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Judge: Calendar, 15

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

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LINDABETH RIVERA, et al.

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 2019-CH-00990

Calendar 15

Hon. Anna M. Loftus

**PLAINTIFFS' UNOPPOSED MOTION AND MEMORANDUM IN SUPPORT OF  
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

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## I. INTRODUCTION

After well over six years of litigation, Plaintiffs Lindabeth Rivera, Joseph Weiss, Michael Azzano, Brandon Molander, and Nicholas Marquez (“Plaintiffs” or “Class Representatives”) respectfully move for final approval of the class action Settlement with Google LLC (“Defendant” or “Google”) for its alleged violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”).<sup>1</sup>

The Settlement establishes a \$100 million non-reversionary cash Settlement Fund, which if approved, will be dispersed *pro rata* to the hundreds of thousands of Class Members who submitted valid claims. In addition to the Settlement Fund, the Settlement provides robust prospective relief that directly addresses Google’s biometric-collection practices at issue in this case. There are no objections to the terms of Settlement, the request for Class Representative Service Payments, or to Class Counsels’ application for attorneys’ fees.

The Court preliminarily approved the Settlement on April 25, 2022. *See* Order Granting Preliminary Approval of Class Action Settlement (“PAO”). In granting preliminary approval, the Court found the terms of the Settlement “fair, reasonable, and adequate” and approved the robust Notice Plan and user-friendly claims process agreed to in the Settlement. *Id.* ¶¶ 2, 8-9. Since then, the Notice Plan and claims process were implemented by the Settlement Administrator. The period for filing objections or exclusions passed on August 10, 2022. Pursuant to the Preliminary Approval Order, 14 days prior to the objection / exclusion deadline (July 27, 2022), Plaintiffs filed their Motion for Class Representative Service Payments, Attorneys’ Fees and Expenses (“Fee Motion”).

The reaction from Class Members to the Settlement is resoundingly positive. As of September 9, 2022, 418,676 valid claims have been submitted, with over a week remaining until the September 24, 2022 Claims Deadline. *See* concurrently filed Affidavit of Brandon Schwartz (Director of Notice at Postlewaite & Netterville, APAC (“P&N”), the Settlement Administrator)

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<sup>1</sup> Unless otherwise defined herein, capitalized words and terms used herein have the same meaning as ascribed to them in the Settlement Agreement (“Settlement Agreement” or “SA”), which is attached as Exhibit 1 to Plaintiffs’ Motion for Preliminary Approval dated April 14, 2022.

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(“Schwartz Aff.”) ¶ 24. Claimants are estimated to be paid approximately \$142 each. *Id.* In contrast, only 97 Class Members submitted valid opt outs from the Settlement, there were no objections to the Settlement or the requests for attorneys’ fees or Service Payments, and one Class Member submitted comments on the Action (though this comment is entitled “Objection to Settlement” it does not interpose any objections to the Settlement itself or to the Fee Motion; instead it provides argument as to whether BIPA applies to Google Photos). *Id.* ¶¶ 26-27, Exs. H-I; *see also infra*, Sec. V.A.4. (discussion of the Class Member comment). The overwhelmingly positive reaction of the Class is not surprising, considering the substantial monetary and prospective relief the Settlement provides.

The Settlement warrants final approval, especially considering its positive reception by the Class. It meets all requirements for final approval under Section 2-801 of the Illinois Code of Civil Procedure. Plaintiffs respectfully request that the Court enter an order granting this Motion.

## **II. BACKGROUND**

### **A. Factual and Procedural History**

This six-plus years-long litigation, where Defendant steadfastly denied any wrongdoing of the alleged BIPA violations, was laborious and adversarial. A detailed account of the extensive factual and procedural history, and of the voluminous work performed by four law firms that comprise Class Counsel, is set forth in Plaintiffs’ Fee Motion at pp. 3-11 and in the Affidavit of Robert Ahdoot in support thereof (“Ahdoot Fee Aff.”) at ¶¶ 2-47 (both filed on July 27, 2022).

The proposed Settlement involves seven separate putative class actions (including this Action) in state and federal courts across the country (as well as an appeal and cross-appeal to the Seventh Circuit Court of Appeals) (the “Google Photos BIPA Cases”).<sup>2</sup>

### **B. The Parties Engaged in Extensive Settlement Negotiations**

While the years-long litigation continued, the Parties engaged in extensive, arm’s-length

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<sup>2</sup> In addition to this case, the Settlement resolves: *Molander v. Google LLC*, No. 5:20-cv-00918 (N.D. Cal.); *Rivera v. Google Inc.*, No. 1:16-cv-02714 (N.D. Ill.); *Weiss v. Google Inc.*, No. 1:16-cv-02870 (N.D. Ill.); *Azzano v. Google LLC*, No. 2019-CH-11153 (Ill. Cir. Ct., Cook Cnty.); *Marquez v. Google LLC*, No. 2021-CH-01460 (Ill. Cir. Ct., Cook Cnty.); and *Marquez v. Google LLC*, No. 1:20-cv-04454 (N.D. Ill.).

negotiations, which involved three experienced mediators, six in-person mediations, and numerous months of negotiations. Ahdoot Fee Aff. ¶¶ 34-42. Prior to Settlement, Class Counsel obtained and reviewed significant written discovery and documents. *Id.* ¶¶ 36-37. Class Counsel also defended the Plaintiffs' depositions, took depositions of Google employees, and retained and consulted with experts to assist in the analysis of this information. *Id.*

The Parties participated in two all-day mediations with the Honorable Layn R. Phillips (Ret.), multiple months-long discussions and an all-day mediation with Seventh Circuit Court of Appeals Mediator Jillisa Brittan, and three all-day mediations with the Honorable Stuart E. Palmer (Ret.) of JAMS. *Id.* ¶ 38. The Parties also participated in numerous lengthy phone conferences during which the myriad detailed terms of the Settlement were negotiated. *Id.* ¶ 39. This process extended for months, included several iterations and revisions of written proposals and counter proposals, discussions with Google's in-house counsel, and consultation with experts. *Id.*

The Parties also negotiated the logistics and substance of the notice and administration plan. *Id.* ¶ 40. Class Counsel obtained competitive bids from experienced and highly regarded class action administration firms, and as result of this process, agreed to retain P&N. *Id.*

### **C. Preliminary Settlement Approval and Dissemination of Notice**

After the Court granted preliminarily approval of the Settlement on April 25, 2022, Class Counsel continued to work with P&N to supervise dissemination of Notice, respond to Class Member inquiries, supervise the claim process, and ensure the provisions of the Settlement and this Court's Preliminary Approval Order were implemented. Ahdoot Fee Aff. ¶ 43-47.

The Notice Plan (direct notice, publication notice, digital media campaign, reminder emails, toll-free hotline, search advertising, etc.) was successfully implemented. Schwartz Aff. ¶¶ 6-22. The Settlement Website makes available the Claim Form, Class Notice, the operative Consolidated Class Action Complaint, relevant motions, and all relevant case information. *Id.* ¶ 6, Ex. D. The Opt-Out and Objection Deadlines fell on August 10, 2022, and the Claims Deadline on September 24, 2022. Class Members were able to submit Claim Forms or Opt-Out requests online, or by mailing hard copies to P&N. *Id.* To date, there are 418,276 valid claims, no class

member objected to the terms of the Settlement or to the Fee and Service Payment requests, one Class Member argued that BIPA did not apply to Google Photos, and 97 Class Members submitted valid requests for exclusion. *Id.* ¶¶ 24-27, Exs. H-I.

### III. THE SETTLEMENT

The Settlement provides substantial benefits to Class Members in exchange for the Release provided to Google, as summarized below.<sup>3</sup>

#### A. The Settlement Class

The preliminarily approved Settlement Class is defined as:

All Illinois residents who appeared in a photograph in Google Photos at any time between May 1, 2015 and the date of Preliminary Approval. Excluded from the Class are: (a) any judge, magistrate, or mediator presiding over the Google Photos BIPA Cases and members of their families; (b) Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest; (c) Class Counsel; and (d) the legal representatives, successors or assigns of any such excluded persons.

PAO ¶ 3; *see also* SA ¶ 2.2.

#### B. The \$100 Million Settlement Fund and Prospective Relief

The Settlement establishes a non-reversionary cash Settlement Fund of \$100 million, which Google fully funded on June 6, 2022 (approximately 45 days after Preliminary Approval). SA ¶ 3.2(a); Schwartz Aff. ¶ 23; Ahdoot Fee Aff. ¶ 47. Settlement Administration Expenses (e.g. costs of notice dissemination, claims processing, distribution of Settlement Payments, etc.), any Court-approved Service Payments and attorneys' fees and expenses will be paid from the Fund. SA ¶ 3.2(a); Schwartz Aff. ¶ 24. The remaining "Net Settlement Fund" will be used to pay Settlement Payments to Class Members with Approved Claims. SA ¶ 1.23, 3.3.

The Claims Process presented a simple form for each Class Member to submit a Claim for a *pro rata* share of the Net Settlement Fund. SA ¶ 3.3. It was incredibly successful: to date, there have been 418,676 valid claims. Schwartz Aff. ¶¶ 24, 32. The total payment to each participating Class Member will depend on the final number of valid Claim Forms submitted. *Id.* Class Members must submit their claims by September 24, 2022. *Id.* P&N estimates that each claimant will receive

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<sup>3</sup> To avoid repetition, a more detailed description of the Settlement is set forth in Plaintiffs' Preliminary Approval Motion (at pp. 4-8), filed on April 14, 2022, and is incorporated herein.



approximately \$142 each (this estimate assumes \$726,768 in notice and administration expenses, interest earned on the Settlement Fund in the amount of \$241,433, and that the Court will grant, in full, Plaintiffs' Motion for Class Representative Service Payments (\$25,000 total) and Attorneys' Fees and Expenses (\$40 million)). *Id.* ¶¶ 23-25. P&N does not anticipate the final Settlement Payment amount to substantially differ from this estimate. *Id.* ¶ 24.

Any Residual Funds (funds from uncashed checks, failed digital payment methods, etc.) will be redistributed (in a second distribution) to all Class Members who submitted a valid claim and successfully negotiated the first payment. SA ¶ 3.5. Any Residual Funds remaining after these efforts will be distributed to one or more 26 U.S.C. § 501(c)(3) non-profit organization(s) selected by the Parties, and subject to the Court's approval at a later date. At least 50% of these Residual Funds will be disbursed to organization(s) appearing on the Chicago Bar Foundation's list of Qualifying CBF-Supported Pro Bono and Legal Aid Organizations. *Id.*, Ex. 7. No portion of the Settlement Fund will be returned to Google. SA ¶ 3.2(b).

The Settlement also provides for significant prospective relief. It obligates Google to implement meaningful changes to its practices. *Id.* ¶ 3.1. Specifically, Google will provide all Face Grouping-Enabled Illinois Users and all New or Re-Enabled Illinois Grouping Users an electronic notice that discloses: (i) that the face grouping feature is enabled; (ii) that Defendant creates "face templates" or "face models" that are based on the images of faces in the photographs that are saved in the user's account; (iii) that by continuing to use Google Photos with the face grouping feature enabled, the user is consenting to Defendant's creation of data from the photographs in his or her account;<sup>4</sup> and (iv) how the user can disable the feature and permanently delete any face templates or face models that may have been created from the photographs in his or her account. *Id.* ¶ 3.1(a)(1). The notice presented when a user activates Google Photos (on a mobile device or computer) will require the user to affirmatively indicate the user's consent as described in subsection (iii) above. *Id.*

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<sup>4</sup> This includes but is not limited to the creation of "face templates" or "face models," which enables Defendant to group photographs of similar faces and which, Plaintiffs contend, involves the collection of "biometric" data under the laws of some jurisdictions. SA ¶ 3.1(a)(1).

Google also will develop, publish, and abide by a retention policy in which it will commit to deleting face models or face templates associated with a user's account within a reasonable period of time after the user takes any of the following actions: (i) turns off the "face grouping" feature in Google Photos (in which case, all face templates or face models would be deleted); (ii) deletes an individual photograph (in which case, face models derived from that photograph would be deleted); (iii) deletes all photographs that include images of people (in which case, all face templates or face models derived from those photographs would be deleted); or (iv) deletes his or her Google account (in which case, all photographs in the account, and all face templates or face models derived from those photographs, would be deleted). *Id.* ¶ 3.1(a)(2).

Additionally, Google will not sell, lease, or trade face templates or face models to any third party, and will store, transmit, and protect from disclosure face templates or face models using reasonable security measures and in a manner that is at least as protective as the way Google stores, transmits, and protects other confidential information. *Id.* ¶ 3.1(a)(3)-(4).

**C. There Are only 97 Opt-Outs, No Objections, One Class Member Comment, and, in Contrast, 418,676 Valid Claims**

Class Members were provided an opportunity to opt out of, or object to, the Settlement on or before August 10, 2022. PAO ¶¶ 10-11. Valid requests for exclusions required information described in the Notice. Schwartz Aff. ¶ 27, Ex. D. Class Members were informed that they could object to any aspect of the Settlement, including Class Counsel's fee application and the request for Service Payments. *Id.* P&N reports that there are 97 Class Members submitted valid requests for exclusion from the Class. *Id.* ¶ 27, Ex. I. There was no objection to the Settlement or to the request for service payments or attorneys' fees. One Class Member (Sarada Mohapatra) filed a document titled as "Objection to Settlement," yet that filing contained no objection to either the Settlement or to the requests for Service Payments or attorneys' fees, but contained only argument regarding whether BIPA should apply to Google Photos. *Id.* ¶ 26, Ex. H; *see also infra*, Sec. V.A.4. (for the response to Sarada Mohapatra's argument).

**D. There Were No Objections to the Narrowly Tailored Release**

If the Settlement is finally approved, Plaintiffs and Class Members who did not timely request exclusion from the Class will release Google from all Claims “arising from or related to Plaintiffs’ allegations or the alleged collection, capture, receipt, storage, possession, dissemination, transfer, use, sale, lease, trade, or profit from biometric information, biometric identifiers, or any data derived from images of faces in photographs, by or for Google, including all claims arising from or relating to the subject matter of the Google Photos BIPA Cases, and all claims that were brought or could have been brought in the Google Photos BIPA Cases.” SA ¶ 1.31. Thus, the release is limited and tailored to apply only to the allegations in this Action. There were no objections to the terms of the Release.

**E. There Were No Objections to the Requests for Class Representative Service Payments and Attorneys’ Fees and Expenses**

On July 27, 2022, Plaintiffs filed an application for Service Payments in the amount of \$5,000 each (\$25,000 total), and for an award of reasonable attorneys’ fees in the amount of 40% of the Settlement Fund (\$40 million) to Class Counsel. There were no objections to these requests. As detailed in the Fee Motion, Class Counsel’s requested fee award is appropriate under governing Illinois law and consistent with the percentages of funds awarded in other settlements in Illinois courts, including other BIPA class actions, and warrants Court approval.

**IV. THE COURT-APPROVED NOTICE PLAN WAS FULLY IMPLEMENTED**

Notice of the Settlement included direct notice to Class Members as well as a robust print and digital media campaign. Schwartz Aff. ¶¶ 6-22. Direct Notice was sent via email to each Class Member identified by Google. *Id.* ¶¶ 10-15, Ex. A. For those Class Members with respect to whom email notice was returned as undeliverable, the Notice was sent via First Class U.S. Mail where a physical address was available. *Id.* ¶ 13, Ex. B. Notice also was disseminated via a robust print and digital notice program, as well as Internet search advertising. *Id.* ¶¶ 17-22, Exs. E-G. Finally, between September 2, 2022 and September 14, 2022, reminder emails were sent to all potential Class Members with valid emails and who had not yet submitted a claim. *Id.* ¶ 15, Ex. C.

The Settlement Website ([www.GoogleBIPASettlement.com](http://www.GoogleBIPASettlement.com)) with the Claim Form, Long Form Notice, and all relevant case information was deployed prior to the Notice Date. *Id.* ¶¶ 6-7, 16, Ex. D. The website allows Class Members to submit Claim Forms and Opt-Out requests electronically, and to obtain copies of the Claim Form and relevant Motions, Orders, and pleadings. *Id.* ¶ 6. Additionally, a toll-free number, email, and physical mailing address are available for Class Members to contact the Settlement Administrator. *Id.* ¶ 6, 8, 22. The date of the Final Approval Hearing and its Zoom credentials also were posted on the Website. *Id.* ¶ 6.

The Notice Plan set forth in the Settlement and approved by the Court was fully implemented, provided the best practicable notice under the circumstances, and fulfilled all due process requirements. *Id.* ¶¶ 6-22, 28-31; *see also*, Schwartz Affidavit ISO Motion for Preliminary Approval ¶¶ 8-9, 30-31 (filed on April 14, 2022); SA ¶¶ 6.1-6.3.

## V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

### A. The Proposed Settlement is Fair, Reasonable, and Adequate

To approve a class settlement, the Court must find it “fair, reasonable and adequate.” *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 493 (1st Dist. 1992). In determining whether a settlement is fair, reasonable, and adequate, Illinois courts apply an eight-factor evaluation, also known as the “*Korshak* factors.” *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990). The factors are: “(1) the strength of the case for the plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant’s ability to pay<sup>5</sup>; (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.” *Korshak*, 206 Ill. App. 3d at 972. Analysis of these factors supports a finding that the Settlement here is fair, reasonable, and adequate.

<sup>5</sup> The second *Korshak* factor considers the defendant’s ability to pay. Here, Google funded the non-reversionary cash Settlement Fund of \$100 million approximately 45-days after Preliminary Approval. Ahdoot Fee Aff. ¶ 47; Schwartz Aff. ¶ 23. As a result, this factor is of minimal relevance.

### 1. The Settlement provides significant benefits to the Settlement Class

The first *Korshak* factor—the strength of Plaintiffs’ 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.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999); *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006). While Plaintiffs remain confident in the strength of their claims, they recognize that they would have to overcome significant obstacles to succeed. Given the obstacles and inherent risks Plaintiffs face with respect to their claims, the substantial benefits the Settlement provides favor its approval.

Here, P&N estimates that claiming Class Members will receive approximately \$142. Schwartz Aff. ¶ 24. This amount may fluctuate depending on the number of additional valid claims are made prior to the September 24, 2022, Claims deadline and the number of submitted claims deemed fraudulent or otherwise invalid by the Settlement Administrator. *Id.* While the estimated recovery does represent a discount from full recovery in an individual case,<sup>6</sup> the discount to the monetary component is warranted in light of the *certain* and *immediate* payments to Class Members provided by the Settlement, the forward-looking relief designed to ensure Google’s compliance with BIPA, and the substantial risks of non-recovery that continued litigation would present. *Smith v. CRST Van Expedited, Inc.*, No. 10-CV-1116-IEG (WMC), 2013 U.S. Dist. LEXIS 6049, at \*9-10 (S.D. Cal. Jan. 14, 2013) (“[T]he actual recovery realized and risks avoided here outweigh the opportunity to pursue potentially more favorable results through full adjudication”).

The risks presented by continued litigation were apparent given Google’s numerous potentially meritorious defenses as well possible legislative amendments to BIPA. These material risks are detailed in Plaintiffs’ Preliminary Approval Motion (filed on April 14, 2022; at pp. 18-24) and in the Fee Motion (at pp. 22-28), and are incorporated herein.

Despite these risks, Plaintiffs achieved an excellent result for the Class. Notably, the relief provided by this Settlement greatly exceeds the relief historically obtained through settlements in

<sup>6</sup> If Plaintiffs prove their claims and certify a class in this case, the class-wide statutory damages would be either \$1,000 (if Google’s conduct were found negligent), or \$5,000 (if willful) for each violation. 740 ILCS 14/20(1)-(2).

data-privacy class actions. *See, e.g., Goldschmidt v. Rack Room Shoes, Inc.*, No. 1:18-cv-21220-KMW (S.D. Fla.) (ECF Nos. 82-1, 86) (\$5 cash and a \$10 voucher to each class member in action alleging violation of the Telephone Consumer Protection Act, which allows for statutory damages of \$500 or \$1,500 per violation); *In re Vizio, Inc., Consumer Privacy Litig.*, No. 16-ml-02693-JLS-KES (C.D. Cal.) (ECF Nos. 282-1, 337) (\$13-\$31 to each class member in action alleging violation of the Video Privacy Protection Act, 18 U.S.C. § 2710, which allows for statutory damages of \$2,500 per violation); *Kinder v. Meredith Corp.*, No. 1:14-cv-11284 (E.D. Mich.) (ECF Nos. 79, 81) (\$32.40 to each class member in action alleging violation of Michigan’s Preservation of Personal Privacy Act, which allowed for statutory damages of \$5,000 per violation).

The Settlement also compares favorably with previously approved settlements in other BIPA cases alleging collection of “scan[s] of . . . face geometry” and related data. *See, e.g., Miracle-Pond v. Shutterfly, Inc.*, No. 2019-CH-07050 (Ill. Cir. Ct.) (\$6.75 million settlement in a BIPA class action on behalf of at least 954,000 class members); *In re Facebook Biometric Information Privacy Litig.*, No. 3:15-cv-03747-JD (N.D. Cal.) (ECF No. 445-2) (settlement agreement); *In re Facebook Biometric Info. Privacy Litig.*, 522 F. Supp. 3d 617, 629 (N.D. Cal. 2022) (\$650 million settlement for a class size of at least 6.9 million, settled after class certification, appeal, and on the eve of trial).

Plaintiffs considered the significant risks and delay that would accompany continued litigation. Weighed against these risks, the Settlement ensures that Class Members will receive valuable and immediate relief and represents a fair, reasonable, and adequate result. Consequently, the first and most important *Korshak* factor weighs strongly in favor of final approval.

## **2. The Complexity, Length, and Expense of Further Litigation Weighs in Favor of Settlement**

The third factor, the “complexity, length and expense of further litigation,” *Korshak*, 206 Ill. App. 3d at 972, also weighs heavily in favor of final approval of the Settlement. As the *Korshak* court observed, a “fair and reasonable settlement” is preferred over continued litigation which

would leave any potential recovery “in limbo.” 206 Ill. App. 3d at 973; *see also Isby v. Bayh*, 75 F.3d 1191, 1199-1200 (7th Cir. 1996) (affirming the final approval of a settlement where continued litigation “would require the resolution of many . . . complex issues” and “entail considerable additional expense”). And “[a]s 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 U.S. Dist. LEXIS 15093, at \*14-15 (N.D. Ill. Oct. 10, 1995).

The Settlement allows Class Members to receive immediate monetary relief, avoiding lengthy and costly additional litigation. Indeed, the Settlement makes monetary relief obtainable through submission of a simple Court-approved Claim Form in a streamlined process (far less burdensome what would be required to obtain relief in a court proceeding). Moreover, the Settlement provides prospective relief that meets or exceeds the injunctive relief that Plaintiffs would have received had Plaintiffs prevailed on the merits.

Had the Parties not reached this Settlement, this case would have proceeded to additional dispositive motions and/or class certification, with the Parties being required to expend substantial resources to go forward with their respective claims and defenses while facing a significant risk regarding any decision on the merits of the case and whether a class should be certified. And the outcome of litigation is uncertain given that BIPA jurisprudence is rapidly evolving. Even if Plaintiffs ultimately prevailed, such efforts would have required significant additional resources, while delaying resolution of this action for an indeterminate time, which would create additional injury to the affected Class Members who are in need of relief. In contrast, the Settlement provides substantial and prompt relief to the Class. This factor weighs in favor of final approval.

### **3. The Positive Reaction of the Class 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. *Korshak*, 206 Ill. App. 3d at 973. Here, to date, 418,676 Class Members have filed valid claims (Schwartz Aff. ¶ 24) and await final approval of the Settlement. Despite direct notice to millions of potential class members and a robust Internet and print publication notice to many more

potential class members, only 97 individuals chose to opt out of the Settlement, no Class Member objected to any term of the Settlement or to the Fee Motion, and only one Class Member commented on the case while styling such comments as an objection (Sarada Mohapatra’s filing). *Id.* ¶¶ 26-27, Exs. H-I. “Such a remarkably low level of opposition supports the Settlement.” *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 965 (N.D. Ill. 2011) (the “tiny fraction” of opt-outs and objections supports approval); *see also Am. Int’l Grp., Inc. v. ACE INA Holdings, Inc.*, No. 07 CV 2898, 2012 U.S. Dist. LEXIS 25265, at \*29 (N.D. Ill. Feb. 28, 2012) (“Out of a class of over thirteen hundred class members, only three . . . have objected, and just one has excluded itself from the class. Thus, . . . there has been almost no opposition to the settlement.”).

**4. Sarada Mohapatra’s “Objection to Settlement” Is Not an Objection but, Rather, Argument that Google Did Not Violate BIPA**

None of the comments raised by the Mohapatra filing provide a basis to deny final approval and relief to more than hundreds of thousands of individuals who expressed support for the Settlement by filing a claim. Indeed, none of Mohapatra’s so-called objections challenged any term of the Settlement or the Fee Motion. *See* Schwartz Aff. Ex. H.

*First*, Mohapatra argues that BIPA “is not applicable to Google Photos since users uploaded their photographs.” Mohapatra at p. 1. But if that were true, it would mean that the Settlement is even more favorable to the Settlement Class than as described by Class Counsel in this motion, because if BIPA does not apply to Google Photos, then the Settlement would be providing Class members substantial compensation for a weak case. Thus, the Mohapatra filing only underscores the adequacy of the relief provided by the Settlement. Also, other than recounting what amounts to personal decision to use Google Photos and an opinion of the Service, Mohapatra provides no legal authority or analysis in support of this argument.

*Second*, Mohapatra objects that “Google Photos ‘People Search’ is [*sic*] biggest innovation in managing photographs” and is “the feature that made me choose Google Photos over many other cloud storage providers like Dropbox.” Mohapatra at p. 2. This is not a complaint that the



Settlement is deficient in any respect, but is simply a reflection of Mohapatra’s own views of Google Photos, and is irrelevant.

*Third*, Mohapatra also objects that “BIPA intends to protect privacy of Illinoisans, not be [*sic*] obstacle for innovation” *Id.* at p. 2. Mohapatra complains that his “‘people search’ stopped working a few months ago, likely as part of this settlement” but provides no evidence to support this allegation. Without any factual or legal support, Mohapatra contends that “[w]hile Clearview settlement furthers privacy, this settlement does not.” *Id.* This assumption is false. In addition to the historically large Settlement Fund, the Settlement also provides significant prospective relief to directly address the privacy concerns raised by Plaintiffs in this case.

In sum, the Mohapatra Objection fails to challenge any term of the Settlement, the request for fees or Service Payments, and provides no evidence undermining the fairness, reasonableness, or adequacy of the Settlement. The Mohapatra Objection should be overruled.

#### **5. There Was 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. *Korshak*, 206 Ill. App. 3d at 972. There is an initial presumption that a proposed settlement is fair and reasonable when it was the result of arm’s-length negotiations. A. Conte & H. Newberg, *NEWBERG ON CLASS ACTIONS*, § 11.42 (4th ed. 2002); *see also Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 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’”); *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 “arms-length negotiation . . . after years of litigation and discovery, resulting in a settlement with the aid of an experienced mediator”).

Here, as this Court found when it granted preliminary approval, there is no indicia of collusion. PAO ¶ 2 (“The proposed Settlement appears to be the product of intensive, thorough, serious, informed, and non-collusive negotiations.”). The context in which the Settlement was reached confirms it was the product of hard-fought, arm’s-length negotiations between adverse

parties and their well-qualified counsel.

When negotiations began, Plaintiffs had a clear view of the strengths and weaknesses of their case and were in a strong position to make an informed decision regarding the reasonableness of a potential settlement. Class Counsel obtained and reviewed discovery concerning every aspect of the case and retained consulting experts to assist in the analysis of this information. Ahdoot Fee Aff. ¶¶ 36-37. The Parties engaged in extensive, arm's-length negotiations—including six separate mediation sessions and copious additional discussions facilitated by the Honorable Stuart E. Palmer (Ret.) of JAMS, U.S. Court of Appeals for the Seventh Circuit Mediator Jillisa Brittan, and the Honorable Layn R. Phillips (Ret.) of Phillips ADR—with such negotiations followed by further communications and negotiations before finalization of the Settlement. *Id.* ¶ 34. There is no indication of collusion or fraud in the settlement negotiations, and none exists.

#### **6. Class Counsel Strongly Endorse the Settlement**

Class Counsel have substantial experience prosecuting actions on behalf of consumers and have regularly been appointed as class counsel in numerous complex consumer class actions, including class actions involving violations of BIPA and other data privacy-related statutes, in state and federal courts across the country. Class Counsel strongly believe that final approval of the Settlement will avoid risks and delays associated with allowing the litigation to move forward.

Upon submission of a valid Claim Form and approval of their claim, Class Members are each provided immediate and meaningful relief instead of having to wait for the litigation and any subsequent appeals to run their course. Further, due to the defenses that Google indicated it would raise should the case proceed through litigation and the resources that it has committed to defend and litigate this matter through appeal, there is legitimate risk that the Class Members would receive no benefit in the absence of this Settlement. Class Counsel are confident that the Settlement is fair, reasonable, adequate, and in the best interests of the Class. This factor favors final approval.

#### **7. The Stage of Litigation and Amount of Discovery Completed Has Ensured that the Settlement Is Fair, Reasonable, and Adequate**

The final factor evaluates the stage of proceedings and the amount of discovery completed

before the parties entered into the settlement. *Korshak*, 206 Ill. App. 3d at 972.

This Action was intensely litigated, and the Settlement was reached only after extensive discovery efforts and substantial motion practice by both Parties. Plaintiffs and Class Counsel devoted substantial time, effort, and resources to this litigation, beginning with their initial investigations of Plaintiffs' allegations, continuing through a series of discovery demands and responses, complex motion practice by both Parties, and ending with hard-fought settlement negotiations. Ultimately, Google disclosed substantial evidence and information through formal discovery and under mediation privilege.

From these efforts, the Parties were able to adequately assess the strengths and weaknesses of the claims and defenses and engage in informed, arm's-length, adversarial negotiations. The Settlement was reached only after more than three-and-a-half years of arm's-length negotiations overseen by three well-respected mediators and after substantial discovery had been taken. Class Counsel had sufficient information to make an informed decision about the merits of the Settlement, and to determine that it represented a fair, reasonable, and adequate result for the Class.

**B. The Class Meets the Elements for Certification Under 735 ILCS 5/2-801**

In its Preliminary Approval Order, the Court found that all applicable requirements of Section 2-801 of the Illinois Code of Civil Procedure were met and certified the Settlement Class. *See* PAO ¶¶ 3, 5. There is no reason for the Court to depart from its previous decision, and no party argues otherwise.

**VI. CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their Motion for final approval of the proposed Settlement, enter a Final Judgment and Order, and provide any further relief the Court deems proper.

Dated: September 14, 2022

Respectfully submitted,

By: /s/ Robert Ahdoot  
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