometric data and sent that data to iSolved's cloud-based servers. At this point, the underlying facts of Plaintiff's and the Class Members' claims are clear: iSolved supplied customers who had locations in Illinois with its iSolved Time finger-scanning timeclock system to track employee time, stored or hosted "templates" based on its customers' employees' fingertips on its servers, and did not itself seek prior informed written consent to do so. By the time the parties reached this Settlement, discovery and litigation was significantly advanced such that the strengths and weaknesses of the case could be fully assessed. This factor, then, like all the others, strongly supports final approval of the Settlement.

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court enter an order finally approving the parties' Settlement and ordering such other relief as this Court deems reasonable and just. For the Court's convenience, Plaintiff will submit a proposed final approval order to the Court's designated email address prior to the May 11, 2023 final approval hearing.

Respectfully submitted,

SERGIO VILLAGOMEZ individually and on behalf of a class of similarly situated individuals,

Dated: April 25, 2023

By: /s/ Schuyler Ufkes
One of Plaintiff's attorneys

Jay Edelson
jedelson@edelson.com

J. Eli Wade-Scott
ewadescott@edelson.com
Schuyler Ufkes
sufkes@edelson.com
EDELSON PC
350 North LaSalle Street, 14th Floor
Chicago, Illinois 60654
Tel: 312.589.6370
Fax: 312.589.6378
Firm ID: 62075

David Fish
dfish@fishlawfirm.com
FISH POTTER BOLAÑOS PC
200 East 5th Avenue, Suite 123
Naperville, Illinois 60563
Tel: 630.355.7590
Fax: 630.778.0400
Firm ID: 44086

CERTIFICATE OF SERVICE

I, Schuyler Ufkes, an attorney, hereby certify that I served the above and foregoing ***Plaintiff's Motion and Memorandum in Support of Final Approval of Class Action Settlement*** on all counsel of record by causing true and accurate copies of such paper to be filed through the Court's electronic filing system on April 25, 2023.

/s/ Schuyler Ufkes