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IN THE CIRCUIT COURT OF WILLIAMSON COUNTY, ILLINOIS
FIRST JUDICIAL CIRCUIT

STEPHANIE SAHLIN, individually and on behalf of all others similarly situated,

Plaintiff,

v.

HOSPITAL HOUSEKEEPING SYSTEMS, LLC,

Defendant.

Case No. 2021L28

The Honorable Jeffrey Goffinet

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

Dated: August 9, 2021

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Pursuant to the Court's May 21, 2021 Order, Plaintiff Stephanie Sahlin ("Plaintiff") respectfully moves for final approval of the class-wide Settlement Agreement entered into between the Parties to this Action, a true and correct copy of which is attached as Exhibit A to the Declaration of Philip L. Fraietta ("Fraietta Decl.") filed herewith.[1] Defendant does not oppose this Motion.

INTRODUCTION

On May 21, 2021, this Court preliminarily approved the class action settlement between Plaintiff and Defendant Hospital Housekeeping Systems, LLC ("HHS" or "Defendant") and directed that notice be sent to the Settlement Class. Fraietta Decl. ¶ 12, Ex. B. The settlement administrator has implemented the Court-approved notice plan and direct notice has reached 95.2% of the Settlement Class. The reaction from the Settlement Class has been overwhelmingly positive. Specifically, of the 815 class members[2], **zero** have objected or requested to be excluded. The Settlement is an excellent result for the Class and the Court should grant final approval.

The Settlement's strength speaks for itself: it creates a Settlement Fund of up to $801,800 from which every Active HHS Employee with an automatic $950 payment and from which each Former HHS Employee may file a claim to receive a $950 payment. The Settlement also provides meaningful prospective relief, as HHS has represented that it is no longer using "biometric" time clocks in Illinois and agreed that if it reinstates them in Illinois, it will provide all notices and consents as required by BIPA.

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[1] Unless otherwise defined herein, all capitalized terms have the same force, meaning and effect as ascribed in Paragraph 1 ("Definitions") of the Settlement Agreement.

[2] The number of class members was initially estimated as 844 persons. Defendant provided JND with a list of 844 persons that records that resulted in a list containing 815 unique members of the Settlement Class after duplicates were removed. *See* Declaration of Jennifer M. Keough Regarding Notice Administration ("Keough Decl.") ¶¶ 3-5.

Critically, the Settlement was reached despite substantial risk of non-recovery. Indeed, just a few weeks before the mediation, the Illinois Supreme Court agreed to hear *McDonald v. Symphony Bronzville Park, LLC*, Case No. 12651, which will determine whether the Illinois Workers' Compensation Act and its exclusivity provisions bar claims for statutory damages under BIPA. *McDonald* has not been decided yet, but an adverse decision could have deprived the Settlement Class of any recovery whatsoever. Furthermore, also pending at the time of mediation were *Tims v. Black Horse Carriers, Inc.*, Case No. 1-28-0563 (IL App. Ct. 1st Dist.) and *Marion v. Ring Container Technologies, LLC*, Case No. 3-20-0184 (IL App. Ct. 3d Dist.). Both *Tims* and *Marion* will decide whether a one-, two-, or five-year statute of limitations applies to BIPA claims. *Tims* and *Marion* have also not yet been decided, but an adverse decision in either could have deprived a substantial portion of the Settlement Class of any recovery whatsoever

For these reasons, and as explained further below, the Settlement is fair, reasonable, and adequate, and warrants this Court's final approval.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff initially filed her Class Action Complaint November 30, 2020, in the Circuit Court of Williamson County, Illinois, First Judicial Circuit, alleging that Defendant utilizes biometric timekeeping devices and that those working at its facilities in Illinois used the devices when clocking into and out of work. Plaintiff brought causes of action alleging that Defendants failed to comply with BIPA by: (1) failing to inform individuals in writing that it will be capturing, collecting, storing, using, and disclosing biometric data (*i.e.*, statutorily-defined biometric identifiers and/or information) prior to doing so; (2) failing to inform individuals in writing of the specific purpose and length of time for which biometric data is collected or captured; (3) failing to obtain a written release for the capture of biometric data prior to such

collection or capture; and (4) failing to publish or adhere to a publicly available retention schedule and guidelines for permanently destroying biometric data. *See* Declaration of Philip L. Fraietta ("Fraietta Decl.") ¶ 4. On January 8, 2021, HHS filed a notice of removal and removed the case to the United States District Court for the Southern District of Illinois. *Id.* ¶ 5.

From the outset of the case, the Parties engaged in settlement discussions and to that end, agreed to participate in a private mediation with Judge Andersen before HHS formally answered the Complaint. *Id.* ¶ 6. On February 25, 2021, the Parties participated in a full-day mediation with Judge Andersen. *Id.* ¶ 9. At the conclusion of the mediation session, the Parties agreed on all material terms of a class action settlement, and in the coming days executed a term sheet confirming the same. *Id.*

On March 8, 2021, Plaintiff dismissed the federal action and re-filed her case in this Court.[3] *Id.* ¶ 10. Thereafter the parties drafted and executed the Settlement Agreement and related documents which are submitted herewith. *Id.* ¶ 11. On May 21, 2021, the Court granted preliminary approval to the Settlement. *Id.* ¶ 12, Ex. B.

TERMS OF THE SETTLEMENT

The key terms of the Settlement, attached to the Fraietta Declaration as Exhibit A, are briefly summarized as follows:

A. Class Definition

The "Settlement Class" is defined as:

> [A]ll individuals who worked or are currently working for HHS in the State of Illinois who had their Biometric Identifiers and/or Biometric Information collected, captured, received, or otherwise

[3] The Parties agreed to process their class action settlement in the Circuit Court of Williamson County due to potential Article III standing issues concerning Plaintiff's claims under Section 15(a) of the BIPA in federal court. *See Bryant v. Compass Group USA, Inc.*, 958 F.3d 617, 619 (7th Cir. 2020) (holding that there is no Article III standing for a Section 15(a) claim that alleges the failure to publicly disclose a retention and destruction policy for biometric data).

> obtained or disclosed by HHS or its agent(s) within the five-year period preceding the date of the Complaint.[4]

Agreement ¶ 1.33. The Settlement Class is comprised of 815 class members. Fraietta Decl. ¶ 13.

B. Monetary And Prospective Relief

Defendant will establish a Settlement Fund of up to $810,800, from which each Active HHS Employee will automatically receive a $950 payment. Agreement ¶ 2.1(a). Each Former HHS Employee who submits a valid claim will also be entitled to a $950 payment. Agreement ¶ 2.1(b). The Settlement Fund will also be used to pay notice and administrative expenses, attorneys' fees, costs, and expenses, and an incentive award to the Class Representative. *Id.* ¶¶ 1.35, 2.1.

Additionally, HHS has represented that it is no longer using "biometric" time clocks in Illinois and has agreed that should it reinstate them in Illinois, it will provide all notices and consents are required by BIPA. *Id.* ¶ 2.2.

C. Release

In exchange for the relief described above, HHS and each of its related and affiliated entities as well as all "Released Parties," as defined in ¶ 1.28 of the Settlement, will receive a full release of all claims arising out of or related to biometrics or BIPA in connection with Plaintiff's and the Settlement Class's employment with HHS. *See id.* ¶¶ 1.28-1.30.

D. Notice And Administration Expenses

The Settlement Fund will be used to pay the cost of sending the Notice set forth in the

[4] Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this Action and members of their families; (2) HHS, HHS's subsidiaries, parent companies, successors, predecessors, and any entity in which HHS or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (3) Persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors or assigns of any excluded Persons.

Agreement and any other notice as required by the Court, as well as all costs of administration of the Settlement. *Id.* ¶¶ 1.31, 1.35.

E. Incentive Award, Attorneys' Fees, Costs, And Expenses

In recognition for her efforts on behalf of the Settlement Class, HHS has agreed that Plaintiff Sahlin may receive, subject to Court approval, an incentive award of up to $5,000 from the Settlement Fund, as appropriate compensation for her time and effort serving as Class Representative and as a party to the Action. HHS will not oppose any request limited to this amount. *Id.* ¶ 8.3. HHS has also agreed that the Settlement Fund may also be used to pay Class Counsel reasonable attorneys' fees and to reimburse costs and expenses in this Action, in an amount to be approved by the Court. *Id.* ¶¶ 1.35, 8.1. Class Counsel has agreed to petition the Court for attorneys' fees, costs, and expenses of no more than 37.5% of the Settlement Fund. *Id.* ¶ 8.1. These awards are subject to this Court's approval, which Plaintiff moved for separately on July 9, 2021. That motion is unopposed.

CLASS ACTION SETTLEMENT APPROVAL PROCESS

Strong judicial and public policies favor the settlement of complex class action litigation, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Quick v. Shell Oil Co.*, 404 Ill. App. 3d 277, 282 (3rd Dist. 2010); *see also* 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.41 (4th ed. 2002) (hereinafter *Newberg*).

Courts review proposed class action settlements using a well-established two-step process. *Newberg* § 11.25, at 38-39; *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 492 (1st Dist. 1992). The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is "within the range of possible approval." *Newberg*, § 11.25, at 38–39; *Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980),

overruled on other grounds. If the Court finds the settlement proposal is "within the range of possible approval," the case proceeds to the second step in the review process: the final approval hearing. *Newberg*, § 11.25, at 38–39.

Plaintiff is presently at the second step of this two-step process.

ARGUMENT

Upon final approval, the Settlement reached in this matter will provide Settlement Class Members with substantial financial compensation and non-monetary relief that they otherwise would be unable to obtain. Because the Settlement reached by the Parties is fair, reasonable, and provides adequate compensation to the Settlement Class, and because the Notice Program effectively notified class members of their rights under the Settlement Agreement, the Settlement warrants final approval by the Court.

I. THE SETTLEMENT SHOULD BE FINALLY APPROVED

Section 2-801 provides that a court may approve a proposed class settlement "on a finding that it is fair, reasonable, and adequate." 735 ILCS 5/2-801; *see also* Fed. R. Civ. P. 23(e)(2).

In assessing the fairness, reasonableness, and adequacy of a proposed class settlement, Illinois courts consider the following factors: "(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; (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." *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990); *see also Armstrong*, 616 F.2d at 314.

In this case, as the Court has already found in granting preliminary approval of the

Settlement, all eight factors weigh in favor of finding the Settlement fair, reasonable, and adequate, warranting its final approval.

A. The Settlement Provides Substantial Relief

As to the first factor, the Settlement in this case provides substantial material benefits to the Settlement Class: each Active HHS Employee will automatically receive a $950 payment, while Former HHS Employees will have the opportunity to submit a timely and valid claim form to receive a $950 payment. Agreement ¶ 2.1. In addition, the Settlement provides meaningful prospective relief, as HHS has represented that it is no longer using "biometric" time clocks in Illinois and has agreed that should it reinstate them in Illinois, it will provide all notices and consents are required by BIPA. *Id.* ¶ 2.2.

While Plaintiff believes she would likely prevail on her claims, she is also aware that Defendant denies the material allegations of the Complaint and intends to pursue several legal and factual defenses, including but not limited to whether claims are barred by the applicable statute of limitations or are preempted by Illinois's Worker's Compensation Act. Fraietta Decl. ¶ 19. The viability of both defenses is currently the subject of at least three pending appellate cases. *See Tims v. Black Horse Carriers, Inc.*, Case No. 1-28-0563 (IL App. Ct. 1st Dist.) (statute of limitations); *Marion v. Ring Container Technologies, LLC*, Case No. 3-20-0184 (IL App. Ct. 3d Dist.) (statute of limitations); *McDonald v. Symphony Bronzville Park, LLC*, Case No. 126511 (IL Sup. Ct.) (Worker's Compensation Act). If successful, either defense would result in Plaintiff and the proposed Settlement Class Members receiving no payment or relief whatsoever. Thus, the unsettled nature of several potentially dispositive threshold issues in this case poses a significant risk to Plaintiff's claims and will add to the length and costs of continued litigation. Taking these realities into account and recognizing the risks involved in any litigation, the relief available to each Settlement Class Member in the Settlement represents a

truly excellent result for the Settlement Class.

In addition to any defenses on the merits Defendant would raise, should litigation continue Plaintiffs would also be required to prevail on a class certification motion, which would be highly contested and for which success is certainly not guaranteed. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) ("Settlement allows the class to avoid the inherent risk, complexity, time and cost associated with continued litigation") (internal citations omitted). "If the Court approves the [Settlement], the present lawsuit will come to an end and [Settlement Class Members] will realize both immediate and future benefits as a result." *Id*. Approval would allow Plaintiffs and the Settlement Class Members to receive meaningful and significant payments now, instead of years from now or never. *See id*. at 582.

Additionally, the fairness, reasonableness, and adequacy of the instant Settlement are supported by previously approved settlements, which provide less value than that achieved for the class here. For example, in *Zepeda v. Intercontinental Hotels Group, Inc.*, No. 2018-CH-02140 (Cir. Ct. Cook Cnty., Ill. 2018), the settlement provided each class member eligible to receive a *pro rata* share of a settlement fund that would amount to approximately $500 per person *before* deductions for administrative expenses, attorneys' fees and costs, and an incentive award. Similarly, recent settlements in *Lopez v. Multimedia Marketing & Sales, Inc.*, No. 17-CH-15750 (Cir. Ct. Cook Cnty., 2020), *Ray McGee v. LSC Comm'ns, Inc.*, No. 17-CH-12818 (Cir. Ct. Cook Cnty., 2019), and *Wydra v. Midwest Can Co.*, Noc. 19-CH-08185 (Cir. Ct. Cook Cnty., 2020) provided settlement class members with net payments of $565 per person, $750 per person, and $626.70 per person, respectively. In *Sekura v. L.A. Tan Enterprises, Inc.*, No. 2015-CH-16694 (Cir. Ct. Cook Cnty., Ill. 2016), the BIPA class settlement resulted in each class member being eligible to receive a *pro rata* share of a settlement fund that would have amounted to approximately $40 per person if each class member had submitted a valid claim. In *Carroll v.*

Crème de la Crème, Inc., No. 2017-CH-01624 (Cir. Ct. Cook Cnty., Ill. 2018), the settlement resulted in each class member being eligible to enroll in credit and identity monitoring services free of charge without further monetary relief. Here, each Settlement Class Member who is an Active HHS Employee will automatically receive a $950 payment, while each Settlement Class Member who is a Former HHS Employee will have the opportunity to submit a timely and valid claim form to receive a $950 payment. Attorneys' fees, costs, administrative expenses, and Plaintiff's incentive award are deducted from the Settlement Fund separate and apart from the funds provided to valid claimants.

This result is exceptional in comparison to other BIPA cases—and is certainly fair, reasonable, and adequate and warrants Court approval.

B. Defendant's Ability To Pay

The second factor that can be considered by courts is the Defendant's ability to pay the settlement sum. Defendant's financial standing has not been placed at issue here.

C. Continued Litigation Is Likely To Be Complex, Lengthy, And Expensive

The third factor asks whether the settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation. *See City of Chicago*, 206 Ill. App. 3d at 972. In absence of settlement, it is certain that the expense, duration, and complexity of the protracted litigation that would result would be substantial. Not only would the Parties have to undergo significant motion practice before any trial on the merits is even contemplated, but evidence and witnesses from throughout the State of Illinois and beyond would have to be assembled for any trial. Further, given the complexity of the issues and the amount in controversy, the defeated party would likely appeal both any decision on the merits as well as on class certification. As such, the immediate and considerable relief provided to the Settlement Class under the Settlement Agreement weighs heavily in favor of its approval compared to the

inherent risk and delay of a long and drawn-out litigation, trial, and appeal. Protracted and expensive litigation is not in the interest of any of the Parties or Settlement Class Members.

D. There Has Been No Opposition To The Settlement

The fourth and sixth factors consider the amount of opposition to the Settlement and the reaction of the Settlement Class to the Settlement. *See City of Chicago*, 206 Ill. App. 3d at 972.

Following the implementation of the Notice plan set forth in the Settlement Agreement, the Settlement Class's reaction to the Settlement has been overwhelmingly favorable. In accordance with the Notice plan, the Settlement Administrator successfully provided direct notice to 95.2% of the Settlement Class. **Zero** Settlement Class Members objected to or requested to be excluded from the Settlement.[5] Moreover, thus far, hundreds of claims have been filed by Former HHS Employees and more continue to be submitted each day. Class Counsel anticipates that a significant number of additional Claim Forms will be filed between now and the October 7, 2021 Claims Deadline.

Accordingly, the fourth and sixth factors weigh in favor of granting final approval.

E. The Settlement Was The Result Of Arms'-Length Negotiations Between The Parties After A Significant Exchange Of Information

The fifth factor considers the presence of any collusion by the Parties in reaching the proposed settlement. *City of Chicago*, 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. *Newberg*, § 11.42; *see also Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 21 (finding no collusion where there was "no evidence that the proposed settlement was not the product of 'good faith, arm's-length negotiations'"). Here, the Settlement was reached only after arm's-length negotiations between counsel for the Parties, with the assistance of Judge Andersen, an

[5] The deadline for Settlement Class Members to object to or request to be excluded from the Settlement was July 15, 2021. 5/21/21 Preliminary Approval Order, Fraietta Decl. Ex. B ¶¶ 15, 20.

experienced class action mediator. Fraietta Decl. ¶ 9. Moreover, negotiations began only after an exchange of information regarding the size and composition of the Settlement Class. *Id.* ¶¶ 7-8. Such an involved process underscores the non-collusive nature of the Settlement. Finally, given the fair result for the Settlement Class in terms of the monetary and prospective relief, it is clear that this Settlement was reached as a result of good-faith negotiations rather than any collusion between the Parties. Accordingly, this factor weighs in favor of final approval.

F. The Settlement Agreement Has Support Of Experienced Class Counsel

The seventh factor is the opinion of competent counsel as to the fairness, reasonableness, and adequacy of the proposed settlement. *See City of Chicago*, 206 Ill. App. 3d at 972. Courts rely on affidavits in assessing proposed class counsel's qualifications under this factor. *Id.* Class Counsel believes that the Settlement is in the best interest of the Settlement Class Members because the Settlement Class Members will be provided an immediate payment instead of having to wait for lengthy litigation and any subsequent appeals to run their course. Further, due to the defenses that Defendant has indicated that it would raise should the case proceed through litigation – and the resources that Defendant has committed to defend and litigate this matter – it is possible that the Settlement Class Members would receive no benefit whatsoever in the absence of this Settlement. Given Class Counsel's extensive experience litigating similar class action cases in federal and state courts across the country, including other BIPA cases, this factor also weighs in favor of granting final approval. *See* Fraietta Decl. ¶¶ 24-28, Ex. C (firm resume); *see also GMAC*, 236 Ill. App. 3d at 497 (finding that the court should give weight to the fact that class counsel supports the class settlement in light of its experience prosecuting similar cases).

G. The Parties Exchanged Information Sufficient To Assess The Adequacy Of The Settlement

The eighth factor is structured to permit the Court to consider the extent to which the court and counsel were able to evaluate the merits of the case and assess the reasonableness of

the settlement. *City of Chicago*, 206 Ill. App. 3d at 972. Here, the Parties exchanged information regarding the facts and size of the class, and thoroughly investigated the facts and law relating to Plaintiff's allegations and Defendant's defenses. Fraietta Decl. ¶¶ 7-8. Accordingly, this factor also weighs in favor of final approval.

II. THE UNOPPOSED MOTION FOR AN INCENTIVE AWARD AND FEE AWARD SHOULD BE APPROVED

Because no objections were filed in opposition to Plaintiff's Motion for Attorneys' Fees, Costs, Expenses, and Incentive Award (the "Fee Petition"), and because all factors in favor of granting final approval of the Settlement have been met, the Court should also approve the requested Incentive Award to Plaintiff, and the Fee Award to Class Counsel.

The Fee Petition was filed on July 9, 2021 and was uploaded to the Settlement Website that same day. In addition, the Class Notice was sent to all Settlement Class Members even before the Fee Petition was filed and fully informed the Settlement Class Members of the maximum amount of the Incentive Award and Fee Award that Class Counsel and Plaintiff would seek. Accordingly, Settlement Class Members had ample opportunity to consider the merits of the Fee Petition. However, no objections to the Fee Petition were filed, and no Settlement Class Members even informally expressed any dissatisfaction with the requested Incentive Award or Fee Award. The lack of any opposition is not surprising because, as discussed above, the Settlement provides substantial cash benefits to the Settlement Class and will result in meaningful changes to HHS's BIPA compliance going forward.

For the reasons stated in the unopposed Fee Petition, and because no Settlement Class Member has voiced any opposition or objection to the requested Fee Award or Incentive Award, Plaintiff and Class Counsel respectfully request that the Court approve the requested Incentive Award and Fee Award.

CONCLUSION

For the reasons stated above and in the unopposed Fee Petition, Plaintiff respectfully requests that the Court enter an Order granting final approval of the Settlement and approving the requested Incentive Award and Fee Award. A proposed Final Order and Judgment is submitted herewith.

Dated: August 9, 2021

Respectfully submitted,

By: */s/ Carl V. Malmstrom*
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**Pro Hac Vice* Application Forthcoming

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