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

TINA VELASCO, individually and on behalf of all others similarly situated, *Plaintiff*, v. BELMONT GROCERIES, LLC, d/b/a RICH'S FRESH MARKET *Defendant*.	Case No. 2023-CH-01077 Calendar 14 Courtroom 2301 Hon. Clare J. Quish

PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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1. INTRODUCTION

Plaintiff Tina Velasco alleges that Defendant Belmont Groceries, LLC required her and a class of workers to use a timeclock that scanned her hand geometry without providing proper notice or consent, in violation of the Biometric Information Privacy Act, 740 ILCS 14/1–99 ("BIPA"). After months of negotiations and two settlement conferences with Judge Conlon, the parties have reached a proposed class settlement (the "Settlement"), described below:[1]

Settlement Fund	$430,000.00
Number of class members	785
Attorneys' fees	One-third of the gross fund
Litigation costs	$1,804.17
Administrative costs	$29,841.00
Incentive award(s)	$5,000.00
Net class member recovery	$250,021.50 ($318.50/member)
Is there a reverter or clear sailing provision?	No

Plaintiff now seeks preliminary approval of the Settlement, certification of the Class[2] for settlement purposes only, appointment of Class Counsel, and approval of the notice plan. The relief obtained in the settlement compares favorably to the strength of Plaintiff's case and recognizes that Defendant has potential defenses to the same. *See Steinberg v. Software Assocs., Inc.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999). Had litigation continued, Plaintiff and the Class faced a substantial risk of nonrecovery, whether through risk of defeat or inability to collect a judgment. Given those risks, the Settlement, which includes meaningful cash compensation to class members

[1] At the October 25, 2024 status hearing, the Court requested that the preliminary approval motion include the information required by Judge Conlon's recently amended standing order. The chart is taken directly from Judge Conlon's standing order, and the remaining data points identified in Judge Conlon's standing order are addressed throughout the brief.

[2] All capitalized terms used herein have the same meaning provided in the Settlement.

without the need for them to complete any claims process, exceeds the standards of fairness. Accordingly, the Court should preliminarily approve the Settlement.

2. BACKGROUND

2.1. The Biometric Information Privacy Act

Recognizing the "very serious need" to protect Illinoisans' biometrics—including fingerprints, voiceprints, retina scans, and scans of hand or face geometry—the Illinois legislature passed BIPA unanimously in 2008. 740 ILCS 14/5. 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 handling biometric data. For example, BIPA requires companies to develop and comply with a written policy establishing a retention schedule and guidelines for permanently destroying biometric data, 740 ILCS 14/15(a), and bars nonconsensual disclosure of biometrics. 740 ILCS 14/15(d).

2.2. Litigation, Negotiation, and Settlement

Unless otherwise stated, the following facts come from Plaintiff's complaints. Plaintiff alleges that she worked at Defendant's grocery store from 2019 to 2020. Throughout that time, Defendant required its hourly workers to clock in and out of shifts with a hand-scanning timeclock. Second Amended Complaint ("SAC"), ¶ 8, 9. While Plaintiff worked for Defendant, Defendant did not obtain workers' informed, written consent prior to scanning their hand geometry, nor did it

maintain a publicly available retention-and-destruction schedule for biometric data. *Id.* ¶ 3. On August 1, 2022, Defendant began requiring its employees to execute a consent form prior to using the hand-scanning timeclock. Declaration of J. Dominick Larry ("Larry Decl.") ¶ 21.

On February 2, 2023, Plaintiff sued Defendant, alleging that it violated BIPA's by failing to publish and comply with a biometric retention and destruction policy, and obtain informed, written consent prior to collecting biometrics. Complaint, ¶¶ 31–44; 740 ILCS 14/15(a), (b). Plaintiff sought to certify a class of everyone who used Defendant's biometric timeclocks in Illinois during the applicable limitations period, *id.* ¶ 22, and requested statutory damages of $5,000 per violation on their behalf. *Id.*, Prayer for Relief.

On September 14, 2023, Plaintiff amended her complaint, adding a claim for violation of BIPA's prohibition on the disclosure of biometric identifiers or information without consent. *See* 740 ILCS 14/15(d). On November 15, 2023, two days after Defendant answered, Plaintiff served her first set of requests for production, requests for admission, and interrogatories. Larry Decl. ¶ 16. Defendant responded to Plaintiff's discovery requests on January 10, 2024, before making its document production on March 15, 2024. *Id.* ¶ 17. Defendant served Plaintiff with interrogatories and requests for production on January 11, 2024, which Plaintiff answered on February 22, 2024. *Id.* ¶ 18. Plaintiff served another round of requests for production and interrogatories on February 26, 2024, *Id.* ¶ 19, and subpoenaed Defendant's timekeeping vendors on April 1, 2024. *Id.* Defendant answered Plaintiff's second set of discovery on April 5, 2024. *Id.*

While Plaintiff and Defendant were engaged in the initial pleadings and discovery, multiple coverage disputes arose between Defendant and its insurers, leading to the filing of three coverage actions. *See Erie Ins. Co. v. Belmont Groceries, LLC, et al.*, No. 2023-CH-05794 (Cir. Ct. Cook Cnty., Ill., Chancery Div., Cal. 14, June 20, 2023); *AmGUARD Ins. Co. v. Belmont Groceries, LLC,*

et al., No. 2024-CH-00823 (Cir. Ct. Cook Cnty., Ill., Chancery Div., Cal. 14, Feb. 8, 2024); *Liberty Mut. Fire Ins. Co. et al. v. Belmont Groceries, LLC, et al.*, No. 2024-CH-04230 (Cir. Ct. Cook Cnty., Ill., Chancery Div., Cal. 7, May 7, 2024).

The Parties began discussing settlement shortly after Defendant appeared on June 5, 2023. Larry Decl. ¶ 22. Those discussions were complicated by Defendant's insurance situation, but the parties exchanged information relevant to settlement while litigating. *Id.* ¶¶ 23–26. Eventually, on July 2, 2024, the parties engaged in a settlement conference with Judge Conlon, which resulted in progress but no settlement. *Id.* ¶ 27. Following that settlement conference, Plaintiff filed a second amended complaint with the Court's leave, adding a common-law claim for intrusion upon seclusion. *Id.* ¶ 20. The parties held a second settlement conference with Judge Conlon on August 30, 2024. *Id.* ¶ 28. Once again, the parties made substantial progress, but failed to reach an agreement. *Id.* Over the following weeks, the parties—including Defendant's insurers—continued to negotiate, before reaching an agreement in principle on September 27, 2024. *Id.*

That process has resulted in the agreement now before the Court: Defendant will establish a settlement fund of $430,000; Class members will automatically receive checks, without having to submit claim forms; funds from uncashed checks will—if sufficient to cover distribution costs—be redistributed to those class members who timely cashed their checks; and any remaining funds after that will be donated to a *cy pres* recipient.[3]

3. TERMS OF THE SETTLEMENT

3.1. Class Definition

The proposed Settlement Class consists of all individuals who used a hand-scanning timeclock while working for Belmont Groceries, LLC d/b/a Rich's Fresh Market at any time from

[3] The parties have agreed, subject to Court approval, for the *cy pres* recipient to be Legal Aid Chicago, earmarked to support the Workers' Rights Practice Group.

February 2, 2018 to August 1, 2022. Agreement, Ex. 1, ¶ 1.24. Excluded from the Class are (1) any Judge or Magistrate presiding over this action; (2) any officer or director of Defendant; (3) counsel for either party; (4) the family members, employees, and staff of anyone within exclusion (1), (2), or (3); and (5) the legal representatives, successors, or assigns of any excluded persons. *Id.* Defendant has represented in discovery that the Class contains 785 individuals. *Id*.

3.2. Settlement Payments

Defendant has agreed to pay $430,000, from which costs of notice and administration (estimated at $29,841), attorneys' fees (up to $143,333.33) and costs (up to $1,804.17), and Plaintiff's incentive award (up to $5,000) will be paid. Settlement Agreement, ¶¶ 8.1–8.3. The remaining amount ($250,021.50) will be distributed *pro rata* to the Class members. *Id.* ¶¶ 1.27, 2.2. It is anticipated that the initial checks will be $318.50 for each Class member.

3.3. Prospective Relief

Under the Settlement, Defendant will ensure deletion of any handprint template data relating still in Defendant's possession and relating to any former employee. Settlement Agreement, ¶ 2.3. Additionally, to the extent Defendant continues to use biometric timeclocks in Illinois, it shall continue to implement policies and procedures sufficient to obtain informed, written consent from employees prior to the employees' use of the timeclock. *Id.*

3.4. Release of Liability

Upon the Settlement's Effective Date, (i) Plaintiff and every Class Member who has not timely filed a request to be excluded from the Class will release and forever discharge the Released Parties as further explained in the Settlement Agreement, and (ii) the Court will be asked to enter a final judgment in favor of Defendant, dismissing with prejudice all claims asserted in, or that could have been asserted in, this action. Settlement Agreement ¶ 3.1.

3.5. Payment of Notice and Administration Costs

The Settlement Fund will be used to pay the costs of notice and administration. *Id.* ¶ 2.1. To that end, Defendant will provide the Settlement Administrator with the class list, containing, where known, the first and last name, middle initial, last-known address, and last-known telephone number of each Class member. *Id.* ¶ 4.1.1. The Administrator will then update the Class members' addresses using the National Change of Address database and skip-tracing resources. *Id.* ¶ 4.1.2.

The Settlement Administrator will then send direct notice in the form of a postcard sent via U.S.P.S. first-class mail, detailing the settlement, the Class members' options, providing the dates and instructions for objections, exclusions, and the final approval hearing, and apprising the Class members of their rights, in English and Spanish (the main languages spoken by the Class).[4] Settlement, ¶¶ 1.14, 4.1.3. If any Notice or Settlement Payment check is returned as undeliverable, the Settlement Administrator shall perform a skip trace to attempt to identify the Settlement Class Member's correct address and shall attempt re-mailings. *Id.* The Settlement Administrator will also launch a settlement website, providing the long-form notice, FAQs, hearing information and deadlines, and key case documents. *Id.*, ¶ 4.1.4.

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

Defendant has agreed that the Settlement Fund may be used to pay Plaintiff an incentive award of not more than $5,000. Settlement Agreement, ¶ 8.3. Courts routinely approve service awards to compensate named plaintiffs for the services they provide and the risks they incur during the course of class action litigation. *See Standards and Guidelines for Litigating and Settling Consumer Class Actions (3d ed., 2014)*, National Association of Consumer Advocates, 299 F.R.D.

[4] Substantial portions of the Class also speak Polish and Ukrainian. The postcard notice will include a banner in Polish and Ukrainian directing recipients to the Settlement Website, where the long-form notice will be available in English, Spanish, Polish, and Ukrainian.

160, Guideline 5 ("Consumers who represent an entire class should be compensated reasonably when their efforts are successful and compensation would not present a conflict of interest."); *see also Cook v. Niedert*, 142 F.3d 1005 (7th Cir. 1998) (affirming $25,000 incentive award to named plaintiff). Here, Plaintiff assisted counsel with the investigation of this action, reviewed and approved of the drafting of the complaint, maintained regular contact with counsel regarding the status of the litigation and settlement, assisted with, reviewed, and approved of her discovery responses, and attended two in-person settlement conferences with Judge Conlon. Larry Decl. ¶ 29.

Defendant also agrees that the Settlement Fund may be used to pay Class Counsel's reasonable attorneys' fees and costs, if approved by the Court. Settlement Agreement, ¶ 8.1. If, as here, "a statute or contractual agreement expressly authorizes an award of attorney fees, the court may award fees 'so long as they are reasonable.'" *McNiff v. Mazda Motor of Am., Inc.*, 384 Ill. App. 3d 401, 404 (4th Dist. 2008) (quoting *Career Concepts, Inc. v. Synergy, Inc.*, 372 Ill. App. 3d 395, 405 (1st Dist. 2007)). Class Counsel will seek fees of one-third of the settlement fund, or $143,333.33, and costs of $1,804.17. Settlement, ¶ 8.1. Similar and larger requests are regularly approved. *See*, *e.g.*, *Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97-cv-7694, 2001 WL 1568856, *4 (N.D. Ill. Dec. 10, 2001) (noting that a "customary contingency fee" ranges "from 33 1/3% to 40% of the amount recovered") (collecting cases); *Shaun Fauley, Sabon, Inc. v. Metro Life Ins. Co.*, 2016 IL App (2d) 150236 ¶ 24 (approving attorneys' fees of one-third of reversionary fund). Defendant may oppose the fee and expense requests. *See* Settlement, ¶ 8.1.

4. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

The parties request the certification of the Class as defined in the Settlement, for settlement purposes only, under 735 ILCS 5/2-801. Section 2-801 allows certification only if:

> (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 interests of the class; and

(4) the class action is an appropriate method for the fair and efficient adjudication of the controversy.

Id. "The trial court has broad discretion to determine whether a proposed class satisfies the requirements for class certification and should err in favor of maintaining class [certification]." *Clark v. TAP Pharmaceutical Prods., Inc.*, 343 Ill. App. 3d 538, 544–45 (5th Dist. 2003). BIPA class actions against employers are regularly certified for settlement purposes. *See*, *e.g.*, *Rapai v. Hyatt Corp.*, No. 17-CH-14483 (Cir. Ct. Cook Cnty. July 14, 2021); *Burlinski et al. v. Top Golf USA Inc. et al.*, No. 1:19-cv-06700, ECF No. 98 (N.D. Ill. June 22, 2021).

4.1. The Settlement Class is Numerous

A prospective class representative must establish that "the class is so numerous that joinder of all members is impracticable." 735 ILCS 5/2-801. A class of even 80 or 90 members is sufficiently numerous under Illinois law. *Cruz v. Unilock Chicago*, 383 Ill. App. 3d 752, 767–68 (2d Dist. 2008). Here, the 785-member Settlement Class easily satisfies that requirement. *Id*.

4.2. Common Issues of Law and Fact Predominate

Next, Plaintiff must establish that questions or fact or law common to the class will "predominate over any questions affecting only individual members." 735 ILCS 5/2-801. Plaintiff must show which substantive issues will predominate over the outcome, and that those issues are common to the class. *Smith v. Illinois Central R.R. Co.*, 223 Ill. 2d 441, 449 (2006).

Here, the common and predominant issues include: (1) whether Defendant's timeclocks and Defendant captured, collected, or otherwise obtained the Class's biometric identifiers or information, 740 ILCS 14/15(b); (2) whether Defendant informed the Class members that their

biometrics were being collected or stored, 740 ILCS 14/15(b)(1); (3) whether Defendant informed the Class members of the specific purpose and length of term for which their biometrics would be collected, stored, and used, 740 ILCS 14/15(b)(2); (4) whether Defendant received written releases from the Class members authorizing the capture, collection, and storage of their biometrics, 740 ILCS 14/15(b)(3); (5) whether Defendant maintained and complied with a publicly available policy establishing a retention schedule and guidelines for permanently destroying the Class members' biometrics, 740 ILCS 14/15(a); (6) whether Defendant disclosed the Class members' biometrics without their consent, 740 ILCS 14/15(d); and (7) whether Defendant's alleged violations were intentional or negligent, 740 ILCS 14/20.

Because each of these questions can be answered in one fell swoop for the Settlement Class members, and no individualized issues could defeat this overwhelming commonality, common issues predominate. *Smith*, 223 Ill. 2d at 449.

4.3. Plaintiff is a Typical and Adequate Class Representative

Prospective class representatives must also establish that they will fairly and adequately represent the class. 735 ILCS 5/2-801(3). The adequacy requirement is satisfied where "the interests of those who are parties are the same as those who are not joined" such that the "litigating parties fairly represent" them, and where the "attorney for the representative part '[is] qualified, experienced and generally able to conduct the proposed litigation.'" *CE Design Ltd. v. C&T Pizza, Inc.*, 2015 IL App (1st) 131465, ¶ 16 (quoting *Miner v. Gillette Co.*, 87 Ill. 2d 7, 14 (1981)).

Here, Plaintiff, like all other Settlement Class members, claims she had her biometrics taken and disclosed by Defendant in a manner inconsistent with BIPA. Plaintiff's pursuit of this matter, including her in-person attendance at two settlement conferences, has demonstrated that she has been, and will remain, a zealous advocate for the Settlement Class. *See Redd v. Arrow Fin. Servs. LLC*, No. 03-cv-1341, at *8 (N.D. Ill. Mar. 31, 2004).

Similarly, proposed Class Counsel have extensive experience in class actions, including BIPA and other privacy cases. J. Dominick Larry, of Nick Larry Law LLC, has been class counsel in consumer-protection and privacy class actions nationwide, represented plaintiffs in several of the first BIPA lawsuits filed in 2015, and has represented BIPA plaintiffs in dozens of class actions since then. Larry Decl. ¶¶ 3–14. Accordingly, Class Counsel will adequately represent the Class.

4.4. Class Treatment is Appropriate

Finally, Plaintiff must establish that a class action is an appropriate method for fairly and efficiently adjudicating the controversy. 735 ILCS 5/2-801(4). To be appropriate, a class action should best secure economies of time, effort, and expense, or accomplish the other ends of equity and justice. *Ramirez v. Midway Moving & Storage, Inc.*, 378 Ill. App. 3d 51, 56 (1st Dist. 2007). Here, class treatment would be an appropriate method of proceeding because "[w]hile not trivial, BIPA's statutory damages are not enough to incentivize" a sufficient number of the individual class members to seek relief, *In re Facebook Biometric Info. Privacy Litig.*, 326 F.R.D. 535, 548 (N.D. Cal. 2018), given the costs of litigation and need to retain their own counsel. Moreover, class treatment is appropriate because individual litigation "would make no sense," given that "each class member here would entail the same discovery and require multiple courts to weigh the same factual and legal bases for recovery." *Bernal v. NRA Grp. LLC*, 318 F.R.D. 64, 76 (N.D. Ill. 2016).

5. THE SETTLEMENT WARRANTS PRELIMINARY APPROVAL

"[T]here is an overriding public interest in favor of settlement of class action suits." *See Donovan v. Estate of Fitzsimmons*, 778 F.2d 298, 307 (7th Cir. 1985) (internal quotation omitted). "Since the result is a 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. Nor should the court turn the settlement approval hearing into a trial. To do so would defeat the purposes of a compromise …."

GMAC Mortg. Corp. of Pa. v. Stapleton, 236 Ill. App. 3d 486, 493 (1992). In assessing fairness, reasonableness, and adequacy of a settlement, courts typically consider the following factors:

> (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. Based on these factors, approval is warranted here.

5.1. The Settlement Reflects the Strength of the Case

The size of the Settlement Fund and the automatic payments to Class members are significant in light of the risks of ongoing litigation. Although Plaintiff and Class Counsel believe they would prevail on their claims against Defendant, they are also aware that Defendant denies their allegations and had defenses it would assert on summary judgment, including common-law defenses, constitutional challenges to BIPA's substantive and remedial provisions, and an argument that Defendant's timekeeping vendors—rather than Defendant itself—obtained and possessed the biometrics at issue. *See* Def's Ans. and Aff. Defs. to 2d Am. Compl.; Larry Decl. ¶ 21. If Defendant were to succeed on any of its defenses, Settlement Class Members would recover nothing. Moreover, Plaintiff would have to prevail on a class certification motion, which would be contested. Further, even if Plaintiff was successful on the merits, Defendant would argue that Plaintiff and the Class members are not automatically entitled to statutory damages. *See Cothron v. White Castle System, Inc.*, 2023 IL 128004, ¶ 42.

In the face of these risks, "[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, 582–86 (N.D. Ill. 2011), and instead automatically receive significant payments now, instead of years from now, if ever. Negotiating under these risks, Plaintiff and Class Counsel have obtained a gross recovery of $547.78 per class member with no claim form or reversion. While this recovery is lower than some recent BIPA settlements with employers, it reflects the difficult financial circumstances presented in this case (addressed below), and still compares favorably to some other BIPA settlements, which have included settlement terms such as credit/dark-web monitoring, claims processes, and caps on the amount that claiming class members can recover. *See*, *e.g.*, *Carroll v. Crème de la Crème, Inc.*, No. 2017-CH-01624 (Cir. Ct. Cook Cnty.) (credit monitoring only); *McGee v. LSC Commc'ns*, No. 2017-CH-12818 (Cir. Ct. Cook Cnty.) ($750 to claiming class members); *Marshall v. Lifetime Fitness, Inc.*, No. 2017-CH-14262 (Cir. Ct. Cook Cnty.) ($270 to claiming class members).

5.2. A Class-Wide Judgment Would be Difficult to Collect.

Defendant's ability to pay also supports settlement. During the settlement process, Defendant provided Plaintiff's counsel with detailed financial statements, which were then reviewed with Judge Conlon during the settlement conferences. Larry Decl. ¶¶ 26–28. Based on that information, even a single recovery per Class member—$5,000 per member, or $3,925,000 total; or $1,000 per member totaling $785,000—would be difficult if not impossible to recover from Defendant, a single-location grocery store involved in coverage disputes with its three insurers.[5] By contrast, the Settlement provides immediate and meaningful relief.

[5] While Plaintiff and Defendant have raised good-faith arguments in the insurance actions, recent case law involving policies with similar exclusions has favored the insurers. *See Nat'l Fire Ins. Co. of Hartford & Cont'l Ins. Co. v. Visual Pak Co., Inc.*, 2013 IL App (1st) 221160, *appeal*

5.3. Further Litigation Would be Expensive, Lengthy, and Risky

The expense, duration, and complexity of continued litigation would be substantial. Had litigation continued, the parties would have had to undergo significant motion practice before any trial, and evidence and witnesses would have to be assembled. The losing party also would likely appeal any merits or class certification decision. As such, the immediate, certain, and considerable relief to Class members under the Agreement weighs heavily in favor of its approval.

5.4. Plaintiff Expects Settlement Class Members to React Positively to the Settlement

With respect to the fourth and sixth factors—amount of opposition to the settlement, and reaction of class members to the settlement—due to the strength of the settlement and significant relief automatically available to Class Members, Plaintiff expects little or no opposition. While it is difficult to ascertain the Class Members' reaction before notice, Plaintiff herself approved of the Settlement and believes it fair and reasonable.

5.5. The Settlement Was Non-Collusive

The fifth factor—potential collusion in reaching the settlement—likewise favors approval. A settlement is presumed fair and reasonable when it is the result of arm's-length negotiations. *Sabon*, 2016 IL App (2d) 150236, ¶ 21 (finding no collusion where there was "no evidence that the proposed settlement was not the product of 'good-faith, arm's-length negotiations'"). Here, the Settlement was only reached after months of negotiations between experienced counsel, two settlement conferences with Judge Conlon, and weeks of further negotiations, resulting in substantial relief given the likelihood of success on the claims. That contested process and excellent result make clear that this Settlement was the result of arm's-length negotiations.

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denied 238 N.E.3d 303 (Ill. 2024); *Thermoflex Waukegan, LLC v. Mitsui Sumimoto Ins. USA, Inc.*, 102 F.4th 438, 442 (7th Cir. 2024).

5.6. Experienced Counsel Favor Settlement

The views of experienced counsel further support settlement. Proposed Class Counsel have substantial experience litigating and settling BIPA class actions, having litigated dozens of BIPA class actions at his own firm and, prior to hanging his own shingle, litigated seminal BIPA cases, including the first (and to date, largest to settle), and the first to settle on a class-basis, *In re Facebook Biometric Info. Privacy Litig.*, No. 15-cv-3747 (N.D. Cal.); *Sekura v. L.A. Tan Enterps., Inc.*, No. 2015-CH-16694 (Cir. Ct. Cook Cnty.). Larry Decl. ¶¶ 6–14. That experience allowed proposed Class Counsel to evaluate the risks and benefits during negotiations, resulting in the substantial relief obtained. Accordingly, the seventh factor favors preliminary approval.

5.7. Settlement is Appropriate at this Stage in the Proceedings

Finally, the stage of proceedings and amount of discovery completed support approval. The core facts necessary to value Plaintiff's and the Class's claims—whether Defendant used a biometric scanner, and whether it provided notice and obtained consent as required by statute—were confirmable through Defendant's two sets of discovery responses and its document production. Larry Decl. ¶¶ 17–19. Had the parties not reached a settlement, this litigation would have proceeded to dispositive motions and class certification, with the parties being required to expend substantial resources proving the material facts through further discovery and then briefing their import, with the accompanying risk to each party. Accordingly, the eighth settlement factor—like the seven before it—favors approval.

6. THE NOTICE PLAN SHOULD BE APPROVED

As explained by the United States Supreme Court, due process requires that the notice be the "best practicable, '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'"

as well as "'describe the action and the plaintiffs' rights in it.'" *Sabon*, 2016 IL App (2d) 150236, ¶ 36 (quoting *Phillips Petroleum Co. v. Shuts*, 472 U.S. 797, 812 (1985)).

Here, the proposed Notice satisfies both the requirements of 735 ILCS 5/2-803 and due process. The Settlement Agreement contemplates mail notice, in English and Spanish directly to the 785 Settlement Class Members, plus establishment of a Settlement. Settlement Agreement, § 4. The employment relationship between Defendant and the Class Members should result in extremely effective direct notice: Defendant has detailed address information for Settlement Class Members, particularly for the approximately 87 class members who are current employees;[6] and for any notices returned as undeliverable, Defendant's possession of detailed information about each Settlement Class Member should enable effective skip tracing. The proposed notices are attached as Exhibits A and B to the Settlement Agreement, with the postcard notice being translated into Spanish prior to issuance, and the long-form notice being available in English, Spanish, Polish, and Ukrainian. Because the notice comports with 735 ILCS 5/2-803 and the requirements of due process, it warrants approval.

7. CONCLUSION

Accordingly, Plaintiff respectfully requests that this Court: (1) appoint her as Settlement Class Representative; (2) appoint her attorneys as Class Counsel; (3) preliminarily approve the proposed Settlement Agreement; (4) approve the form and methods of the proposed notice; (5) order the issuance of notice; and (6) grant such other relief as the Court deems reasonable and just.

Dated: November 19, 2024

TINA VELASCO, individually and on behalf of all others similarly situated,

s/ J. Dominick Larry
Plaintiff's counsel

[6] Given the high-turnover nature of Defendant's business, this number will likely continue to decrease throughout the approval process.

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CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that on November 19, 2024, I served the foregoing by filing through an approved e-filing vendor, which provides copies by electronic mail upon those listed below:

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AMUNDSEN DAVIS, LLC

Dated: November 19, 2024

s/ J. Dominick Larry
Plaintiff's Counsel