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

RACHEL LABARRE, individually and on behalf of the Settlement Class, *Plaintiff*, v. CERIDIAN HCM, INC., a Delaware corporation, *Defendant*,	Case No. 2019 CH 06489 Calendar 2

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 Rachel LaBarre ("Plaintiff" or "LaBarre") alleges that Defendant Ceridian HCM, Inc. ("Defendant" or "Ceridian")—the vendor of a cloud-based timeclock system with a finger scanner attached—violated BIPA by collecting and storing her 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 two years of active litigation, which included two motions to dismiss and a motion to strike class allegations, formal and informal discovery, and a full-day mediation with the Honorable James F. Holderman (ret.) of JAMS Chicago, the Parties reached a class-wide Settlement.[1] Since then, Judge Raymond W. Mitchell, who formerly presided over this case, granted preliminary approval of the Settlement on May 18, 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, Ceridian has agreed to create a non-reversionary $3,493,074.00 Settlement Fund for the benefit of 14,142 Settlement Class members, which represents the highest monetary relief per-person in a vendor BIPA case to date. The fund will be split *pro rata* among those who file 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: Ceridian has agreed to maintain its publicly-available retention and destruction schedule for biometric data, which is currently on its website, and has agreed to maintain a process for its customers to obtain informed written consent from their workers prior to the collection and storage of their fingerprint data, including via on-screen consent that Ceridian implemented. (Agreement § 2.2.) Finally, the Settlement explicitly preserves Plaintiff's and the Settlement Class's claims against their employers (i.e., Ceridian'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 94.8% of the Settlement Class. The Settlement Administrator then sent a first round of reminder notices via email on August 31, 2022 to members of the Settlement Class who, at that point, had not yet submitted a claim. The Settlement Administrator is scheduled to send a second round of reminder emails on September 23, 2022. By the Objection/Exclusion Deadline of September 6, 2022, only one person (who is not a member of the Settlement Class) objected to the Settlement and only two people (or 0.01% of the Settlement Class) submitted a request for exclusion from the Settlement.

Unsurprisingly, given the comprehensive notice and outstanding relief available, the Settlement has also seen an excellent participation rate. Though there are still 10 days left until the September 30, 2022 Claims Deadline, 22% of Class Members have already submitted Approved Claims, which means each of those Class Members will receive a Settlement Payment of approximately $700 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 rates in the double digits.

For these reasons, and as detailed below, this Settlement is exceptional. The factors to be considered by Illinois courts when determining whether to grant final approval to a class settlement weigh heavily in favor of approving this one. Thus, the Court may appropriately grant final approval.

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 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"), ¶¶ 12–13.) 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 unanimously passed BIPA to provide individuals recourse when companies fail to appropriately handle their biometric data in accordance with the statute. *See* 740 ILCS 14/5. BIPA 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 id.*; § 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, plus costs and reasonable attorneys' fees. *See id.* § 14/20.

B. The Claims

Plaintiff claims that her employer used Ceridian's cloud-based time and attendance system, called Dayforce, to authenticate and monitor her and other Illinois employees' working hours. (FAC ¶¶ 21, 29, 30, 49.) Employers across Illinois use Ceridian'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 Ceridian. (*Id.* ¶¶ 21, 23, 49.) An example of a Ceridian timeclock with the Dayforce systems is pictured below:

Unbeknownst to Plaintiff and other employees, each time they scanned their fingerprints on a Ceridian timeclock, the timeclock automatically sent their fingerprint data to Ceridian's servers to be collected and stored, Plaintiff alleges. (*Id.* ¶¶ 21-22.) In doing so, Plaintiff claims that Ceridian violated section 15(b) of BIPA by collecting her and other employees' fingerprints

without first obtaining their informed, written consent, and also alleges that Ceridian 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*. ¶¶ 24-25, 34-35.) Ceridian denies that it has engaged in any wrongdoing.

C. Litigation, Negotiation, and Settlement

On May 28, 2019, Plaintiff filed this putative class action against Ceridian, and the case was assigned to former-presiding Judge Moshe Jacobius. Ceridian then moved to strike Plaintiff's class allegations and to dismiss the case pursuant to 735 ILCS 2-619.1. After full briefing and argument, on August 25, 2020, Judge Jacobius denied Ceridian's motion to strike class allegations and its motion to dismiss pursuant to 735 ILCS 2-619, but granted its motion pursuant to 735 ILCS 2-615 with leave to amend the complaint.

Plaintiff promptly filed an amended complaint on September 22, 2020, with additional specific factual allegations. In response to the amended complaint, Ceridian filed a second motion to dismiss under Section 2-619.1 and moved to stay the case pending the Illinois Appellate Court's decision on the applicable statute of limitations for BIPA claims in *Tims v. Black Horse Carriers, Inc.*, No. 1-20-0563 (Ill. App.). Plaintiff opposed both motions, and, on March 4, 2021, Judge Jacobius denied Ceridian's second motion to dismiss in full and denied its request for a stay. Ceridian then answered the amended complaint, denying all material allegations and raising twenty-two affirmative defenses.

Just after discovery began, Ceridian moved to bifurcate discovery and to limit the number of third-party subpoenas each party could serve, which Plaintiff opposed. While that motion was pending, on August 9, 2021, Judge Jacobius ordered the parties to commence limited written discovery into any BIPA-related consent forms obtained or disclosures made by Ceridian or its

customers. Plaintiff then served her first set of written discovery requests to Ceridian on August 13, 2021, which Ceridian responded to on September 20, 2021. (Declaration of Schuyler Ufkes ("Ufkes Decl."), attached as Exhibit 2, ¶ 3.)

During this period, the parties began to discuss the possibility of settlement. After Ceridian provided informal discovery regarding the size of the class, the parties exchanged several demands and counteroffers before agreeing that a formal mediation would aid resolution. (*Id.* ¶ 4.) On February 3, 2022, the parties participated in a full-day, formal mediation session with Judge Holderman (ret.) of JAMS in Chicago. (*Id.*) After a full day of negotiations, the parties ultimately reached an agreement on the material terms of a class-wide settlement, which was memorialized in a written Memorandum of Understanding that evening. (*Id.*) The parties then spent the next several months preparing and negotiating the final terms of the settlement, ultimately executing the final settlement agreement on April 20, 2022. (*Id.*) During the parties' negotiations, this case was reassigned to Judge Raymond W. Mitchell due to Judge Jacobius's retirement. As a result, Plaintiff moved for preliminary approval of the Settlement before Judge Mitchell, which was granted on May 18, 2022. (*See* Prelim. Approval Order, attached as Exhibit 3.) Most recently, Plaintiff and Class Counsel moved for an award of attorney's fees, expenses, and Plaintiff's incentive award on August 23, 2022 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 his order granting preliminary approval of the settlement, Judge Mitchell certified a

Settlement Class of "[a]ll individuals who scanned their fingers in Illinois on a timeclock issued, leased, or sold by Ceridian, and for whom any alleged biometric data relating to that scan was shared with or stored by Ceridian, between May 18, 2014, and May 17, 2022." (Prelim. Approval Order ¶ 3; Agreement § 1.26.) Excluded from the Settlement Class are: "(1) persons who were settlement class members in *Edmond v. DPI Specialty Foods, Inc.*, 2018-CH-09573 (Cir. Ct. Cook Cnty.), *Gonzalez v. Richelieu Foods, Inc.*, No. 20-cv-04354 (N.D. Ill.), *Terry v. Griffith Foods Grp., Inc.*, 2019-CH-12910 (Cir. Ct. Cook Cnty.), *Quarles v. Pret a Manger (USA) Ltd.*, 20-cv-7179 (N.D. Ill.), and *Struck and Jones v. Woodman's Food Market*, 2021-CH-053 (19th Jud. Cir., Lake Cnty.),[2] (2) persons who executed Defendant's on-screen consent prior to any use of finger scanners provided by Defendant, (3) any Judge or Magistrate presiding over this Action and members of their families, (4) Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, (5) persons who properly execute and file a timely request for exclusion from the Settlement Class, and (6) the legal representatives, successors or assigns of any such excluded persons." (Prelim. Approval Order ¶ 3; Agreement § 1.26.)

B. Monetary Relief

Pursuant to the Settlement, Ceridian has agreed to create a non-reversionary Settlement Fund in the amount of $3,493,074.00 for the benefit of the Settlement Class. From this fund, 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 §§ 1.3, 1.24, 1.29, 2.1(a).) Should the Court

[2] The defendants in each of the cases listed in the first exclusion are Ceridian's customers. These customers each reached class action settlements with their employees that released their employees' BIPA claims against Ceridian.

approve Plaintiff's requested attorneys' fees and incentive award, and given the remarkable 22% claims rate, each Class Member who submitted an Approved Claim can expect to receive a Settlement Payment for approximately $700, which will be delivered via check or the electronic payment method of the Class Member's choosing, including Venmo, Zelle, or PayPal. (*Id*. § 2.1(g).) Any uncashed checks or electronic payments unable to be processed within 180 days of issuance will, subject to Court approval, be distributed to the Illinois Bar Foundation or some other *cy pres* recipient selected by the Court pursuant to 735 ILCS 5/2-807(b). (*Id*. § 2.1(j).)

C. Prospective Relief

Pursuant to the Settlement, Ceridian has agreed to maintain a publicly-available retention schedule and guidelines for permanently destroying any biometric data, which is currently posted on its website,[3] and has agreed to destroy biometric data in its possession pursuant to that policy. (*Id*. § 2.2.) Ceridian has also agreed to maintain a process by which its customers are required to obtain written releases before individuals can use Ceridian timeclocks to scan their fingers, including via an on-screen release deployed automatically on the clocks. (*Id*.)

D. Payment of Settlement Notice and Administrative Costs

Ceridian will 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

Ceridian has agreed to pay Plaintiff's reasonable attorneys' fees and unreimbursed

[3] *See Ceridian's Biometric Statement*, CERIDIAN (June 1, 2022), available at https://tinyurl.com/4ajtaydj.

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.*) Ceridian 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 her efforts on behalf of the Settlement Class. (*Id.* § 8.2.) Class Counsel made these requests by separate motion filed on August 23, 2022, which was (and still is) posted on the Settlement Website for Class Members to review.

F. Release of Liability

In exchange for the relief described above, Ceridian 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, redisclosure, dissemination, storage, transmittal, and/or protection from disclosure of biometric information from its timeclocks. (*Id.* §§ 1.22, 3.) Ceridian's customers—including the Settlement Class's employers who used the Ceridian timeclocks at issue—are explicitly excluded from the Settlement's release, and Class Members retain any separate BIPA claims they have against their employers. (*Id*. § 1.22.)

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 that is 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 94.8% 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 direct notice plan, which started with the Parties obtaining as many of the Settlement Class members' mailing addresses and email addresses ("Contact Information") as possible. To start, Ceridian reached out to its customers asking for consent to disclose any Contact Information in its possession to the Settlement Administrator, since Ceridian was prohibited by contract from disclosing it without the consent of the customer or a court order directing Ceridian to disclose the information. (Agreement § 4.1.) Ceridian was able to obtain consent from many of its customers, but several others refused or did not respond. Plaintiff then sought and obtained a compelling order from Judge Mitchell, ordering Ceridian to provide any Contact Information in its possession to the Settlement Administrator. Still, though, there were several customers for whom Ceridian did not possess Contact Information, so Plaintiff sent those entities subpoenas, which resulted in obtaining email and/or mailing addresses for 190 Settlement Class members. (*See* Declaration of Jacob Kamenir ("Kamenir Decl."), attached as Exhibit 4, ¶¶ 4, 7.) Using the existing Contact Information, the Settlement Administrator then performed a skip trace to obtain additional email addresses for the Settlement Class members. (*Id.* ¶ 5.) In the end, the final class list contains 14,142 Settlement Class member names, 13,235 of which have a mailing address, and 8,598 of

which have at least one email address. (*Id.* ¶¶ 3, 5.) The Settlement Administrator also updated the U.S. Mail addresses through the National Change of Address database to ensure the most up-to-date addresses as possible. (*Id.* ¶ 6.) The Settlement Administrator then sent the Court-approved Notice via email and/or U.S. Mail to every single Settlement Class member for whom an address was available, which was successfully delivered to 13,411 Settlement Class members. (*Id.* ¶ 17; Agreement § 4.2(a), (b).) Accordingly, direct notice reached 94.8% of the Settlement Class. (Kamenir Decl. ¶ 17.)

On August 31, 2022 (i.e., 30 days prior to the Claims Deadline), the Settlement Administrator emailed the first round of reminder notices to 6,928 Settlement Class members who, at that point, had not yet submitted a claim. (*Id.* ¶ 18.) The second reminder notices will be sent via email on September 23, 2022 (i.e., 7 days prior to the Claims Deadline). (*Id.* ¶ 19.)

These summary notices directed class members to the Settlement Website, www.CeridianBIPASettlement.com, which has been and continues to be available 24/7. (*Id.* ¶ 10.) On the website, Settlement Class members could and are still able to submit a Claim Form and Form W-9 online, access the "long form" notice, access important court filings—including Plaintiff's Motion and Memorandum of Law for Attorneys' Fees, Expenses, and Incentive Award—and see deadlines and answers to frequently asked questions. (*Id.*; Agreement §§ 1.30, 2.1(g), 4.2(d).)

Overall, the Notice program was highly successful, as direct Notice reached 94.8% of the Settlement Class and those notices have been supplemented with reminder notices with another round to come. 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:

> 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)).

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 she ultimately would have prevailed had she 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 Ceridian'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.*

Ceridian has created a $3,493,074.00 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 in the Settlement Fund to Ceridian. Based on the current 22% claims rate, each Class Member with an Approved Claim is going to get a substantial payment—approximately $700 if this Settlement is approved.

Settlements in other statutory privacy class actions frequently don't come near this amount, either in terms of the amount of the payments or percentage of available relief. Such settlements all too often secure *cy pres* relief without any individual payments to class members. *See, e.g.*, *In re Google LLC Street View Elec. Commc'ns Litig.*, No. 10-md-02184, 2020 WL 1288377, at *11–14 (N.D. Cal. Mar. 18, 2020) (approving, over objections of class members and state attorney general, a settlement providing only *cy pres* relief for violations of a federal privacy statute, where $10,000 in statutory damages were available per claim); *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). This has been true in finally-approved settlements in the BIPA context as well, where some settlements have provided only

credit monitoring and *no* monetary relief for the class. *See Carroll v. Crème de la Crème, Inc.*, No. 2017-CH-01624 (Cir. Ct. Cook Cnty. June 6, 2018). Other BIPA settlements have capped the amount class members can receive and reverted the inevitable remaining funds back to the defendant. *E.g.*, *Zhirovetskiy v. Zayo Grp., LLC*, No. 2017-CH-09323 (Cir. Ct. Cook Cnty. Apr. 8, 2019) (approving $990,000 reversionary fund for 2,200 class members, which capped payments at $400 and reverted up to $490,000 of unclaimed funds back to defendant); *Rosenbach v. Six Flags Ent. Corp.*, No. 2016-CH-00013 (Cir. Ct. Lake Cnty. Oct. 29, 2021) (approving $36 million reversionary fund for approximately 1,110,000 class members, which capped class member payments at $200 or $60 depending on date of finger scan and reverted unclaimed funds to defendant); *Lark v. McDonald's USA, LLC*, No. 17-L-559 (Cir. Ct. St. Clair Cnty. Feb. 28, 2022) (approving $50 million reversionary fund for more than 175,000 class members, which capped class member payments at $375 or $190 depending on date of finger scan and reverted tens of millions of dollars in unclaimed funds to defendants); *Marshall v. Lifetime Fitness, Inc.*, No. 2017-CH-14262 (Cir. Ct. Cook Cnty. July 30, 2019) (paying a cap of $270 to individuals who filed claims and reverting the remainder to defendant).

Even when compared to the other BIPA vendor cases that have settled, this one excels—the $3,493,074.00 fund for 14,142 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. 358 (N.D. Ill. Feb. 18, 2022) (preliminarily approving $15,276,227 fund for approximately 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); *see also Bryant v. Compass Group USA, Inc.*, No. 19-cv-06622, dkt. 125 (N.D. Ill. Sept. 8, 2022) (approving $6.8 million settlement for 63,450 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 with respect to the exact same biometric data at issue here. (Agreement § 1.22, (the Released Parties definition does not include "Defendant's customers (specifically, employers that used a Ceridian timeclock in Illinois")).) This carve-out enables Class Members to vitiate 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 go after 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*, 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*, No. 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—Ceridian's promise to maintain its retention and deletion policy and a process for its customers to obtain proper consent on its behalf, including via on-screen consent—warrant 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.*

Ceridian has already raised a number of arguments that threatened to substantially or fully deprive the class of relief. At class certification, the damages phase of a trial, or on appeal of the case, those risks multiplied. Moreover, there have been ongoing attempts to attack BIPA in the legislature. In light of those risks, the relief obtained for the Settlement Class is even more outstanding.

First, Ceridian has argued that BIPA has a one-year, instead of five-year, statute of limitations and thus bars Plaintiff's claims. Though Judge Jacobius rejected that argument at the motion to dismiss stage, the applicable statute of limitations for BIPA claims is still undecided, as the Illinois Supreme Court will soon resolve whether a one- or five-year limitations period applies to the various claims under section 15 of BIPA. *See Tims v. Black Horse Carriers, Inc.*, 2021 IL App (1st) 200563.[4] If the high court holds that a one-year period applies to claims under sections 15(a) and (b)—instead of a five-year period—the vast majority of the class's BIPA claims would be time barred absent settlement. (*See* Agreement § 1.26 (settling a five-year class period).)

Furthermore, Ceridian was likely to assert—like nearly every other BIPA defendant—that the fingerprint data collected by its scanners are not actually "biometric identifiers" or "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 doubts 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, it would still need to be defeated at summary judgment or trial and remains an issue ungoverned by precedent. *See Howe v. Speedway LLC*, No. 19-cv-01374, dkts. 125, 140, 149 (N.D. Ill.) (fully briefed motion for summary judgment on this issue in fingerprint scan case).

[4] Our Supreme Court is set to hear oral argument in *Tims* on September 22, 2022, at 9:00 a.m.

Additionally, Plaintiff would have needed to establish that her claims were not barred by the general prohibition on the extraterritorial application of state statutes. *See Avery v. State Farm Mut. Auto Ins. Co.*, 216 Ill. 2d 100, 184 (2005). Ceridian, a corporate citizen of Delaware and Minnesota, argued in its first motion to dismiss that its alleged conduct did not take place primarily and substantially in Illinois, largely because Ceridian's servers on which Class Members' fingerprint data is stored are not physically located in Illinois. Though Judge Jacobius rejected Ceridian's extraterritoriality argument on Ceridian's first motion to dismiss, he explained that the inquiry is a fact-intensive one and noted that "any alleged wrongdoing or damages purportedly caused by Ceridian must be tied to Ceridian's conduct in or related to Illinois." (Exhibit 5, Mar. 4, 2021, Memo. Op. & Order.) At summary judgment or trial, Plaintiff would have needed to overcome this issue to prevail. *But see In re Facebook Biometric Info. Priv. Litig.*, No. 3:15-CV-03757-JD, 2018 WL 2197546, at *4 (N.D. Cal. May 14, 2018) ("Facebook's facial recognition program cannot be understood to have occurred wholly outside Illinois, and the same rather metaphysical arguments about where BIPA was violated fare no better.").

Nor would the risks have ceased at summary judgment or even trial. If successful at trial, Plaintiff expected that Ceridian would argue for a reduction in damages based on due process in light of the significant potential statutory damages at issue. *See, e.g.*, *Golan v. FreeEats.com, Inc.*, 930 F.3d 950, 963 (8th Cir. 2019) (statutory award in TCPA class action of $1.6 billion reduced to $32 million); *but see United States 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). Given the

significant exposure that Ceridian faced, Plaintiff expects that Ceridian would have appealed these issues—all of which are matters of first impression—further delaying relief.

Moreover, the attacks on BIPA in the legislature have been relentless. Over the past year, at least ten bills have been introduced in the legislature in an attempt to gut BIPA.[5] It is not unprecedented for legislation to be amended retroactively while a class action is pending in a way that threatens the Settlement 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 mid-stream amendment to Michigan's Video Rental Protection Act was retroactive). Were BIPA to be gutted—as tech companies, timeclock vendors, and the Chamber of Commerce have advocated in nearly every legislative session—the Settlement Class might be deprived of any meaningful result.

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, Ceridian has represented that it will be able to fully fund the Settlement. At the same time, however, a victory at trial would result in, at minimum, a greater than $28 million aggregate judgment for the

[5] *See* 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); S.B. 1607, 102nd Gen. Assembly (Ill. 2021); S.B. 3874, 102nd Gen. Assembly (Ill. 2022).

Settlement Class, even if Ceridian were only found liable for negligent violations of sections 15(a) and (b) of BIPA per Class Member. *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 Ceridian 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 Ceridian'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.

Had the parties continued to litigate, Ceridian 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 Settlement 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). Though Plaintiff believes in the strength of her claims and that she would ultimately prevail, continued litigation is not risk-free.

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, the Court-approved Notice plan was enacted, with Notice being sent directly to the Settlement Class. To date, 3,111 Class Members, or approximately 22% of the Settlement Class, have submitted Approved Claims, indicating a robust positive reaction from the Settlement Class. (Kamenir Decl. ¶ 22.) *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 is consistent with—and in many instances, exceeds—previous BIPA settlements. *See Prelipceanu v. Jumio Corp.*, No. 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.*, No. 2015-CH-16695 (10.6% claims rate); *Kusinski*, No. 2017-CH-12364 (12.7% claims rate); *Sekura v. L.A. Tan Enters., Inc.*, 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).

Conversely, that only two individuals have requested to opt out of the Settlement[6] and only person who is not a Settlement Class member has objected is a further demonstration of the Settlement Class's remarkable support. *GMAC Mortg.*, 236 Ill. App. 3d at 497 ("The fact that

[6] The Settlement Administrator received two timely requests for exclusion, but one is technically incomplete under the terms of the Agreement and the Court's Preliminary Approval Order, as it does not identify the case name or the class member's address. (Kamenir Decl., Exhibit H.) Plaintiff suggests that both requests for exclusion be honored.

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). A fulsome rebuttal of the objection is included in Section VI, *infra*.

Altogether, the Settlement's outstanding claims rate, coupled with infinitesimal opt-out and objection rates, 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 factors *Korshak* 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; *Coy v. CCN Managed Care, Inc.*, 2011 IL App (5th) 100068-U, ¶ 31 (affirming trial court's finding of no collusion where the record showed "an arms-length negotiation between plaintiffs and defendants, entered into after years of litigation and discovery, resulting in a settlement with the aid of an experienced mediator").

The Parties here engaged in two years of active litigation, including contested motion practice and written discovery. By the time the Parties reached a resolution, the Parties thoroughly understood the underlying facts of the case as well as the size and composition of the putative class. And, on February 3, 2022, the Parties participated in a formal, full-day mediation

with Judge Holderman (ret.), a highly experienced mediator who has assisted in resolving dozens of BIPA class actions. After extensive negotiations throughout the mediation, the Parties finally reached agreement on the material terms of a settlement and executed a Memorandum of Understanding that evening. 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. 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 competent to give their opinion on this Settlement. *See, e.g.*, *McCormick v. Adtalem Glob. Educ., Inc.*, 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"). Edelson PC is a national leader in high stakes' plaintiffs' work, including class actions, as well as mass actions and public client investigations and prosecutions. The firm filed the first-ever class action under BIPA against Facebook, *Licata v. Facebook, Inc.*, No. 2015-CH-05427 (Cir. Ct. Cook Cnty. Apr. 1, 2015), secured the first-ever adversarially-certified BIPA class in that case and defended the ruling in the Ninth Circuit, *Patel v. Facebook, Inc.*, 932 F.3d 1264, 1277 (9th Cir. 2019) (upholding adversarial BIPA class certification), *cert. denied Facebook, Inc. v. Patel*, 140 S. Ct. 937 (2020), and settled the case with Facebook for $650 million—the largest consumer privacy settlement ever. *In re Facebook Biometric Info. Priv. Litig.*, 522 F. Supp. 3d at 634 (granting final settlement approval).

The firm has also achieved many of the seminal appellate rulings on the matters of first impression under BIPA. *See Patel*, 932 F.3d at 1277 (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 ("IWCA") 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. ¶ 5.) 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 vendor BIPA settlement 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 actively litigated this case for over two years. Plaintiff defeated Defendant's two motions to dismiss and its motion to strike class allegations and fully briefed Defendant's motion to bifurcate discovery. Prior to agreeing to the settlement, the parties had exchanged formal and informal discovery on any BIPA-related consent forms obtained or disclosures made by Defendant, any retention schedules or guidelines of Defendant for destroying biometric information, and the number of individuals who scanned their fingers on Defendant's Dayforce 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 Dayforce timeclocks allegedly collected biometric data and sent that data to Ceridian's cloud-based servers. At this point, the underlying facts of Plaintiff's and the Class Members' claims are clear: Ceridian supplied Illinois employers with its Dayforce finger-scanning timeclock system to track

employee time, stored information obtained from its customers' employees' fingertips on its servers, and did not itself seek 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. MS. HERRON'S OBJECTION TO THE SETTLEMENT IS MERITLESS

Of the thousands of individuals who received direct Notice of the Settlement only one person, Ms. Brenda Herron, took any steps to formally object to the Settlement. (*See* Brenda Herron Objection ("Herron Obj."), attached as Exhibits I, J to the Kamenir Decl.) Ms. Herron, however, is not a member of the Settlement Class and therefore does not have standing to object the Settlement because it does not affect her. *In re Nat'l Collegiate Athletic Ass'n Student-Athlete Concussion Inj. Litig.*, 332 F.R.D. 202, 219 (N.D. Ill. 2019) (finding that a person not in the settlement class lacked standing to object); *Agretti v. ANR Freight Sys., Inc.*, 982 F.2d 242, 246 (7th Cir. 1992) ("[A] non-settling party does not have standing to object to a settlement between other parties.").

The Settlement Administrator has confirmed that the class list does not include a "Brenda Herron" or anyone who lives at the address she listed in her objection. (Kamenir Decl. ¶ 20.) Ceridian also thoroughly reviewed its records and determined she is not, and should not be, a Class Member. (*See* Affidavit of Erika Brown ("Brown Decl."), attached as Exhibit 6; Affidavit of Kastytis Sileika ("Sileika Decl."), attached as Exhibit 7; Affidavit of Karl Lemmer ("Lemmer Decl."), attached as Exhibit 8.) None of the four employers Ms. Herron listed in her objection (Stampede Meat Company, Greencore, DHL, or Gold Standard Bakery) were even Ceridian timeclock customers during the time periods Ms. Herron claims she worked at each. (Lemmer

Decl. ¶¶ 3–4; Brown Decl. ¶¶ 3–4.) And only two of those customers ever used Cerdian timeclocks, but not during the time periods Ms. Herron claims she worked for those customers—Ceridian first provided a parent company of Greencore timeclocks in 2021 and Stampede Meat Company didn't purchase timeclocks until February 2022. (Lemmer Decl. ¶ 5; Brown Decl. ¶ 5.) Ceridian did locate one "Brenda Herron" in its database, but that person has a different current address than the objector, she worked for a Ceridian customer other than the four named in the objection, and that customer never used a Ceridian timeclock. (Lemmer Decl. ¶ 8; Sileika Decl. ¶¶ 3–5.) It's clear Ms. Herron is not a Class Member, and her objection should be stricken for that reason alone.

But even if Ms. Herron were a Class Member (she's not), her objection is still meritless and provides no grounds warranting the denial of final approval. While the objection is frankly difficult to understand, it appears Ms. Herron objects to the Settlement because she believes she should be paid $225,000. (*See* Herron Obj. at 4 (demanding $75,000 in damages for scanning at Stampede Meat Company, $50,000 in damages for scanning at Green Core Sandwiches, $50,000 in damages for scanning at DHL, and $50,000 in damages for scanning at Gold Standard Bakery).) Even if the Court considers her objection, it should be overruled for several reasons.

First, Ms. Herron's objection reads less like a complaint about the Settlement and more like a request for exclusion. The good news for Ms. Herron is, since she's not a Class Member, she didn't need to exclude herself—she can still bring her own individual case against Ceridian if she wants, and she can pursue whatever damages she thinks she's entitled to at her own risk and expense. Ms. Herron is certainly capable of doing so, as she is currently litigating a BIPA case against Gold Standard Bakery on an individual basis. *Herron v. Gold Standard Baking, Inc.*, No. 20-cv-07469 (N.D. Ill.). As noted above, even if Ms. Herron were a Class Member, the claims

against Ceridian's customers (i.e., the Class Members' employers) are not released by this Settlement.

Second, to the extent Ms. Herron is arguing that she should be compensated more than other Class Members under the Settlement because she (allegedly) scanned her fingers more times and at more locations than other Class Members, not one of the hundreds of BIPA class settlements to date has been structured on a per-scan basis to Class Counsel's knowledge. Every BIPA settlement Class Counsel is aware of has been based on a single violation of one or more subsections of BIPA per class member (i.e., for unlawful retention under 15(a), unlawful collection under 15(b), unlawful disclosure under 15(d), etc.), regardless of the number of scans per person. No court has rejected a BIPA settlement on the basis that it provided a *pro rata* distribution to Class Members, like here, as opposed to a per-scan distribution.

And that's for good reason: under what seems to be Ms. Herron's theory, this case could be settled on a class basis for no less than three *billion* dollars. Not only is Ceridian, or most companies, unable to pay such sums, but the due process argument noted above becomes much more concerning.

In the end, because Ms. Herron is not a Class Member and because her objection does not seriously question the appropriateness of final approval, her objection should be overruled.

VII. 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 October 3, 2022 final approval hearing.

Respectfully submitted,

RACHEL LABARRE, individually and on behalf of the Settlement Class,

Dated: September 22, 2022

By: /s/ Schuyler Ufkes
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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,*** by transmitting such document via the Court's electronic filing system to all counsel of record.

/s/ Schuyler Ufkes