

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

PRESTON KYLES, individually and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

PAPA JOHN'S INTERNATIONAL, INC.,

*Defendant.*

Case No. 1:20-cv-07146

Judge: Hon. John Robert Blakey

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

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## 1. INTRODUCTION

Plaintiff Preston Kyles filed this Biometric Information Privacy Act, 740 ILCS 14/1–99 (“BIPA”) lawsuit more than five years ago. Since then, Plaintiff and Defendant Papa John’s International, Inc. have fully briefed motions to dismiss twice, completed discovery, briefed class certification and summary judgment twice, held a settlement conference with Magistrate Judge Appenteng, and finally reached a class-wide settlement following a mediator’s proposal by the Hon. James R. Epstein (ret.) of JAMS.

In exchange for a release from the Class Members, Papa John’s will establish a \$2.25 million, non-reversionary settlement fund, from which Class Members who submit valid claims will receive their *pro rata* share of the proceeds remaining after payment of administration costs and any approved attorneys’ fees, costs, and incentive award. No settlement funds will revert to Papa John’s. Instead, any unclaimed funds will be paid out to those Class Members who timely cashed their checks or accepted their digital payments, with any unclaimed funds after that going to the Illinois Treasury’s Unclaimed Property Division. The Settlement Fund provides for approximately \$205 gross per Class Member, which is above the norm in cases against companies providing biometric technology like Papa John’s did here.

Since the Court granted preliminary approval on December 17, 2025, the administrative process has gone off without a hitch. The settlement administrator provided CAFA notice on December 22, 2025, and no state or federal official has objected or sought to intervene. Notice was disseminated on February 16, 2026, and no Class Member has objected or sought exclusion. Plaintiff moved for attorneys’ fees, costs, and an incentive award on April 3, 2026, and neither Papa John’s nor any Class Member opposed the request, though they had the right to do so.

Accordingly, Plaintiff requests that the Court finally approve the settlement, and grant

Plaintiff's previously filed motion for attorneys' fees, costs, and incentive award.

## 2. BACKGROUND

Plaintiff worked for Papa John's franchisee Hoosier Papa, LLC in Ottawa, Illinois in 2017 and 2018. ECF No. 145, ¶ 3. As a franchisee, Hoosier Papa used Papa John's proprietary FOCUS point-of-sale system. ECF No. 162 at 4–5. Hoosier Papa required Plaintiff to use the FOCUS system's integrated finger-scan function to clock in and out of shifts, and to clock deliveries in and out. ECF No. 142 at 7. On December 3, 2020, Plaintiff sued Hoosier Papa and Papa John's, alleging that both entities had obtained and possessed his biometric data without the notices and consent required by BIPA Sections 15(a) and (b). ECF No. 1.

Papa John's moved to dismiss, ECF No. 12, and to stay pending resolution of several appeals, ECF No. 14. Plaintiff amended as of right. ECF No. 17. The Court held that the amended complaint mooted the motion to dismiss, but it granted the motion to stay. ECF No. 22. The stay lifted, and on October 15, 2021, Papa John's again moved to dismiss. ECF No. 26. The Court denied the motion to dismiss on March 30, 2023, ECF No. 60, and the parties renewed discovery.

Discovery took approximately fourteen months. Larry Decl. ¶ 15. Combined, the parties served and responded to hundreds of requests, produced thousands of pages of documents, took eight depositions, and briefed several discovery disputes. *Id.* ¶¶ 16–19; ECF Nos. 64–66, 80–96. Shortly after the close of discovery, Plaintiff moved for class certification and Papa John's moved for summary judgment. ECF Nos. 120, 129. Meanwhile, during discovery, the parties had exchanged settlement proposals on the Court's order. *See* ECF No. 107. The parties were referred to Magistrate Judge Appenteng for a settlement conference, which took place on October 30, 2024. ECF No. 140. While the settlement conference was unsuccessful, the parties continued to discuss settlement as they completed renewed briefing on summary judgment and class certification. Larry

Decl. ¶¶ 28–29; ECF Nos. 141–191. With briefing completed on those motions, the parties renewed their settlement negotiations and scheduled a mediation with the Honorable James R. Epstein (ret.) of JAMS Chicago. Larry Decl. ¶¶ 28–30. The August 18, 2025 mediation was attended by Plaintiff, his counsel, and counsel and a representative from Papa John’s. *Id.* ¶ 30. The session ended with a mediator’s proposal, which the parties agreed to four days later. *Id.* ¶ 31.

The parties then negotiated the full settlement agreement, and the Court granted preliminary approval on December 17, 2025. ECF No. 210. EisnerAmper Group (“EAG”), the settlement administrator, disseminated notice beginning on February 16, 2026. Declaration of Brandon Schwartz, filed contemporaneously herewith, ¶¶ 8, 9. Direct notice reached over 36% of the Class, and an estimated 81% of the Class received either direct notice or publication notice. *Id.* ¶¶ 17, 24.

Plaintiff moved for attorneys’ fees, costs, and an incentive award on April 3, 2026, ECF No. 212. The deadline for Class Members to object or opt out was April 17, 2026. ECF No. 210, ¶¶ 13, 17. None objected, and none opted out. Schwartz Decl. ¶¶ 20, 21. The claims deadline was also on April 17, 2026, and, so far, at least 825 Class Members (7.5% of the Class) have submitted valid claims, and 354 claims are still under review. Schwartz Decl. ¶¶ 17, 18.

### **3. TERMS OF THE SETTLEMENT**

#### **3.1. Class definition**

At preliminary approval, the Court certified a single Settlement Class consisting of all individuals who used the FOCUS system’s finger scanner while working at a franchisee-owned Papa John’s location in Illinois, at any time from December 3, 2015 to December 17, 2025. ECF No. 210. The Settlement Class excludes individuals who previously released PJI from liability under BIPA for such use, including pursuant to a settlement agreement and release. *Id.*, ¶ 4.

### **3.2. Settlement payments**

The Settlement would create \$2,250,000 settlement fund. Agreement, ¶ 2.1. From the fund, costs of notice and administration (estimated to be \$50,168), litigation expenses (no more than \$13,890.42), attorneys' fees (no more than one third of the fund, net of administration costs), and Plaintiff's service award (no more than \$10,000) will be paid. Agreement, ¶¶ 2.4, 4.1, 4.2. The remaining amount in the Settlement Fund will be distributed *pro rata* to Class Members who submit approved claims. Agreement, ¶¶ 3.1.3, 3.1.4. The Class contains an estimated 10,975 members. Schwartz Decl. ¶ 6. Class Members had the ability to choose to receive payments by check or digital payment, including ACH, Zelle, Venmo, PayPal, or digital Mastercard). Agreement ¶ 3.1.3. Based on the claims rate to date, and assuming Plaintiff's fee petition is granted in full, claiming Class Members will receive payments of between \$1,226.46 and \$1,752.72 each. Schwartz Decl. ¶ 19.

Any unclaimed funds will be re-distributed *pro rata* to those claiming Class Members who timely cashed their settlement checks or received digital payments, unless the remaining funds cannot cover the cost of distribution. *Id.* ¶¶ 3.1.6. Any funds remaining unclaimed after the redistribution will be deposited with the Unclaimed Property Division of the Illinois Treasurer's Office. *Id.* ¶ 3.1.7.

### **3.3. Release of liability**

Upon the Effective Date, and to the fullest extent permitted by law, each Class Member, shall, either directly, indirectly, representatively, or in any capacity, be permanently barred and enjoined from filing, commencing, prosecuting, continuing, pursuing, intervening in, or participating (as a class member or otherwise) in any lawsuit, action, or other proceeding in any jurisdiction (other than participation in the Settlement as provided herein) against any Released

Party based on the Released Claims. Agreement ¶ 11.3.

### **3.4. Payment of notice and administration costs**

The Settlement Fund will be used to pay the costs of sending the Notice and any other notice the Court requires, as well as all costs of administration. Agreement ¶ 2.4.

### **3.5. Payment of attorneys' fees, costs, and service award**

Plaintiff sought a service award of \$10,000 as compensation for his efforts and achievements on behalf of the Settlement Class. ECF No. 212. Further, Class Counsel sought reimbursement of \$13,890.42 in litigation expenses, and attorneys' fees of \$729,444 (representing one third of the net settlement fund). ECF No. 212. No class member objected to those requests, Schwartz Decl. ¶ 21, nor did Papa John's file any opposition, even though it was free to do so under the Settlement. Settlement Agreement, ¶¶ 4.1, 4.2.

## **4. THE NOTICE SATISFIED DUE PROCESS**

The federal rules require that notice be directed "in a reasonable manner to all class members who would be bound by" a proposed settlement. Fed. R. Civ. P. 23(e)(1)(B). The notice must be "the best ... practicable under the circumstances, including individual notice to all class members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Here, the notice satisfied Rule 23 and provided due process.

To start, the EAG sent Class Action Fairness Act notice to the required state and federal officials. Schwartz Decl. ¶ 5. No official has objected to the settlement or sought to intervene in the case. *Id.*; Larry Decl. ¶ 36; Declaration of Thomas R. Kayes, filed contemporaneously herewith ¶ 9. Next, EAG received a partial class list from Papa John's, containing 4,437 Class Member names and addresses that Papa John's had received from franchisees that responded to its requests for identifying class information. Schwartz Decl. ¶ 6. EAG then deduplicated and validated that

list, and ran it against the national change of address database. Schwartz Decl. ¶¶ 6, 8. Next, EAG disseminated direct notice via U.S.P.S. first-class mail to the 4,334 Class Members remaining on that partial list. *Id.* ¶ 8. Of those 4,334 notices, 1,150 were returned as undeliverable. *Id.* ¶ 15. The Class Members whose notices were returned as undeliverable were then skip traced, and 940 of the notices were re-issued, of which 797 were successfully delivered. *Id.* Ultimately, direct notice was disseminated by mail to 3,981 Class Members, or 36.3% of the Class. Alongside the direct notice, EAG disseminated the online publication notice, which received 2,543,284 impressions and 8,270 clicks over four weeks. *Id.* ¶ 9.

The publication notice and the hard-copy notice both directed class members to the settlement website, which featured important information about the settlement, contact information for the administrator and Class Counsel, and online and print claim forms. Schwartz Decl. ¶¶ 7, 9, 12. To date, the settlement website has had 74,673 unique visitors. *Id.* ¶ 12.

EAG also established a toll-free line for class members to call about the settlement, and a P.O. box for receipt of hard-copy mail relating to the settlement. *Id.* ¶ 13. Taken together, the direct and online notices reached 81% of the class. Schwartz Decl. ¶ 24. That amount exceeds the 70% threshold typically considered sufficient for due process,<sup>1</sup> and is more than sufficient here given the long class period, the transient nature of the class, Papa John's lack of identifying information about Class Members, and Papa John's limited ability to collect Class Member information from its current franchisees. *See Birchmeier v. Caribbean Cruise Line, Inc.*, 302 F.R.D. 240, 255 (N.D. Ill. 2014) (noting that “the rule requires ‘only the best notice that is practicable,’” and “that ‘[w]hen

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<sup>1</sup> *See In re TikTok Consumer Privacy Litig.*, 617 F. Supp. 3d 904, 927–928 (N.D. Ill. 2022) (“According to the Federal Judicial Center, notice to at least seventy percent of the class generally meets [the due process] standard.”) (citing *See Federal Judicial Center, Judges’ Class Action Notice & Claims Process Checklist & Plain Language Guide*, 3 (2010), available at <https://fjc.gov/sites/default/files/2012/NotCheck.pdf>).

reasonable effort would not suffice to identify the class members, notice by publication, imperfect though it is, may be substituted.”) (quoting *Hughes v. Kore of Ind. Center, Inc.*, 731 F.3d 672, 676–77 (7th Cir. 2013) (internal question marks omitted).

Ultimately, EAG implemented the Court-approved notice plan, and the plan constituted “the best notice that is practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B)

## **5. THE SETTLEMENT WARRANTS FINAL APPROVAL**

When weighing final approval, courts consider whether: (1) the class representative and counsel have adequately represented the class; (2) the settlement was negotiated at arm’s length; (3) the settlement treats class members equitably relative to each other; and (4) the relief is adequate. Fed. R. Civ. P. 23(e)(2). “[E]ach circuit has developed its own vocabulary for expressing Rule 23(e)’s concerns.” Fed. R. Civ. P. 23(e), Advisory Committee’s Note to 2018 Amendment. In the Seventh Circuit, courts look to: “(1) the strength of the case for the plaintiffs on the merits, balanced against the extent of the settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of the class members to the settlement; (5) the opinion of competent counsel; and (6) [the] stage of the proceedings and the amount of discovery completed.” *Gautreaux v. Pierce*, 690 F.2d 616, 631 (7th Cir. 1982). Here, the settlement satisfies those factors and warrants final approval.

### **5.1. Plaintiff and Class Counsel have adequately represented the Class.**

Rule 23(e)(2)(A)’s adequacy analysis focuses “on the actual performance of counsel acting on behalf of the class,” and considers (1) the nature and amount of discovery completed and (2) the “actual outcomes” of other, similar cases. Fed. R. Civ. P. 23(e), Advisory Committee’s Note to 2018 Amendment; *see also Gautreaux*, 690 F.2d at 631 (considering the “stage of the proceedings and amount of discovery completed.”).

Here, Plaintiff has been involved throughout this case, helping his attorneys investigate his claims; reviewing the complaint before filing; responding to discovery; sitting for his deposition; regularly conferring with his counsel; attending the settlement conference and the mediation; and reviewing and signing the settlement agreement. Larry Decl. ¶ 40. There would be no settlement without Plaintiff's participation. *Id.* ¶ 41.

Likewise, Class Counsel's performance in this case demonstrates their adequacy. First, Class Counsel conducted more than enough discovery to "evaluate the merits of the case" and engage in informed negotiations. *See Am. Int'l Grp., Inc. v. ACE INA Holdings, Inc.*, No. 07-cv-2898, 2011 WL 3290302, at \*8 (N.D. Ill. July 26, 2011) (noting that the standard "is not whether it is conceivable that more discovery could possibly be conducted."). Fact and expert discovery, and class-certification and summary-judgment briefing, were all completed before settlement. *See* ECF Nos. 141–191. Class Counsel's work included serving and reviewing responses to hundreds of discovery requests; reviewing thousands of pages of documents and deposition testimony; and briefing numerous dispositive issues, including in Papa John's motions to dismiss, Plaintiff's motion for class certification, and Papa John's summary-judgment motion. Larry Decl. ¶¶ 15–33; ECF Nos. 141–191. That effort has crystallized the issues sufficiently for Plaintiff and his counsel to weigh the risks and rewards of settlement and further litigation. *Id.* ¶ 37.

As a result of that work, Plaintiff and Class Counsel were able to maximize the recovery given the risks of loss. The \$205 gross recovery per class member compares favorably to other BIPA settlements with technology vendors, which is essentially Papa John's role here with respect to the FOCUS system. *See, e.g., Heard v. Omnicell, Inc.*, No. 2019-CH-06817 (Cir. Ct. Cook Cnty., Ill.) (\$114 per class member); *Neals v. Partech Inc.*, No. 19-cv-5660 (N.D. Ill.) (\$222 per class member); *Tapia-Rendon v. WorkEasy Software, LLC*, No. 21-cv-3400 (N.D. Ill.) (\$77 per class

member); *Figueroa v. Kronos Inc.*, No. 19-cv-1306 (N.D. Ill.) (\$89 per class member); *Kusinski v. ADP LLC*, No. 17-CH-12364 (Cir. Ct. Cook Cnty., Ill.) (\$78 per class member).

Thus, the Class stands to reap valuable benefits thanks to Plaintiff's and Class Counsel's hard work pursuing representing their interests. This factor is satisfied.

**5.2. The Settlement was the result of arm's-length negotiations.**

The second Rule 23(e)(2) factor asks whether the parties negotiated the settlement at arm's length. Fed. R. Civ. P. 23(e)(2)(B). Here, meaningful negotiations started in April 2024, in response to an order from the Court. *See* ECF No. 96; Larry Decl. ¶ 24; *see Wright v. Nationstar Mortg. LLC*, No. 14-cv-10457, 2016 WL 4505169, at \*11 (N.D. Ill. Aug. 29, 2016) (finding no collusion or unfairness where the parties "engaged in discovery" prior to reaching settlement). The parties then had a settlement conference with Magistrate Judge Appenteng in October 2024, which did not result in resolution. ECF No. 140. Only after completing briefing on class certification and summary judgment, *see* ECF Nos. 141–191, did the parties schedule the mediation with Judge Epstein. Larry Decl. ¶ 29. Even then, the parties only reached an agreement days after the mediation, when they accepted Judge Epstein's mediator's proposal. *Id.* ¶ 31.

The settlement process was, therefore, entirely free from collusion, and the Settlement's terms confirm its absence: "[T]here is no provision for reversion of settlement amounts, no clear sailing clause regarding attorneys' fees, and none of the other types of settlement terms that sometimes suggest something other than an arm's length negotiation." *Snyder v. Ocwen Loan Servicing, LLC*, No. 14-cv-8461, 2019 WL 2103379, at \*4 (N.D. Ill. May 14, 2019).

**5.3. The Settlement treats all Class members equitably.**

Rule 23 also requires a settlement to "treat[] class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). Here, the Settlement treats the Class Members identically with *pro rata* payments to each Class Member who submits a valid claim. *See* Agreement ¶ 3.1.4. *Ortiz*

*v. Fibreboard Corp.*, 527 U.S. 815, 855 (1999) (equitable treatment is “assured by straightforward pro rata distribution of the limited fund.”).

The provision of a service award to Plaintiff is consistent with that equitable treatment. The requested \$10,000 service award would reflect the work performed for the Settlement Class’s benefit, is in line with other BIPA cases, and is particularly justified given Plaintiff’s hands-on involvement with the case, which involved responding to discovery, sitting for deposition, and attending the settlement conference and the mediation (both of which required clearing his schedule for the day). *See Dixon v. Washington & Jane Smith Cmty.-Beverly*, No. 17-cv-8033, ECF No. 103 (N.D. Ill. May 31, 2018) (\$10,000 service award); *Howe v. Speedway LLC et al.*, No. 19-cv-1374, ECF No. 218 (N.D. Ill. Oct. 22, 2025) (\$10,000 service award); *Bedford v. Lifespace Communities, Inc.*, No. 20-cv-4574, ECF No. 32 (N.D. Ill. May 12, 2021) (\$10,000 service award); *see also* ECF No. 213 at 15–16.

Because Plaintiff’s efforts were key to securing the recovery, the proposed service award is equitable, and the Settlement’s equitability favors approval.

#### **5.4. The relief secured by the Settlement warrants final approval.**

The final Rule 23(e)(2) factor examines whether the relief provided for the class is adequate considering (i) the cost, risks, and delay of trial and appeal; (ii) the effectiveness of the proposed method of distributing relief to the class; (iii) the terms of any proposed award of attorneys’ fees, including timing of payment; and (iv) any agreements made in connection with the proposed settlement. Fed. R. Civ. P. 23(e)(2). As set forth below, this factor also supports approval.

##### **5.4.1. The costs, risks, and delay of trial and appeal, relative to the strength of the Class’s case, warrant approval.**

To start, the cost, risk, and delay of further litigation favor approval. While Class Counsel believe in their arguments in opposition to Papa John’s fully briefed summary-judgment motion,

there was a very real risk of the Court finding that Papa John’s complied with its BIPA policy, or that it never collected or stored the Settlement Class Members’ biometric data. *See* ECF No. 155. The former finding would result in a loss for the Settlement Class on their BIPA Section 15(a) claims, while the latter would defeat their Section 15(b) claims. *See* 740 ILCS 14/15. On top of that, Papa John’s would likely argue at trial that it never possessed the Settlement Class Members’ biometrics (as needed to sustain their Section 15(a) claims), and that the finger-scan data at issue was not “biometric information” or a “biometric identifier” under BIPA, *see* ECF No. 183 at 10–11. Success on the latter argument would mean a total loss for the Settlement Class.

Even if the Settlement Class prevailed on liability at trial, there is no guarantee that it would recover more than Papa John’s has agreed to pay in the Settlement. The Seventh Circuit recently held that the 2024 amendments to BIPA—which limited prevailing plaintiffs to a single recovery for each violation of Section 15(b), *see* 740 ILCS 14/20(b)—apply retroactively to suits like this one. *See Clay v. Union Pac. R.R. Co.*, 171 F.4th 975 (7th Cir. 2026). On top of that, the Seventh Circuit confirmed that “damages appear to be discretionary under BIPA.” *Id.*, 171 F.4th at 982. As a result, not only was the likelihood of a windfall recovery off the table, but Plaintiff and the Class could have prevailed on liability and still recovered no money at all.

Against these risks, Papa John’s payment of \$2.25 million—now, rather than after a trial and the exhaustion of any appeals—represents a more-than-adequate result and further supports approval. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 582 (N.D. Ill. 2011).

#### **5.4.2. The effectiveness of the distribution method supports approval.**

The Settlement’s straightforward distribution process also favors approval. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii). An effective distribution method “get[s] as much of the available damages remedy to class members as possible and in as simple and expedient a manner as possible.”

4 Newberg and Rubenstein on Class Actions § 13:53 (6th ed.). Here, the Settlement provides for complete distribution to Class Members who submit valid claims. Claiming Settlement Class Members will receive payments in their chosen form, and those who timely accept or cash their payments will automatically receive their *pro rata* share of the leftover funds, before the money is distributed to the Unclaimed Property Division of the Illinois Treasurer’s Office. Agreement § 3.1.

**5.4.3. The proposed fee award supports approval.**

Third, “the terms of any proposed award of attorneys’ fees, including timing of payment” favor approval. Fed. R. Civ. P. 23(e)(2)(C)(iii). Class Counsel sought a fee award of one third of the net settlement fund. ECF No. 212. That request is within the typical range in BIPA settlements. *See* ECF No. 213 at 9–10 (collecting cases); *see also In re Clearview AI, Inc., Consumer Privacy Litig.*, No. 21-cv-135, 2025 WL 1371330 (N.D. Ill. May 12, 2025) (awarding 39.1% of gross settlement fund); *Hirmer v. ESO Sols., Inc.*, No. 22-cv-1018, 2025 WL 2048339, at \*3 (N.D. Ill. Jan. 14, 2025) (awarding 36% of net settlement fund); *Roberson v. Maestro Consulting Services, LLC*, No. 20-cv-895, 2024 WL 4785358, at \*3 (S.D. Ill. Nov. 14, 2024) (awarding 40% of the gross settlement fund). No class member objected to the requested fees, costs, or incentive award. *See* Schwartz Decl. ¶ 21. Nor did Papa John’s oppose the requests, despite its right to do so under the settlement. *See* Agreement ¶ 4.1.

The proposed fee award therefore supports final approval.

**5.4.4. There are no agreements requiring disclosure under Rule 23(e)(3).**

Rule 23(e)(3) requires disclosure of “any agreement made in connection with the propos[ed]” settlement. Fed. R. Civ. P. 23(e)(3). Here, there are no such agreements; the entirety of the Parties’ agreement is reflected in the Settlement presented to the Court. Larry Decl. ¶ 35. As such, this factor favors approval as well.

### **5.5. The Seventh Circuit’s remaining factors favor final approval.**

In addition to the Rule 23(e) factors, courts in the Seventh Circuit assess the class members’ reaction and the opinion of competent counsel, and look for several red flags. *Gautreaux*, 690 F.2d at 631. Here, both factors support final approval, and no red flags are present.

#### **5.5.1. The Class’s reaction supports approval.**

Lack of opposition to a settlement “indicates that the class members consider the settlement to be in their best interest.” *Am. Int’l Group, Inc. v. ACE INA Holdings, Inc.*, No. 07-cv-2898, 2012 WL 651727, at \*6 (N.D. Ill. Feb. 28, 2012). Here, EAG effectuated the notice plan, and no class member objected or opted out. Schwartz Decl. ¶¶ 20, 21. That lack of opposition “is evidence that the settlement is fair, reasonable, and adequate.” *Retsky Family Ltd. P’ship v. Price Waterhouse LLP*, No. 97-cv-7964, 2001 WL 1568856, at \*3 (N.D. Ill. Dec. 10, 2001).

“The lack of opposition to the settlement, coupled with the positive reaction by class members, including the number of [members] who have filed claims ... further supports a finding that the settlement is fair and reasonable.” *Daluge v. Cont’l Cas. Co.*, No. 15-cv-297, 2018 WL 6040091, at \*3 (W.D. Wis. Oct. 25, 2018). Despite the lack of a complete class list, 7.5% of the Class Members have submitted validated claims to date. Schwartz Decl. ¶ 17. That rate is above the norm in privacy cases. *See Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 493 (N.D. Ill. 2015) (approving settlement with claims rate of approximately 2.5%); *Pollard v. Remington Arms Co., LLC*, 896 F.3d 900, 905 (8th Cir. 2018) (affirming approval of settlement with 0.29% claims rate); *In re Forefront Data Breach Litig.*, No. 21-cv-887, 2023 WL 6215366, at \*4 (E.D. Wis. Mar. 22, 2023) (A “claims rate of 1.46% is generally in line with the rate [in] ... data breach class actions.”).

The claims rate, coupled with the complete lack of opposition to the settlement, suggests that the class supports final approval.

### **5.5.2. Counsel’s opinion favors approval.**

Next, Class Counsel’s “belie[f] that the Settlement is beneficial to the Class” supports final approval, given their “extensive experience in consumer class actions and complex litigation.” *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011). Class Counsel regularly litigate complex class actions, including similar class actions involving BIPA and other privacy statutes, in state and federal courts across the country. Larry Decl. ¶¶ 3–13; Kayes Decl. ¶¶ 3–7. Based on that experience, Class Counsel are confident that final approval is in the class members’ best interest. Larry Decl. ¶ 37; Kayes Decl. ¶ 10. Accordingly, this factor also favors final approval.

### **5.5.3. The Settlement raises no red flags.**

Finally, the Settlement raises none of the Seventh Circuit’s red flags for class settlements, such as: (1) a class consisting of multiple adverse subgroups; (2) a close relationship between class counsel and the class representative; (3) failure to establish the amount of class member recovery; (4) reversion of unawarded attorneys’ fees to the defendant; (5) an advance of attorneys’ fees prior to notice; (6) denial of incentive awards to class representatives who object to the settlement; (7) relief of only coupons to some class members; and (8) an overly complicated claims procedure. *Eubank v. Pella Corp.*, 753 F.3d 718, 721–28 (7th Cir. 2014).

To start, the Settlement Class has no adverse subgroups. Each Class Member used the FOCUS system’s finger scanner in the same way, and brings the same sort of claims. As shown in the parties’ summary-judgment briefing, proof of one portion of the class’s claims would not have disproved any other portion of the class’s claims, nor would recovery by one reduce or prevent recovery by the other. While Plaintiff did initially propose that the Class also include a Subclass for individuals who first used the scanner before April 1, 2018, *see* ECF No. 142 at 6, that

differentiation only existed because the proposed subclass members had an extra basis for arguing that they never consented to the collection of their biometrics, *see id.* at 11–12. All Class members, however, contend that they never consented, *id.*, and as such, no adversity exists between them.

As to the other potential red flags identified by the Seventh Circuit, Mr. Kyles has no familial or close personal relationship with Class Counsel. Larry Decl. ¶ 41; Kayes Decl. ¶ 11. The settlement provides a plain amount of gross recovery, and also details the method by which each Class Member’s recovery will be determined. *See* Agreement § 2. There is no reversion to Papa John’s, *id.* ¶¶ 1.39, 2.3, nor was there any advance of attorneys’ fees to Class Counsel. *Id.* § 4. There is no provision denying incentive awards to a named plaintiff who does not support the settlement, nor any disparate form of relief among the class members. Finally, the claims process is straightforward and necessary, given the lack of a comprehensive class list.

Because the settlement offers substantial benefits without any of the Seventh Circuit’s red flags, it warrants final approval.

## **6. CONCLUSION**

Accordingly, Plaintiff respectfully requests that this Court: (1) finally approve the proposed Settlement Agreement; (2) dismiss all claims with prejudice; (3) enter a final judgment disposing of the case; and (4) grant such other relief as the Court deems reasonable and just.

Dated: May 4, 2026

Respectfully submitted,

**PRESTON KYLES**, individually and on  
behalf of all others similarly situated,

s/ J. Dominick Larry

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