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

KELSEY HIRMER, individually and on behalf of all others similarly situated, *Plaintiff,* v. ESO SOLUTIONS, INC. d/b/a ECORE SOLUTIONS, INC., *Defendant.*	Case No. 22-cv-01018 Hon. LaShonda A. Hunt. Presiding Judge

PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND SUPPORTING MEMORANDUM

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Treatises

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Kelsey Hirmer respectfully moves the Court for preliminary approval of the class action settlement ("Settlement") reached between Plaintiff and Defendant ESO Solutions, Inc. ("ESO" or "Defendant").

Ms. Hirmer alleges ESO violated the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1, *et seq.* by collecting the proposed Class's fingerprints without complying with the statute's informed consent regime or adhering to a publicly-available policy governing the retention and destruction of this highly-sensitive data. Defendant denied and continues to deny Plaintiff's allegations.

After engaging in motion practice, the parties participated in a full-day mediation session overseen by the Honorable Judge James F. Holderman (ret.) on July 18, 2023. These efforts culminated in a class-wide settlement. Pursuant to the settlement agreement reached by the parties, ESO has agreed to pay $4,101,300.00 into a non-reversionary Settlement Fund. There are 6,414 individuals who will receive an equal, *pro-rata* distribution without the need to file a claim or take any other action. Plaintiff estimates[1] every class member would receive approximately $401 without the need for a claim form.

As demonstrated below, the significant relief provided by the Settlement, along with its equitable and effective method of distribution, places the Settlement squarely within the range of

[1] Plaintiff's estimate is based on a pro-rata distribution after deduction of $37,342 in administration costs, $16,412.62 in reimbursed expenses, $10,000 for incentive award, and 36% of the fund after administration costs are deducted, which equals $1,463,074.88 for fees. *See Birchmeier v. Caribbean Cruise Line, Inc.*, 896 F.3d 792, 796-97 (7th Cir. 2018) (affirming attorney fees in statutory class action of 36% of the first $10 million). As explained below, Plaintiff will separately file a fee petition and there is no clear sailing agreement for fees or incentive award.

possible approval, whereas the proposed Settlement Class satisfies Rule 23's requirements for conditional certification for settlement purposes only. Accordingly, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement, certify the Settlement Class for settlement purposes only, appoint Plaintiff's attorneys as Class Counsel, approve the form and method of Class Notice, and set a Final Approval Hearing.

II. RELEVANT BACKGROUND

A. The Biometric Information Privacy Act.

The growing use of biometric data in commercial transactions implicates unique privacy concerns. Unlike other forms of personally identifiable information, biometric information such as fingerprints cannot be changed (much less replaced) when stolen. Recognizing the "very serious need of protections for the citizens of Illinois when it comes to biometric information," the legislature passed BIPA in 2008 to provide heightened protections for biometric privacy rights. *See* Illinois House Transcript, 2008 Reg. Sess. No. 276, p.249 (May 30, 2008); *see also* 740 ILCS 14/5(g). The statute features several safeguards that protect Illinois' citizens' ability to maintain control over their biometric information.

B. The alleged BIPA violations.

ESO Solutions, Inc. ("ESO") is a Texas-based company that offers an integrated suite of software products, including scheduling software, for EMS agencies, fire departments, and hospitals. Plaintiff alleges that ESO sells a "software scheduling platform," including alleged "biometric timekeeping authentication technology" used in connection with an ePro BioClock to emergency medical services agencies. Plaintiff contends that during her employment with one of ESO's customers, she was "required to scan her fingerprints" into "Defendant's timekeeping devices" to clock in and out of work each day.

Plaintiff alleges that she was required to track her time and attendance at Elite Medical Transportation Providers, LLC ("Elite") via the ePro BioClock throughout her tenure, which Plaintiff alleges resulted in ESO capturing, collecting, and storing her fingerprint data (as well as every other Settlement Class member's). *See* ECF No. 1 at Ex. A (Compl.), ¶¶ 23-26. ESO denies that it captured, collected, stored, or used Plaintiff's or other's "fingerprint" or biometric identifiers or biometric information, and denies the Plaintiff's allegations.

According to Plaintiff, ESO's systematic collection and storage of the Settlement Class's highly sensitive biometric data violated BIPA in two discrete ways. First, Plaintiff alleges ESO violated Section 15(a) of the statute by failing to implement and adhere to a publicly available policy governing the retention and destruction of the biometric data in its possession. *Id.* at ¶¶ 13, 21, 30-31, 38-44. Second, Plaintiff alleges ESO violated Section 15(b) by collecting, storing, and using the Settlement Class's biometric data without first providing the necessary disclosures or receiving informed written consent. *Id.*, at ¶¶ 13, 21, 24-25, 27-29, 47-54. Again, ESO denied and continues to deny these allegations, including that it had any obligation to comply with the BIPA.

C. Procedural History.

On January 24, 2022, Plaintiff commenced this class action in the Circuit Court of Cook County. ESO removed the case to this Court on February 22, 2022. *See* ECF No. 1.

On April 15, 2022, ESO moved to stay this case pending the Illinois Appellate Court's resolution of *Tims v. Black Horse Carriers, Inc.* and *Cothron v. White Castle Sys.* *See* ECF No. 20. The Court denied this Motion on April 18, 2022, and entered a case management schedule.

On May 5, 2022, ESO filed a motion to dismiss under Rule 12(b)(6). *See* ECF Nos. 22-23 (motion and supporting memorandum). On May 31, 2022, while Plaintiff was in the midst of preparing her response to the motion to dismiss, ESO filed a second motion to stay the case (the

"Second Stay Motion") pursuant to the *Colorado River* doctrine pending the resolution of a separate BIPA class action Plaintiff brought litigating against her former employer in state court (the "State Court Action"). *See* ECF Nos. 27-28 (Second Stay Motion and supporting memorandum. On June 2, 2022, the Court stayed the briefing on the ESO's motion to dismiss and entered a briefing schedule on the Second Stay Motion. *See* ECF No. 29. On July 13, 2022, the Court granted the Second Stay Motion.

The Parties subsequently agreed to mediate this dispute on July 18, 2023, before the Honorable James Holderman (ret.) of Judicial Arbitration and Mediation Services, Inc. ("JAMS"). Over the weeks leading up to the mediation, the Parties exchanged information regarding the estimated size of the proposed Class and submitted detailed briefs setting forth their respective views on the strengths of their cases.[2] At mediation, the Parties discussed their relative views of the law and the facts and Plaintiff's theory regarding potential relief for the proposed Class. But after an all-day, highly-adversarial mediation, the Parties were unable to bridge the gap between their respective positions.[3] Nevertheless, the parties continued their settlement efforts over the ensuing two weeks before reaching an agreement-in-principle on August 1, 2023 with the assistance of Judge Holderman.[4] After doing so, the Parties continued extensive negotiations over the next seven and a half months on their remaining points of dispute,[5] which culminated in the fully executed Agreement, a copy of which is attached hereto as *Appendix 1*.

Following the execution of the Agreement, Plaintiff's counsel spent the next two-and-a-half months engaging in third-party discovery to confirm which individuals should be included in

[2] *See* Declaration of Keith J. Keogh ("Keogh Decl.") attached as *App. 2*, ¶ 9.
[3] *Id.* at ¶ 10.
[4] *Id.* at ¶ 11.
[5] *Id.*

the Settlement Class, obtain contact information for the Settlement Class members, which entailed the issuance of seventeen subpoenas, multiple Rule 37.2 conferences, and motion practice to compel with respect to information Plaintiff requested from third parties.[6] As a result of these efforts, the parties were able to finalize the list of individuals in the Settlement Class, *i.e.*, individuals who used an ePro BioClock in Illinois during the relevant time-period and had their finger-scan data hosted on a server owned or leased by ESO.

D. The proposed Settlement.

The Settlement's details are contained in the Agreement signed by the Parties. *See App. 1*. For purposes of preliminary approval, the following summarizes the Agreement's terms:

1. The Settlement Class.

The Settlement Class is defined as follows:

> All individuals who, while residing in the State of Illinois, scanned their finger in connection with their use of an ePro BioClock and whose finger-scan data was hosted on a server owned or leased by ESO from January 24, 2017, to the date the Court enters the Preliminary Approval Order. The Settlement Class does not encompass individuals who may have used an ePro BioClock in Illinois but did not have their finger-scan data hosted on a server owned or leased by ESO.

App. 1 at §§ II.32.[7] Based on the information obtained in discovery, the Settlement Class consists of 6,414 individuals. *See App. 2* (Keogh Decl.), ¶ 14

2. Monetary relief for Settlement Class Members.

The Settlement requires ESO to create a non-reversionary Settlement Fund of $4,101,300.00, from which each Settlement Class Member will receive a *pro rata* portion after payment of Settlement Administration Expenses, attorney's fees and costs, and any incentive

[6] *Id.* at ¶ 12.

[7] Excluded from the Settlement Class are: (1) the district and magistrate judges presiding over this case; (2) the judges of the Seventh Circuit; (3) the immediate families of the preceding person(s); (4) any Released Party; and (5) any Settlement Class Member who timely opts out.

award approved by the Court. *See App. 1* (Agreement) at §§ II.37, V.54-58, XI.73-74. No amount of the Settlement Fund will revert to ESO, and Settlement Class Members are not required to submit a claim or take any action to receive compensation. Instead, the class administrator ("Administrator") will automatically issue checks to the last known address of each Settlement Class Member who declines to opt out. *Id.* at §§ II.30, XI.73**.** Checks issued to Settlement Class Members shall remain valid for 180 days from the date of their issuance. *Id.* at § XI.73. If, after the expiration date of the checks distributed, there remains money in the Settlement Fund sufficient to pay at least five dollars ($5.00) to each Settlement Class Member who cashed their initial check, those remaining funds will be distributed on a *pro rata* basis to those Settlement Class Members (the "Second Distribution"). *Id*. at § XI.74.

3. Prospective relief.

The settlement agreement provides that within thirty (30) days following the entry of the preliminary approval order, ESO will permanently delete any data generated from the scan of any Settlement Class Member's finger in connection with the ePro BioClock which is hosted on servers leased or owned by ESO or will request that its customers do so directly. *App. 1* at §XVII.93. Plaintiff and Class Counsel acknowledge and agree that the deletion of this data shall not be considered evidence that ESO controls such data or used to establish or suggest that ESO or any other entity exercised any control over such data, as set forth in Paragraph 93 of the Settlement Agreement. Further, at the request of Plaintiff and Class Counsel, with respect to individuals who used the BioClock in connection with their work at Elite, Plaintiff's employer, any data generated in connection with the scan of such individual's finger will not be deleted while Plaintiff's lawsuit against Elite is pending. Class Counsel will notify ESO's counsel when the Elite action is resolved and ESO has agreed to permanently delete any data generated from the scan of a finger within 30

days after such notice is provided or will request that Elite do so directly. The Parties acknowledge and agree, that any retention of such data during the pendency of the Elite Action does not constitute a violation of the BIPA or any other similar statute of law and shall not form the basis of any claim by Plaintiff or any Settlement Class Member, but is being retained consistent with 740 ILCS 14/15(a), which allows for the retention of alleged biometric identifiers or biometric information pursuant to a subpoena issued by a court of competent jurisdiction. *Id.*

4. *Cy pres* distributions.

Only if a Second Distribution is not feasible or if there remains money after the Second Distribution will the money be donated to a *cy pres* beneficiary. *App. 1* (Agreement) at §XI.74.

The Seventh Circuit has made clear any *cy pres* recipient must be related to the class member's claims and the interests of the class in preventing similar conduct in the future. /. *See Ira Holtzman, C.P.A., & Assocs. v. Turza*, 728 F.3d 682, 689 (7th Cir. 2013). In *Holtzman*, the Seventh Circuit reversed final approval when a objector complained that the Legal Assistance Foundation of Metropolitan Chicago was not an appropriate *cy pres* recipient in TCPA class action settlement because it does not directly or indirectly benefit the class members' interests. Noting the Legal Assistance Foundation was a worthy nonprofit, the Seventh Circuit emphasized the organization was not related to the underlying claim and "many courts have expressed skepticism about using the residue of class actions to make contributions to . . . favorite charities." *Id.* (citing *In re Lupron Marketing & Sales Practices Litigation*, 677 F.3d 21, 31-38 (1st Cir. 2012) (*cy pres* distributions should be aimed at recipients "whose interests reasonably approximate those being pursued by the class."); *Klier v. Elf Atochem North America, Inc.*, 658 F.3d 468, 474 (5th Cir. 2011) ("a *cy pres* distribution is designated to . . . put any unclaimed settlement funds to their next best compensation use, *e.g.*, for the aggregate, indirect, prospective benefit of the class"); *Nachshin*

v. AOL, LLC, 663 F.3d 1034, 1039 (9th Cir. 2011) ("When selection of *cy pres* beneficiaries is not tethered to the nature of the lawsuit and the interests of the silent class members, the selection process may answer to the whims and self-interests of the parties, their counsel, or the court.").

Thus, Plaintiff proposes any such residual funds be disbursed to the Electronic Privacy Information Center ("EPIC"). EPIC is a public interest research center devoted to safeguarding consumer privacy rights in the digital age. *See* https://epic.org (last visited August 28, 2024). EPIC has been a vocal proponent of biometric privacy rights in particular, having worked with lawmakers and executive agencies on behalf of consumers to regulate use of biometric technologies.[8] Most importantly, EPIC has fought against efforts to weaken BIPA's biometric privacy rights by submitting an amicus brief in *Cothron v. White Castle* urging the Illinois Supreme Court to hold each unauthorized biometric scan triggers a new limitations period. *See* https://epic.org/epic-urges-illinois-supreme-court-to-uphold-illinois-residents-biometric-privacy-rights (last visited August 28, 2024). Put simply, one would be hard-pressed to find another organization more closely aligned with the Settlement Class's interests than EPIC (an organization that has no connection to Plaintiff or her counsel).

Conversely, Defendant has proposed Illinois Heart Rescue or the Chicago Bar Foundation

[8] *See* https://epic.org/epic-coalition-urge-new-york-lawmakers-to-pass-biometric-recognition-bans/ (last visited August 28, 2024) ("EPIC and a coalition of civil society groups urged lawmakers to pass a package of four bills limiting the use of biometric recognition technologies including facial recognition …. [e]mphasizing … harms … [such as] bias, over-policing, wrongful arrests, and disparate impacts on marginalized communities."); *id.* ("EPIC and a coalition of groups urged Congress to pause TSA's use of facial recognition at airport security checkpoints."); https://epic.org/overview-of-epics-comments-to-doj-and-dhs-on-the-use-of-facial-recognition-other-technologies-using-biometric-information-and-predictive-algorithms (last visited August 28, 2024) ("EPIC submitted comments in response to DOJ and DHS' Request for Written Submissions … as the agencies craft new guidance for law enforcement on certain advanced technologies … [including] facial recognition ….").

as *cy pres* recipients. Alternatively, Defendant has proposed that any *cy pres* distribution be split between the Electronic Privacy Information Center and either Illinois Heart Rescue or the Chicago Bar Foundation. While the Chicago Bar Foundation and Illinois Heart Rescue are undoubtedly worthy organizations, neither have any connection to the Settlement Class's interests or the underlying claims. Thus, the fact both charities serve important social goals cannot justify their receipt of any unclaimed settlement funds. *Nachsin, supra* (finding *cy pres* distribution to Boys and Girls Club of America in consumer protection class action inappropriate). The Court should therefore designate EPIC as the sole *cy pres* recipient. *See Ira Holtzman,* 728 F.3d at 689.

5. Settlement Class release.

In exchange for the benefits allowed under the Settlement, Settlement Class Members who do not opt out will provide a release tailored to the alleged claims and practices at issue in this case. Specifically, they will release "any and all claims, rights, demands, liabilities, lawsuits and/or causes of action of every nature and description, whether known or unknown, filed or unfiled, asserted or as of yet unasserted, existing or contingent, whether legal, statutory, equitable, or of any other type or form, whether under federal, state, or local law, and whether brought in an individual, representative, or any other capacity, of every nature and description whatsoever, including, but not limited to, claims that were or could have been brought in the Lawsuit or any other actions filed (or to be filed) by Plaintiff and Settlement Class Members against the Released Parties relating in any way to or connected with the alleged capture, collection, storage, possession, transmission, conversion, purchase, obtaining, sale, lease, profit from, disclosure, re-disclosure, dissemination, transmittal, conversion and/or other use of alleged biometric identifiers and/or biometric information through the date of Final Approval of Settlement, including, but not limited to, claims under the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 et seq. *Id.* at §

XII.76. Significantly, the Settlement expressly excludes any claims against ESO's customers that used the ePro BioClock in the State of Illinois. *Id.* at § XII.79. Thus, Plaintiff and Settlement Class Members may still pursue BIPA claims against their employers.

6. Class Representative Service Award.

The Agreement provides Plaintiff may petition the Court for a Service Award. *Id*. at § V.57. There is no clear sailing provision as to this request. The Service Award shall be paid out of the Settlement Fund and is subject to this Court's approval; neither Court approval nor the amount of the Service Award is a condition of the Settlement. *Id*. Given Plaintiff's role in prosecuting this action on behalf of the Settlement Class, Plaintiff will request a Service Award of $10,000.00. The Class Notice will advise the Settlement Class of Plaintiff's request.

7. Attorneys' fees and costs.

Class Counsel will apply to the Court for an award of attorneys' fees and costs prior to notice being sent. As will be addressed in the motion for attorneys' fees, courts in this district commonly award approximately 36% plus reasonable expenses in common fund class settlements after settlement administration costs are deducted. *See Birchmeier supra* 796-97 (7th Cir. 2018) (affirming attorney fees in statutory class action of 36% of the first $10 million, 30% of the next $10 million, and 24% of the next $34 million); *Kolinek v. Walgreen Co*., 311 F.R.D. 483, 503 (N.D. Ill. 2015) (Kennelly, J.) (36% of fund net admin costs in statutory action).[9]

This amount is appropriate to compensate Class Counsel in this amount here for the work they have performed in procuring a settlement for the Settlement Class, as well as the work remaining to be performed in documenting the Settlement, securing Court approval of the

[9] *See also Pearson v. NBTY, Inc.*, 772 F.3d 778, 782 (7th Cir. 2014) (holding attorneys' fees awarded to class counsel should not exceed at most a half of the total amount of money going to class members); *Gaskill v. Gordon*, 160 F.3d 361, 362-63 (7th Cir. 1998) (affirming award of 38%); *Kirchoff v. Flynn*, 786 F.2d 320, 323 (7th Cir. 1986) (observing that "40% is the customary fee in tort litigation").

settlement, overseeing settlement implementation and administration, assisting Settlement Class Members, and obtaining dismissal of the action. It should be noted, however, that the enforceability of the Settlement is not contingent on Court approval of an award of attorneys' fees or costs. *Id*. at § V.56. Further, the Class Notice will inform the Settlement Class Members Class Counsel will seek 36% of the fund net administration costs. The Agreement does not contain a clear sailing agreement as to attorney fees or costs.

8. Administration and Notice.

All costs of notice and claims administration shall be paid by ESO out of the Settlement Fund. The Administrator will be KCC Class Action Services LLC ("KCC") subject to this Court's approval. *App. 1* (Agreement) at §II.29. The Administrator shall: (1) issue Class Notice; (2) set up and maintain the settlement website and toll-free number; and (3) issue settlement payments. *Id.* at §§ VI, XI.

Within twenty-one (21) days of the entry of the Preliminary Approval Order, the Administrator will issue the Class Notice (Exhibit 3 to the Agreement) via direct mail to all Settlement Class Members. *Id*. at § VI.60.A. Before doing so, the Administrator will update Settlement Class Members' addresses by running their names and addresses through the National Change of Address database. *Id.* For Settlement Class Members whose Notice is returned as undeliverable, the Administrator will conduct a database search and re-issue the Mail Notice to all Settlement Class Members for whom an alternative address can be found. *Id.*

Further, the Administrator will establish and maintain a Settlement Website www.esoBIPAsettlement.com. *Id.* at § VI.60.B. The Settlement Website will include general information such as the Agreement, Website Notice, the Preliminary Approval Order, the operative Complaint, the attorney fee motion, and any other materials the Parties agree to include. *Id*.

III. ARGUMENT

A. The settlement approval process.

Under Fed. R. Civ. P. 23(e)(1)(C), a court may approve a class action settlement if it is "fair, adequate, and reasonable, and not a product of collusion" There is usually a presumption of fairness when a proposed class settlement "is the product of arm's length negotiations, sufficient discovery has been taken to allow the parties and the court to act intelligently, and counsel involved are competent and experienced." H. Newberg, A. Conte, Newberg on Class Actions § 11.41 (4th ed. 2002); *Goldsmith v. Technology Solutions Co.*, No. 92 C 4374, 1995 U.S. Dist. LEXIS 15093, at *10 n.2 (N.D. Ill. Oct. 10, 1995).

As the Seventh Circuit has recognized, federal courts strongly favor and encourage settlements, particularly in class actions and other complex matters, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain:

> It is axiomatic that the federal courts look with great favor upon the voluntary resolution of litigation through settlement. In the class action context in particular, there is an overriding public interest in favor of settlement. Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources.

Armstrong v. Bd. of Sch. Dirs. of the City of Milwaukee, 616 F.2d 305, 312-13 (7th Cir. 1980) (citations and quotations omitted), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873, 875 (7th Cir. 1998); *see also Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996) ("Federal courts naturally favor the settlement of class action litigation.").

In granting preliminary approval Rule 23(e) requires courts to determine whether "giving notice is justified by the parties' showing that the court will likely be able to: (i) approve the

proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B)(i—ii). Both requirements are satisfied here.

B. The Settlement warrants preliminary approval.

When deciding whether to grant preliminary approval of a proposed settlement, Rule 23(e)(2) directs courts to consider whether: (1) the named plaintiff and class counsel have adequately represented the class; (2) the settlement resulted from arm's-length negotiations; (3) the settlement treats class members equally; and (4) the relief provided for the class is adequate. Fed. R. Civ. P. 23(e)(2); *see, e.g.*, *Rysewyk v. Sears Holdings Corp*., Civil Action No. 1:15-cv-4519-MSS, 2019 U.S. Dist. LEXIS 236004, at *11-12 (N.D. Ill. Jan. 29, 2019) (Shah, J.).[10] Each of these factors supports preliminary approval.

1. The Class has been adequately represented.

The first Rule 23(e)(2) factor is satisfied where the named plaintiff: (1) possesses an interest in the outcome of the case sufficient to ensure vigorous advocacy; (2) has no interest antagonistic to the class's; and (2) has retained qualified and competent counsel. *Fournigault v. Independence One Mortgage Corp.*, 234 F.R.D. 641, 646 (N.D. Ill. 2006).

The first two prongs of the adequacy analysis are satisfied here. To begin, Plaintiff's interests in this case are aligned with, and not antagonistic to, those of the class she seeks to represent. Plaintiff and the other Settlement Class Members are all individuals who used the ePro BioClock and whose finger-scan data was hosted on a sever owned or leased by ESO during the

[10] The factors to be considered under the 2018 amendment to Rule 23 "overlap with the factors articulated by the Seventh Circuit, which include: '(1) the strength of the case for plaintiffs on the merits, balanced against the extent of the settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to the settlement; (5) the opinion of competent counsel; and (6) stage of the proceedings and the amount of discovery completed.'" *Rysewyk*, 2019 U.S. Dist. LEXIS 236004, at *12 (quoting *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863 (7th Cir. 2014)).

relevant time-period and share identical claims arising from a common course of conduct: ESO's allegedly unlawful collection and retention of their biometric data. To vindicate those claims, Plaintiff has vigorously prosecuted this action on behalf of the Settlement by retaining counsel, assisting her attorneys in investigating the Settlement Class's BIPA claims, reviewing, and approving the Class Action Complaint prior to filing, regularly conferring with her attorneys throughout the litigation, and reviewing and approving the Agreement prior to signing it. *See App. 2* (Keogh Decl.) at ¶ 19.

The third prong of the adequacy analysis is also satisfied because proposed Class Counsel have extensive experience in complex litigation and consumer class actions involving statutory privacy claims such as BIPA and have been found adequate and appointed class counsel in scores of cases arising under various other consumer protection statutes. *See id.* at ¶¶ 3-5, 20-52. Drawing on this experience, proposed Class Counsel were able to extensively evaluate the merits of this case, ESO's defenses, the benefits of the proposed Settlement, and the attendant risks of litigation.

Further, Class Counsel have vigorously pursued the class claims from the outset, from investigating Plaintiff's claims, drafting, and filing a well-pled complaint, briefing a motion to stay, obtaining informal discovery into merits and class issues, and preparing a detailed mediation statement that spelled out Plaintiff's factual and legal theories. *See id.* at ¶¶ 7-9. These efforts culminated in a non-reversionary Settlement Fund that provides all Settlement Class Members with significant cash relief without the need to submit a claims form or other paperwork. As such, the Court should find the adequacy of representation prong met.

2. The Settlement resulted from arm's length negotiations.

The second 23(e)(2) factor focuses on whether the Settlement is the product of an "arm's length transaction. As detailed above, the Settlement is the result of extensive, arm's length

negotiations between attorneys experienced in the litigation, carried out during an all-day mediation session held before Judge Holderman (Ret.) and only reached after the Parties continued their discussions for an additional two weeks following the mediation. *See App. 2* (Keogh Decl.) at ¶¶ 10-11. The Parties then spent the next seven months finalizing the Agreement. *Id.* at ¶ 12.

The arms-length nature of the Parties' discussions is also borne out by the terms of the Agreement itself. The Settlement is non-reversionary, automatically provides significant cash payments to all members of the Settlement Class and is devoid of any provision that could indicate fraud or collusion such as a "clear sailing" or "kicker" clause related to attorney's fees or the incentive award. *See Snyder v. Ocwen Loan Servicing, LLC,* No. 14 C 8461, 2019 U.S. Dist. LEXIS 80926, at *15 (N.D. Ill. May 14, 2019) (granting preliminary approval where agreement had "no provision for reversion of unclaimed amounts, no clear sailing clause regarding attorneys' fees, and none of the other types of settlement terms that sometimes suggest something other than an arm's length negotiation"); *Aranda v. Caribbean Cruise Line, Inc.*, No. 12 C 4069, 2017 U.S. Dist. LEXIS 29400, at *14 (N.D. Ill. Mar. 2, 2017) (same).

For all these reasons, the Court should find the Settlement here was the result of good-faith, arm's-length negotiations.

3. The proposed Settlement treats Settlement Class Members equally.

Here, Plaintiff contends each Settlement Class Member has identical BIPA claims, which is why they receive identical treatment under the proposed Settlement. Specifically, every Settlement Class Member is entitled to an equal, *pro rata* share of the Settlement Fund. *See Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 855 (1999) (where class members are similarly situated with similar claims, equitable treatment is "assured by straightforward pro rata distribution of the

limited fund"). Because there is no disparate treatment between members, the settlement merits approval.

4. The relief provided to the Settlement Class is more than adequate.

The most critical Rule 23(e)(2) factor analyzes whether the relief provided for the class is adequate. Because the essence of settlement is compromise, courts should not reject a settlement solely because it does not provide a complete victory to the plaintiffs." *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 347 (N.D. Ill. 2010) (citations omitted).

Here, ESO has agreed to create a $4,101,300.00 non-reversionary Settlement Fund for a settlement class of 6,414 individuals. *See App. 1* at § II.37**.** Thus, the Settlement represents a significant and immediate value for those Class Members. As noted above, Plaintiff estimates every single Settlement Class Member will receive $401.39 after reductions for Administrative Expenses, attorney's fees, and the incentive award.

This class relief compares more than favorably with per-claimant recoveries in prior settlements in similar BIPA cases. *See Sekura*, 2015-CH-16694 (Cir. Ct. Cook Cnty. Dec. 1, 2016) (net recovery of $125 to $150 per claimant); *Marshal v. Life Time Fitness, Inc.*, 2017-CH-14262 (Cir. Ct. Cook Cty. July 30, 2019) (net recovery of approximately $270 per claimant, as well as dark web monitoring valued at approximately $130.00 per claimant); *Prelipceanu v. Jumio Corp.*, 2018-CH-15883 (Cir. Ct. Cook Cnty. July 21, 2020) (net recovery of $262.28 per claimant); *Trotter v. Summit Staffing*, 2019-CH-02731 (Cir. Ct. Cook Cnty. Aug. 4, 2020) (net recovery of $102); *Kusinski v. ADP, LLC*, 2017-CH-12364 (Cook Cnty. Feb. 10, 2021) (net recovery of $250 per claimant); *O'Sullivan, et al. v. WAM Holdings, Inc., d/b/a All Star Management, Inc.*, 2019-CH-11575 (Cir. Ct. Cook Cnty. Sept. 2, 2021) (net recovery of $384.09); *Pelka v. Saren Restaurants Inc.*, 2019-CH-14664 (Cir. Ct. Cook Cnty. Apr. 9, 2021) (net recovery of $289 per

claimant); *Sykes v. Clearstaff, Inc.*, 2019-CH-03390 (Cir. Ct. Cook Cnty. Jan 5, 2021) (net recovery of $298.04).[11] In sum, the relief provided by the proposed Settlement is more than adequate when compared against comparable results.

Finally, as shown below, the adequacy of the class relief is further illustrated by the sub-factors set forth in Rule 23(e)(2).

a. The risks of continued litigation weigh, when viewed against the relief provided, weigh in favor of approval.

This sub-factor weighs heavily in favor of approval because the proposed Settlement provides immediate relief to Settlement Class Members while avoiding potentially years of costly, complex litigation and appeals, as well as the risk that goes with it.

While Plaintiff remains confident in the strength of her claims, ESO denied and continues to deny all of her material allegations while raising myriad legal and factual defenses that, if successful, could preclude any recovery for the Class. For starters, ESO argued it faces no liability under BIPA because the finger-scan information allegedly captured in connection with the ePro BioClock does not fall within the statutory definition of "biometric identifiers" or "biometric information." *See* ECF No. 31 at 22. Defeating this highly technical defense would entail costly expert and third-party discovery. While Plaintiff is confident, she would prevail on this issue, the lack of any guiding precedent offers no guarantee of success at summary judgment or trial.

[11] Outside the realm of BIPA, the cash payments afforded by the Settlement Agreement dwarf the recoveries typically seen in privacy class actions, which often provide class members with little (if any) monetary relief. *See, e.g.*, *Lane v. Facebook, Inc.*, 696 F.3d 811, 818 (9th Cir. 2012) (upholding settlement providing only $9.5 million in *cy pres* relief despite that statutory claims at issue provided for significant statutory damages); *In re Google LLC Street View Electronic Communications Litigation*, No. 3:10-md-02184, 2020 U.S. Dist. LEXIS 47928 (N.D. Cal. Mar. 18, 2020) (approving *cy pres* distribution of $13 million fund in case with 60 million person class (equating to $0.22 per person before fees, expenses, or administration costs).

ESO also argued, among other things: (1) ESO is merely a passive technology vendor, and thus did not take an "active step" towards collecting and storing Plaintiff's and the Settlement Class's alleged biometric data; (2) the extraterritoriality doctrine barred Plaintiff's claim because any alleged biometric collection or storage on ESO's systems, if any, part took place outside of Illinois; (3) Plaintiff and the Settlement Class consented to any collection of their alleged biometric data (if any) and waived their claims under BIPA; and (4) Plaintiff's claims were barred because the data at issue falls within the healthcare exemption in Section 10 of the BIPA, as any alleged collection of their data was for healthcare treatment, payment, or operations as those terms are defined under HIPAA. A victory on these defenses could doom the case in its entirety or greatly reduce the size of the proposed class. *See In re Southwest Airlines Voucher Litig.*, 2013 WL 4510197, at *7 (N.D. Ill. Aug. 26, 2013) ("In considering the strength of plaintiffs' case, legal uncertainties at the time of settlement favor approval.").

Plaintiff would also need to prevail at class certification, which would entail extensive motion practice on several hotly contested issues with no guarantee of success. *See* Fed. R. Civ. P. 23(e)(2), Advisory Committee's Note to 2018 Amendment (directing courts to consider the likelihood of certification when evaluating this sub-factor). Though Plaintiff maintains this case is an ideal candidate for certification, her success is certainly not guaranteed.

Finally, even if Plaintiff prevailed at class certification and obtained a complete victory on the merits, ESO intended to seek a reduction of damages based on the argument an award of $1,000 or $5,000 per violation would violate its right to due process under the Illinois and United States Constitution. *See* ECF No. 31 at 24. This, too, presents a significant risk, as some courts view awards of aggregate, statutory damages with skepticism and reduce such awards—even after a plaintiff has prevailed on the merits—on due process grounds. *See, e.g., Aliano v. Joe Caputo &*

Sons - Algonquin, Inc., No. 09 C 910, 2011 U.S. Dist. LEXIS 48323, *13 (N.D. Ill. May 5, 2011) ("[T]he Court cannot fathom how the minimum statutory damages award for willful FACTA violations in this case — between $100 and $1,000 per violation — would not violate Defendants' due process rights . . . . Such an award, although authorized by statute, would be shocking, grossly excessive, and punitive in nature."); *but see Phillips Randolph Enters., LLC v. Rice Fields*, No. 06 C 4968, 2007 U.S. Dist. LEXIS 3027, *7-8 (N.D. Ill. Jan. 11, 2007) ("Contrary to [Defendants'] implicit position, the Due Process clause of the 5th Amendment does not impose upon Congress an obligation to make illegal behavior affordable, particularly for multiple violations.").

Taking these realities into account, the monetary relief available to each Settlement Class Member represents a truly excellent result. Instead of facing the uncertainty of a potential award in their favor years from now, the Settlement allows Plaintiff and Settlement Class Members to receive immediate and certain relief. *See, e.g., Goldsmith v. Tech. Sols. Co.*, No. 92 C 4374, 1995 WL 17009594, at *4 (N.D. Ill. Oct. 10, 1995) ("As courts recognize, a dollar obtained in settlement today is worth more than a dollar obtained after a trial and appeals years later."); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) (citation omitted) ("Settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation."). Thus, this sub-factor weighs in favor of preliminary approval.

b. The proposed method of distribution is effective.

The next sub-factor analyzes whether the proposed method for distributing relief to the class is effective. Fed. R. Civ. P. 23(3)(2)(C)(ii). Unsurprisingly, courts routinely find this factor satisfied where class members do not need to take any affirmative steps to receive their portion of the settlement fund. *See, e.g., Taylor v. Shutterfly, Inc.*, No. 5:18-cv-00266-BLF, 2021 U.S. Dist. LEXIS 237069, at *20 (N.D. Cal. Dec. 7, 2021) (finding distribution method reasonable where

"[a]ll Class Members automatically receive benefits under the Settlement, without the need to file a Claim."); *Lawrence v. First Fin. Inv. Fund V, LLC*, No. 2:19-cv-00174-RJS-CMR, 2021 U.S. Dist. LEXIS 162184, at *14-15 (D. Utah Aug. 26, 2021) ("Here, the method of distributing relief to the class is sufficiently effective and no claims process is required. Because the class members can be individually identified from First Financial' s records, no action is required of any class member to receive the benefits of the Settlement.").

The same result is warranted here. Settlement Class Members do not need to submit a claim form or take any action. Instead, the Administrator will simply distribute each *pro rata* share of the Settlement Fund. This method of distribution is weighs in favor of preliminary approval.

c. The proposed attorney fee award and timing of payment support preliminary approval.

The final relevant sub-factor[12] analyzes the adequacy of the class relief in light of "the terms of any proposed award of attorney's fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii).

Here, the Agreement does not provide ESO has agreed to any set fee amount. Instead, Class Counsel will petition the Court to approve a fee award of 36% of the Settlement Fund (excluding Administrative Expenses) — an amount courts within the Seventh Circuit routinely award. *Martin v. JTH Tax, Inc.*, No. 13-6923 (N.D. Ill. Sept. 16, 2015) (Shah, J.) (38% of total fund); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 501 (N.D. Ill. 2015) (Kennelly, J.) (36% of the fund net admin

[12] The fourth sub-factor directs courts to consider any side deals or separate agreements reached by the parties in connection with the settlement agreement. *See* Fed. R. Civ. P. 23(e)(2)(c)(iv); *id.* at § (e)(3). Because the Parties have reached no such agreement, *see App. 2* (Keogh Decl.) at ¶ 16, this factor does not factor into the analysis. *See, e.g., Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 U.S. Dist. LEXIS 210368, at *20 (S.D. Ill. Dec. 13, 2018) ("The parties have not identified, nor is the Court aware of, any agreement—other than the Settlement itself—that must be considered pursuant to Rule 23(e)(3). This factor is neutral.").

costs); *see also Birchmeier v. Caribbean Cruise Line, Inc.*, 896 F.3d 792, 796-97 (7th Cir. 2018) (affirming attorney fees of 36% of the first $10 million.)[13]

Regarding timing, Class Counsel will file their application on the date of the Notice Deadline allowing Class Members to review or object, and actual funding will occur at the same time as funding of the Settlement Fund. Thus, the provisions regarding fees are fair, reasonable and support approval.

Considering all these factors, the relief provided to the class is more than adequate and merits approval. For the foregoing reasons, the Parties' Settlement Agreement is fair, reasonable, and adequate, and merits approval.

C. The Settlement Class should be certified for settlement purposes only.

In order to certify a settlement class, the Court must also determine whether the requirements of Rule 23 are met. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

To that end, Plaintiff must demonstrate: (i) the proposed class be so numerous that joinder of individual class members is impracticable; (ii) there be questions of law and fact common to the class; (iii) the proposed class representative's claims be typical of the class claims; and (iv) the named class representative and counsel will fairly and adequately represent the interests of the class. Fed. R. Civ. P. 23(a); *see Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 811 (7th Cir. 2012). And, because the Settlement provides for monetary relief, the Settlement Class must also satisfy Rule 23(b)(3)'s requirements: (i) common questions of law or fact predominate over individual issues; and (ii) the class action device is superior to other means of resolving the claims.

[13] Courts in Cook County have awarded 40% of the gross settlement amount in other BIPA class action settlements. *See e.g. Sekura v. L.A. Tan Enters., Inc.*, 2015-CH-16694 (awarding 40% of fund); *Zepeda v. Intercontinental Hotels Grp., Inc.*, 2018-CH-02140 (Cir. Ct. Cook Cnty.) (awarding 40% of fund); *Svagdis v. Alro Steel Corp.*, 2017-CH-12566 (Cir. Ct. Cook Cnty.) (awarding 40% of fund);

Fed. R. Civ. P. 23(b)(2). Finally, a Rule 23(b)(3) class must also be "ascertainable"—*i.e.* defined by objective criteria. *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 659 (7th Cir. 2015).

As explained below, the Settlement Class satisfies all of these prerequisites and should therefore be certified for settlement purposes only.

1. The Settlement Class is sufficiently numerous.

Rule 23(a)(1) requires that a class be so numerous that joinder of all its members is impracticable. A class of as few as 40 is sufficient. *See Rodriguez v. Simplex Grinnell LP*, No. 16 C 9605, 2020 U.S. Dist. LEXIS 273380, at *5 (N.D. Ill. Mar. 5, 2020) (citing *Mulvania v. Sheriff of Rock Island Cty.*, 850 F.3d 849, 859 (7th Cir. 2017)). Here, the Settlement Class consists of 6,414 members, which easily satisfies numerosity.

2. Plaintiff's claims are typical.

A putative class representative also must demonstrate her claims are typical of the claims of the class she seeks to represent. Fed. R. Civ. P. 23(a)(3). This prong of the Rule 23 analysis simply requires "enough congruence between the named representative's claim and that of the unnamed members of the class to justify allowing the named party to litigate on behalf of the group." *Spano v. The Boeing Co.*, 633 F.3d 574, 586 (7th Cir. 2011); *see also Owner-Operator Indep. Drivers Ass'n v. Allied Van Lines, Inc.*, 231 F.R.D. 280, 282 (N.D. Ill. 2005) (typicality is a "low hurdle" requiring "neither complete coextensivity nor even substantial identity of claims"). The critical issue is whether the plaintiff's claim "arise[es] from the same events or course of conduct that gives rise to the putative class members' claims." *Beaton v. SpeedyPC Software*, 907 F.3d 1018, 1026 (7th Cir. 2018).

Here, Plaintiff asserts there is no daylight between Plaintiff's claims and those of the Settlement Class. All flow directly from Plaintiff's assertions regarding ESO's alleged failure to:

(1) inform Plaintiff and the Settlement Class, in writing, about the alleged collection of their alleged biometric data, along with the purpose and length of term for the collection; (2) obtain Plaintiff and the Settlement Class's informed written consent prior to allegedly collecting their alleged biometric data; (3) implement a publicly-available policy governing the retention and destruction of alleged biometric data; and (4) permanently destroy Plaintiff's and the Settlement Class's alleged biometric data at the earliest practicable time (*i.e.* upon termination of their employment). ECF. No. 1 at Ex. A (Compl.), at ¶¶ 13, 21, 24-25, 27-29, 30-31, 38-44, 47-54. Hence, the outcome of Plaintiff's and the Settlement Class's claims depend entirely on *ESO's* alleged biometric collection and destruction practices—*i.e.* a common course of conduct. Typicality is satisfied.

3. Plaintiff and Counsel are adequate.

Adequacy means Plaintiff and his counsel "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). As demonstrated above, both Plaintiff and proposed Class Counsel fully satisfy this requirement. *See* Section III.B.1, *supra*.

4. Commonality is satisfied.

Commonality requires "there are questions of law or fact common to the class" and the class members have suffered the same injury." Fed. R. Civ. P. 23(a)(2); *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-50 (2011). The class claims must "depend upon a common contention … capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart*, 564 U.S. at 350. A single common question is sufficient to satisfy Rule 23(a)(2). *Langendorf v. Skinnygirl Cocktails, LLC*, 306 F.R.D. 574, 589 (N.D. Ill. 2014) (collecting cases).

Plaintiff's and the Settlement Class's BIPA claims are based on the same contention and

allegedly unlawful course of conduct: That ESO violated Sections 15(a) and 15(b) of BIPA by allegedly collecting, storing, and using the Settlement Class's alleged biometric data without obtaining informed written consent or implementing and adhering to a publicly available biometric retention and destruction policy. This contention depends entirely on common questions that can be resolved on a class-wide basis "in one stroke." *See, e.g., In re Facebook Biometric Info. Privacy Litig.*, 326 F.R.D. 535, 545 (N.D. Cal. 2018) ("[T]here is no doubt that a template-based [BIPA] class poses common legal and factual questions….").

5. Common questions predominate.

Rule 23(b)(3) requires "the questions of law or fact common to the class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). Predominance "is satisfied when 'common questions represent a significant aspect of [a] case and . . . can be resolved for all members of [a] class in a single adjudication.'" *Messner*, 669 F.3d at 815. Put another way, the critical issue is whether "there exists generalized evidence that proves or disproves an element on a simultaneous, class-wide basis…Such proof obviates the need to examine each class member's individual position." *Golon v. Ohio Savs. Bank*, No. 98-cv-7430, 1999 WL 965593, at *4 (N.D. Ill. Oct. 15, 1999).

Plaintiff contends that is the case here. Plaintiff's and the Settlement Class's claims hinge entirely on the common questions identified above, all of which Plaintiff claims can be resolved through class-wide evidence maintained by ESO. Plaintiff claims the common questions posed by the Section 15(b) claim, for instance, can be easily resolved by reviewing the uniform disclosures and releases ESO provided to Class Members (if any), along with evidence regarding the type of data allegedly captured in connection with the ePro BioClock (if any). As to the Section 15(a) claim, Plaintiff claims the question of whether ESO destroyed the Settlement Class's alleged

biometric data once it was no longer necessary—*i.e.* when their employment ended—is a straightforward factual issue that turns on ESO's data destruction policies (or lack thereof).

In sum, the BIPA violations at issue can, for provisional certification purposes, be determined on a class-wide basis in a single adjudication without consideration of any individualized issues. *See, e.g., In re Facebook*, 326 F.R.D. at 545-48 (predominance satisfied where liability turned on class-wide issues—whether defendant's facial recognition software captured biometric identifiers, and, if so, whether defendant's uniform disclosures complied with Section 15(b)'s informed regime); *see also Kurgan v. Chiro One Wellness Ctrs. LLC*, No. 10-cv-1899, 2014 U.S. Dist. LEXIS 20255, at *33 (N.D. Ill. Feb. 19, 2014) ("Where, as here, the focus is on the liability-imposing conduct of the defendant that is identical for all putative plaintiffs, the predominance element is satisfied."). As such, predominance is satisfied.

6. A class action is the superior means of resolving this dispute.

Rule 23(b)(3) requires "a class action [be] superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). The rule provides four criteria that govern superiority analysis, all of which weigh in favor of certification.

First, the "extent and nature" of any parallel litigations does not defeat superiority, as there is no indication any Settlement Class Member has a pending BIPA suit against ESO. *See* Fed. R. Civ. P. 23(b)(3)(B) (one superiority factor is "the extent and nature of any litigation concerning the controversy already begun by or against class members"). Second, it is desirable to concentrate the litigation, including the settlement approval process, in this forum because the events underlying the Settlement Class's claims arose in this district. *See* Fed. R. Civ. P. 23(b)(3)(C); *see also Barnes v. Air Line Pilots Ass'n*, 310 F.R.D. 551, 562 (N.D. Ill. 2015). Third, it is highly unlikely any class members have an interest in individually controlling this action, *see* Fed. R. Civ.

P 23(b)(3)(A).

Finally, the fourth factor—"the likely difficulty in managing a class action," Fed. R. Civ. P. 23(b)(3)(D)—is a non-issue where, as here, certification is sought solely for settlement purposes. *Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial."). Nevertheless, manageability is not a problem here. There are no individual issues that could present any overwhelming practical or administrative issues at trial, and the notice process will be trivially easy in this case given that ESO possesses the names and last known addresses for each member of the Classes. *See Barnes*, 310 F.R.D. at 562.

As such, all four factors set forth in Rule 23(b)(3) support a finding of superiority.

7. The Settlement Class is ascertainable.

Finally, the Settlement Class is ascertainable. Although not an element of Rule 23, the ascertainability requirement imposes a modest bar. This simply requires the class to be defined based on "objective" criteria. *Mullins*, 795 F.3d at 672.

Here, the Settlement Class definition is based entirely on objective components: (1) employment at one of ESO's customers' Illinois locations; (2) use of the ePro BioClock at issue; and (3) hosting of the finger-scan data on a server owned or leased by ESO. Further, Settlement Class Members are not only ascertainable, but can be identified based upon records of ESO and its customers. Accordingly, the ascertainability requirement is satisfied. *Mullins*, 795 F.3d at 672.

As shown above, the Settlement Class satisfies the requirements of Rule 23(a) and Rule 23(b)(3), as well as the Seventh Circuit's ascertainability standard. Thus, the Court should certify the proposed Settlement Class.

D. The proposed Notice plan is constitutionally sound.

"Rule 23(e)(1)(B) requires the court to direct notice in a reasonable manner to all class members who would be bound by a proposed settlement. *Manual for Compl. Lit., supra*, at § 21.312. The best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

The proposed forms of Notice, attached as Exhibits 1 and 2 to the Agreement, satisfy Rule 23. The Notice Plan provides direct, individual notice ("Mail Notice") will be mailed by the Administrator to the last known address of each Settlement Class Member within 21 days of entry of the Preliminary Approval Order. *App. 1* at § VI.60.A. For all mail returned as undeliverable, the Administrator will use reasonable means to update the address and re-issue the Mail Notice. *Id.*

The Mail Notice provides information about the claims at issue, the cash benefits provided by the Settlement, the process for distributing those cash benefits the proposed attorney fee and incentive awards, and the procedure for excluding oneself or objecting to the Settlement. *See App. 1* at Ex. 1. Settlement Class Members will have up to and including 60 days from the date the Mail Notice is issued to exclude themselves from the Settlement. *Id.* at § II.19. The Mail Notice shall also direct recipients to the Settlement Website, which will provide Settlement Class Members with 24-hour access to additional information about the case, including important court documents and a detailed "long form" Notice document ("Website Notice"). *See Id.* § VI.60.A-B; *see also id.* at Ex. 1 (Mail Notice); *id.* at Ex. 2 (Website Notice).

Accordingly, the proposed Notice Plan passes muster and should be approved.

IV. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests the Court: (1) preliminarily approve the proposed Settlement as being within the range of possible final approval; (2) conditionally certify the Settlement Class for settlement purposes only and appoint Plaintiff as class representative; (3) appoint her attorneys, Keith J. Keogh and Gregg M. Barbakoff of Keogh Law, Ltd. as Class Counsel; (4) approve the proposed Notice Program, to be administered by KCC; (5) direct Notice be provided to the Settlement Class pursuant to the terms of the Agreement; (6) establish a procedure for Settlement Class Members to object to the Settlement or exclude themselves from the Class; (7) set a deadline after the Notice Deadline, after which no one shall be allowed to object to the Settlement, exclude himself or herself from the Settlement Class, or seek to intervene; (8) schedule a hearing to consider final approval of the Settlement and set the following schedule as set forth in the draft Preliminary Approval Order attached as *Appendix* C, which provides the following schedule:

_____, 2024 [21 days after the date of this Order]	Deadline for the Settlement Administrator to send notice to the Settlement Class in accordance with the Agreement and this Order (Notice Deadline)
_____, 2024 [Same as Notice Deadline]	Deadline for Plaintiff to file his Motion for Attorneys' Fees and Expenses, and any Incentive Award
_____, 2024 [60 days after Notice Deadline]	Deadline for any member of the Settlement Class to request exclusion from the Settlement or object to the Settlement in accordance with the Notice and this Order (Opt-Out and Objection Deadline)
_____, 2024 [21 days after the Opt-Out, Objection, and Claim Deadline]	Deadline for Plaintiff to file: (1) Motion and memorandum in support of final approval, including proof of class notice; and (2) Response to any objections.
_____, 2025 at ____ _.m. [Court's Convenience]	Final Approval Hearing

Dated: August 29, 2024

Respectfully submitted,

KELSEY HIRMER, individually and on behalf of all others similarly situated,

By: /s/ Gregg M. Barbakoff
Keith J. Keogh
Gregg M. Barbakoff
KEOGH LAW, LTD.
55 W. Monroe St., Suite 3390
Chicago, Illinois 60603
Tel.: (312) 726-1092
Fax: (312) 726-1093
keith@keoghlaw.com
gbarbakoff@keoghlaw.com

Attorneys for Plaintiff and the Proposed Settlement Class

CERTIFICATE OF SERVICE

I hereby certify that, on **August 29, 2024**, I caused a copy of the foregoing document, along with any attached exhibits, to be served upon all counsel of record via electronic filing using the CM/ECF system.

/s/ Gregg M. Barbakoff

APPENDIX 1

SETTLEMENT AGREEMENT AND RELEASE

I. PREAMBLE

1. This Settlement Agreement is made and entered into as of the dates of Execution set forth below, by and among (1) Plaintiff Kelsey Hirmer, individually and on behalf of the Settlement Class, (2) Settlement Class Members, (3) ESO Solutions, Inc. ("ESO").

II. DEFINITIONS

2. "***Action***" means the pending action styled *Hirmer, individually and on behalf of all others similarly situated v. ESO Solutions, Inc., d/b/a eCore Solutions, Inc.* in the United States District Court for the Northern District of Illinois, Case No. 2022-cv-01018, originally filed in the Circuit Court of Cook County, Illinois, Case No. 2022CH00553.

3. "***Agreement***" means this Settlement Agreement and Release, inclusive of all exhibits hereto.

4. "***Attorneys' Fees and Litigation Expenses***" means the attorneys' fees and litigation expenses to be requested by Class Counsel subject to Court approval in accordance with this Agreement to be paid out of the "Settlement Fund."

5. "***CAFA Notice***" refers to the notice requirements imposed by 28 U.S.C. § 1715(b).

6. "***Claimant***" means any Settlement Class Member who does not timely opt out of the Settlement.

7. "***Class Counsel***" means Keith J. Keogh and Gregg M. Barbakoff of Keogh Law, Ltd.

8. "***Class Period***" means the period from January 24, 2017 through the date the Preliminary Approval Order is entered by the Court.

9. "***Court***" means the United States District Court for the Northern District of Illinois.

10. "***Defendant***" means ESO.

11. ***"Defendant's Counsel"*** means Jody Kahn Mason and Andrew D. Welker of Jackson Lewis P.C.

12. "***Execution***" means the signing of this Agreement by all signatories hereto.

13. "***Final Approval Hearing***" means the hearing during which the Court considers the Parties' request to enter the Final Approval Order granting final approval of the Settlement and to determine the amount of Attorneys' Fees and Litigation Expenses awarded to Class Counsel and the amount of any Settlement Class Representative Incentive Payment.

14. "***Final Approval Order***" means the final judgment and order of dismissal: (a) approving the Settlement and dismissing the Action with prejudice and without costs, except as explicitly provided for in this Agreement, (b) certifies the Settlement Class for purposes of effectuating the

terms of this Agreement, (c) finds that the Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs the consummation of this Agreement, (d) approves the Release provided in Paragraph 76 and orders that, as of the Effective Date, the Released Claims will be released as to the Released Parties, and (e) enters final judgment with respect to the foregoing. The parties agree to propose the Final Approval Order in substantially the same form attached hereto as Exhibit 4. "Final Approval" occurs on the date that the Court enters the Final Approval Order.

15. "***Notice***" means the direct notice and website notices of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for Preliminary Approval of the Settlement, substantially in the form attached hereto as Exhibit 1 and Exhibit 2.

16. "***Notice and Administration Costs***" means any and all costs associated with Claims administration and administering the Settlement by the Settlement Administrator, including, but not limited to, mailing costs, printing costs, taxes and tax-related expenses incurred by or in connection with handling the Settlement Fund, all costs of providing notice to the Settlement Class, costs for creating and mailing the Notice, Website Notice, and any different or additional notice that might be ordered by the Court and any other costs associated with administering the Settlement. The Notice and Administration Costs shall be paid entirely from the Settlement Fund.

17. "***Notice Deadline***" means the date the Court sets for Notice to be provided to the Settlement Class in accordance with the Agreement. The Parties agree to propose that the Notice Deadline will be 14 days following the receipt of the Class List by the Settlement Administrator, unless extended by the Court.

18. ***"Opt-Out/Objection Deadline"*** means the date by which a written objection to this Settlement Agreement or Opt-Out Request submitted by a Settlement Class Member must be postmarked and/or filed with the Court, which shall be designated as sixty (60) days after the Notice is mailed to the Settlement Class. The Opt-Out/Objection Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Notice.

19. "***Opt-Out Request***" means a request by a Settlement Class Member to exclude himself or herself from the Settlement Class using the procedures set forth in this Agreement.

20. "***Opt-Out/Objection Period***" means the period that begins the day after the date on which the Notice is mailed to Settlement Class Members by the Settlement Administrator, and ends sixty (60) days after mailing of the Notices to Settlement Class Members, or such other date as the Court determines. The deadline for the Opt-Out Period and Objection Period will be specified in the Notice and the exact date in the Notice will control.

21. "***Parties***" means Kelsey Hirmer and ESO.

22. "***Plaintiff***" means Kelsey Hirmer.

23. "***Preliminary Approval Order***" means the order certifying the Settlement Class for settlement purposes only, preliminarily approving the Settlement, and directing the Notice to the Settlement Class, which the Parties agreed to propose in the form attached as Exhibit 3. "Preliminary Approval" occurs on the date the Court enters the Preliminary Approval Order.

24. "***Release***" means the release contained in this Agreement.

25. "***Released Claims***" means all claims to be released as set forth in the Release.

26. "***Released Parties***" shall refer, jointly and severally, and individually and collectively to, ESO and all and/or each of its past, present, or future, direct or indirect, current and former parents, successors, assigns, affiliates, wholly-owned subsidiaries, present or former heirs, executors, estates, administrators, predecessors, successors, assigns, parents, subsidiaries, holding companies, licensors, investors, divisions, associates, employers, employees, agents, representatives, consultants, independent contractors, directors, managing directors, officers, partners, principals, members, attorneys, accountants, fiduciaries, financial and other advisors, investment bankers, insurers, reinsurers, employee benefit plans, underwriters, shareholders, lenders, auditors, investment advisors, and any and all present and former companies, firms, trusts, corporations, officers, directors, vendors and contractors used by Defendant in connection with ePro BioClock. Released Parties also include ESO's vendor Microsoft, but only as to Released Claims, not any other claims by Plaintiff and Settlement Class Members. Released Parties expressly excludes any of ESO's customers that used the ePro BioClock in the State of Illinois, including but not limited to Elite Medical Transportation, LLC ("Elite").

27. "***Releasing Settlement Class Members***" means Plaintiff and all Settlement Class Members, other than those who submit timely and proper Out-Out Requests, and each of their respective executors, representatives, heirs, spouse, partners, predecessors, assigns, beneficiaries, successors, bankruptcy trustees, agents, attorneys, and all those who claim through them or on their behalf.

28. "***Settlement***" means the compromise and settlement of the Action as contemplated by this Agreement.

29. "***Settlement Administrator***" means KCC Class Action Services LLC ("KCC") subject to approval by the Court. The Settlement Administrator shall be responsible for the establishment of an escrow account for the Settlement Fund, providing notice to the Settlement Class Members, verifying addresses, skip tracing as necessary, communicating with Settlement Class Members, disbursing Settlement Award payments, tax reporting and other administrative activities contemplated in connection with the Settlement. The Settlement Administrator's costs shall be paid from the Settlement Fund. The Parties agree to cooperate in the Settlement administration process and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the Settlement.

30. "***Settlement Award***" means a payment that may be available to eligible Settlement Class Members who do not timely and properly opt-out of the Settlement pursuant to the process outlined below.

31. "***Settlement Class***" means the individuals defined and identified as follows:

> All individuals who scanned their finger in connection with their use of an ePro BioClock in Illinois and whose finger-scan data was hosted on a server owned or leased by ESO from January 24, 2017 to the date the Court enters the Preliminary Approval Order. The Settlement Class does not encompass individuals who may

have used an ePro BioClock in Illinois, but did not have their finger-scan data hosted on a server owned or leased by ESO.

The following are excluded from the Settlement Class: (1) the district and magistrate judges presiding over this case; (2) the judges of the Seventh Circuit; (3) the immediate families of the preceding person(s); (4) any Released Party; and (5) any Settlement Class Member who timely opts out of this Action.

Prior to the Parties' mediation, Defendant provided a good-faith estimate that the class size was approximately 7,812 people. However, the Parties acknowledge and agree that this number was an estimate and that the final number of Class Members could be higher or lower and will depend upon information to be provided by Defendant's customers via the process described in this Agreement. The Parties further acknowledge and agree that should the final number of Settlement Class Members be higher or lower, that will not provide grounds for either Party to void the Agreement so long as the final number is not materially different than 7,812, *e.g.*, the final class number is 12,000 or 50,000 instead of 7,812, which neither Party contemplates.

32. "***Settlement Class Member(s)***" means the Settlement Class Representative and all members of the Settlement Class.

33. "***Settlement Class Representative***" means Kelsey Hirmer, who is the named Plaintiff in the Action, and who is also the person Class Counsel shall request to be appointed by the Court as Class Representative for purposes of the Settlement Class. Plaintiff is also a member of the Settlement Class.

34. "***Settlement Class Representative Incentive Payment***" means the additional amount Plaintiff may request the Court she be paid as Class Representative under Paragraph 57 of this Agreement.

35. "***Settlement Effective Date***" means the business day after the last of the following occurrences:

A. Expiration of the date to appeal entry of the Final Approval Order with no appeal or other judicial review having been taken or sought; or

B. If an appeal or other judicial review has been taken or sought on this Action, the latest of: (i) the date the Final Approval Order is finally affirmed by an appellate court with no possibility of subsequent appeal or other judicial review; or (ii) the date the appeal(s) or other judicial review therefrom are finally dismissed with no possibility of subsequent appeal or other judicial review; or (iii) if remanded to the District Court or to a lower appellate court following an appeal or other review, the date the Final Approval Order is entered by the District Court after remand and the time to appeal or seek other judicial review of the entry of that Final Approval Order has expired with no further appeal or other judicial review having been taken or sought. If further appeal is sought after a remand, the time periods in this Sub-Section shall apply.

36. "***Settlement Costs***" means all costs incurred by Plaintiff, Class Counsel, and the Settlement Administrator in connection with the Action, including: (i) the Attorneys' Fees and Litigation Expenses approved by the Court; (ii) any Settlement Class Representative Incentive Payment approved by the Court; (iii) Notice and Administration Costs, including any costs associated with the creation and maintenance of a Settlement Website; and (iv) the fees, expenses, and all other costs of the Settlement Administrator, including, but not limited to, any costs related to providing notice, communicating with Settlement Class Members, and disbursing payments to Settlement Class Members. The Settlement Costs shall be deducted from each Settlement Class Member's cash payment amount on a *pro rata* basis and shall be paid exclusively from the Settlement Fund.

37. "***Settlement Fund***" means the $4,101,300 to be provided by Defendant pursuant to this Agreement, for purposes of paying Approved Claims and Settlement Costs, as the foregoing are defined herein. Defendant shall have no obligation to pay any fees or costs, or any other amount in connection with this settlement that exceed the amount of the Settlement Fund.

38. "***Settlement Website***" means the website created and managed by the Settlement Administrator which will provide Settlement Class Members with access to the Notice, the online Claim Form, and other information regarding the Settlement. The Parties agree that the following URL will be used: esoBIPAsettlement.com. Any costs associated with the creation of a Settlement Website shall be taken exclusively from the Settlement Fund.

39. "***Website Notice***" means the long form notice provided pursuant to this Agreement, substantially in the form attached hereto as Exhibit 2. The Website Notice will be posted on the "Settlement Website."

Capitalized terms used in this Agreement but not defined above shall have the meaning ascribed to them in this Agreement, including the attached exhibits.

III. RECITALS

40. On January 24, 2022, Plaintiff filed the Action in the Circuit Court of Cook County, Illinois, on behalf of herself and on behalf of the putative class alleging that Defendant violated the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 et seq. On February 25, 2022, Defendant removed the Action to the United States District Court for the Northern District of Illinois.

41. On July 13, 2022, the District Court granted Defendant's motion to stay this case pending the outcome of a separate state court action brought by Plaintiff against her employer, Elite Medical Transportation, LLC, styled *Hirmer v. Elite Medical Transportation, LLC,* Case No. 2020-CH-04069, which is currently pending in the Circuit Court of Cook County, Illinois (the "Elite Action").

42. After the exchange of informal discovery, the Parties participated in private, all-day mediation with the Honorable James F. Holderman of JAMS on July 18, 2023.

43. Following mediation, the Parties were able to reach a settlement in principle and agreed to resolve all matters pertaining to, arising from, or associated with the Action, and as set forth herein, all claims Plaintiff and members of the Settlement Class she seeks to represent for purposes of the

Settlement have or may have had against Defendant or any of the Released Parties defined herein through the date of Preliminary Approval of the Action.

44. Each of the Parties has entered into this Settlement Agreement with the intention to avoid further disputes and litigation in the Action. There has been no determination as to the merits of the claims or defenses asserted by Plaintiff or Defendant, or with respect to class certification.

45. Plaintiff and Class Counsel believe this Action is meritorious. Class Counsel thoroughly investigated the case and diligently pursued Plaintiff's and the Settlement Class Members' claims against Defendant, including, but not limited to: (i) exchanging informal discovery; (ii) briefing the motion to stay; (iii) obtaining and analyzing relevant documents and class data; (iv) and researching the applicable law and the potential defenses. Based on their full, independent investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class Members in light of all known facts and circumstances, including the risk of significant delay, the defenses raised by Defendant, class certification risk, summary judgment risk, the risk associated with potential changes in the applicable law, trial risk and appellate risk.

46. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged or that may be alleged in the future, and asserts its actions comply with all applicable provisions of federal and state law, that in any event it is not liable for any of the claims asserted. Defendant also continues to assert the Action fails to meet the prerequisites necessary for class action treatment under applicable law but, despite this belief, it will not oppose certification of the Settlement Class contemplated by this Agreement solely for purposes of effectuating this Settlement. In the event this Settlement is not finally approved, nothing contained herein shall be construed as a waiver by Defendant of its contention that class certification is not appropriate or is contrary to law in the Action or any other case or proceeding.

47. The Parties have agreed to settle the Action on the terms and conditions set forth herein in recognition that the outcome of the Action is uncertain and that achieving a final result through litigation would require substantial additional risk, discovery, time, and expense. Considering the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Parties are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in their best respective interests.

48. Neither the fact of Settlement, nor the Settlement Agreement, nor any other Settlement documents nor any other matter pertaining to the Settlement contemplated herein shall be offered, used or received in any other case or proceeding for any purpose, whether as an argument, admission, concession, evidence or otherwise, including, but not limited to, the validity of any claim or defense asserted in the Action or any matter being settled and finally resolved in this Settlement Agreement, the truth of any fact alleged by any Party, or the appropriateness of class certification, and/or as evidence of any admission by Defendant of any liability with respect to any claim for damages or other relief, or of any admission by Plaintiff that they would not have prevailed on liability on any of their claims. Further, neither this Settlement Agreement nor any settlement negotiation or discussion thereof is or may be deemed as an admission of or evidence that Defendant or any Released Party collected, captured, received, possessed, or otherwise obtained or disclosed biometric identifiers or biometric information under the BIPA or any similar

federal, state, or local law. Any stipulation or admission by Defendant or Plaintiff contained in any document pertaining to the Settlement is made for settlement purposes only.

49. The Parties contemplate that entry of the Final Approval Order shall dismiss with prejudice Plaintiff's and the Settlement Class Members' claims against Defendant and the Released Parties, with the sole exception of claims of Settlement Class Members who timely and properly exclude themselves from the Settlement, if any, in accordance with the Opt-Out Process described in Section VIII of this Agreement. Defendant shall retain any and all defenses to such excluded claims. The Parties agree to cooperate in good faith and take all steps reasonable and appropriate to obtain preliminary and final approval of this Settlement, and to effectuate its terms.

50. In consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and amount the undersigned that the Action be settled and compromised, and that the Releasing Settlement Class Members (defined above) release the Defendant and the other Released Parties of the Released Claims (defined above), without costs as to Defendant, Released Parties, Plaintiff, Class Counsel, or the Releasing Settlement Class Members except as explicitly provided for in this Agreement, subject to the approval of the Court, on the terms and conditions set forth herein.

51. Each of these Recitals is incorporated into this Agreement as if fully set forth herein.

IV. CERTIFICATION OF THE SETTLEMENT CLASS

52. The Settlement contemplates Plaintiff will move for an order granting certification of the Settlement Class in order to effectuate the Parties' Settlement. The Parties agree certification of the Settlement Class is conditional and for settlement purposes only. This Settlement further contemplates, and all counsel, Parties, and Released Parties agree that none of the Released Parties are admitting that class certification is appropriate, or that any violation of any state, federal or local statute or common law occurred, or that any damages were suffered by Plaintiff or any putative class member. The Released Parties retain their rights to object to certification of this Action, or any other class action, should the Settlement ultimately not receive final approval.

53. If the Court does not grant final approval of the Settlement, or if final approval is granted but ultimately reversed on appeal, or if the Settlement Effective Date does not occur, the certification of the Settlement Class for settlement purposes shall be deemed null and void, and each Party, and Released Party, shall retain all of their respective rights as they existed prior to Execution of this Agreement, and neither this Settlement Agreement, nor any of its accompanying exhibits or any orders entered by the Court in connection with this Settlement Agreement, may be admissible or used for any purpose in this Action, or any other action against any of the Released Parties. Certification of the Settlement Class for settlement purposes is in no way an admission by the Released Parties that class certification is proper.

V. TERMS OF SETTLEMENT

54. ***Settlement Fund.*** Subject to the other terms and conditions of this Agreement, and subject to Court approval, within thirty (30) days after the Settlement Effective Date and receipt by Defendant's Counsel of Settlement Administrator instructions and necessary Form W-9s from the

Settlement Administrator, Defendant agrees to pay the Settlement Fund to the Settlement Administrator to make Settlement Award payments to Settlement Class Members and Settlement Costs, as described in this Agreement, to settle the Action with the Plaintiff Kelsey Hirmer and the other Settlement Class Members pursuant to this Agreement. Provided that Final Approval of this Agreement is granted by the Court without material change, material amendment, or material modification, the Settlement Fund will be used to pay Settlement Awards to Settlement Class Members and Settlement Costs, as described in this Agreement. Settlement Class Members will be eligible for a cash payment, the amount of which depends upon the number of Settlement Class Members and Settlement Costs. The amounts paid after Preliminary Approval for Notice and Administration Costs will be credited against the Settlement Fund such that the Settlement Funds represent the total extent of Defendants' and the Released Parties' monetary obligations under the Settlement. In no event will Defendant's and the other Released Parties' payment obligations exceed the total amount of the Settlement Fund. The Settlement contemplates the Settlement Fund shall be used to pay Settlement Awards to Settlement Class Members and all Settlement Costs. The Settlement Fund will be used to satisfy all claims of Plaintiff and the Settlement Class Members in exchange for the comprehensive release and the covenants set forth in this Agreement, including, without limitation, a full, fair, and complete release of all Released Parties from Released Claims, and dismissal of the Action with prejudice.

55. ***Notice and Administration Costs.*** Notice and Administration Costs shall be paid from the Settlement Fund, and from no other source. The Parties shall be jointly responsible for supervising the Settlement Administrator.

56. ***Attorneys' Fees and Litigation Expenses.*** Attorneys' Fees and Litigation Expenses approved by the Court shall be paid from the Settlement Fund, and from no other source. Class Counsel shall apply to the Court for an award of reasonable Attorneys' Fees and Litigation Expenses. The Settlement Administrator shall pay to Class Counsel the amount of the Attorneys' Fees and Litigation Expenses awarded by the Court, as directed by Class Counsel. Prior to the payment of approved Attorneys' Fees and Litigation Expenses, Class Counsel shall provide the Settlement Administrator with a duly completed Form W-9. The award of attorney fees and litigation expenses shall be reported by the Settlement Administrator on the applicable IRS Form 1099 as required by the Internal Revenue Code and shall be made without withholding. In the event the Court does not approve the award of Attorneys' Fees and Litigation Expenses requested by Class Counsel, or the Court awards Attorneys' Fees and Litigation Expenses in an amount less than that requested by Class Counsel, such decision shall not affect the validity and enforceability of the Settlement. Plaintiff and Class Counsel retain their right to appeal any decision by the Court regarding the award of Attorneys' Fees and Litigation Expenses. However, any award made by the Court with respect to Class Counsel's attorneys' fees or expenses, or any proceedings incident thereto, including any appeal thereof, shall not operate to terminate or cancel this Agreement or deemed material thereto.

57. ***Settlement Class Representative Incentive Payment.*** Any Settlement Class Representative Incentive Payment shall be paid from the Settlement Fund, and from no other source. Plaintiff may apply to the Court for a Settlement Class Representative Incentive Payment for the Settlement Class Representative (in addition to any *pro rata* distribution he may receive under this Agreement). The Settlement Administrator shall pay Plaintiff, c/o Class Counsel, the amount of incentive payment awarded by the Court. The denial by the Court of any such

application shall not affect the validity and enforceability of the Settlement. Plaintiff retains his right to appeal any decision by the Court regarding the application. However, any award made by the Court with respect to the Class Representative Incentive Payment, or any proceedings incident thereto, including any appeal thereof, shall not operate to terminate or cancel this Agreement or deemed material thereto.

58. ***Settlement Award to Settlement Class Members.*** The Settlement Administrator will manage the notice process in cooperation with Class Counsel and Defendant's Counsel, and in accordance with this Agreement. All Settlement Class Members who do not timely or properly opt out of the Settlement consistent with the process outlined in this Agreement shall be paid by check or electronic payment a *pro rata* share of the Settlement Fund after Settlement Costs are deducted.

VI. NOTICE TO THE CLASS

59. Within fourteen (14) days of the Court's entry of the Preliminary Approval Order, Defendant shall produce the names and addresses of the Settlement Class Members it has in its possession to the Settlement Administrator. For information regarding Settlement Class Members not within Defendant's possession, within fourteen (14) days after execution of this Agreement by all Parties, Defendant shall request the information directly from its customer. If the customer does not provide the information to Defendant within thirty (30) days following a request to do so or a different date reasonably agreed to by the Parties, the name of the customer shall be provided to Class Counsel so that the information can be subpoenaed. The information requested in the subpoena shall be provided by the customer directly to the Settlement Administrator. ESO shall forward a list of the approximately 7,812 potential class members Defendant identified in good faith as potential members of the Settlement Class to the Settlement Administrator to allow it to compare against data provided by the customers to confirm that the individuals are members of the Settlement Class (*i.e.,* that they fall within the definition of Settlement Class Members) and finalize the class list. The class list shall include the first and last name and last known address and e-mail for each Settlement Class Member to the extent Defendant or its customer(s) are able to obtain such information. The class list is being provided to the Settlement Administrator for the purpose of giving notice to the Settlement Class Members and will be kept confidential by the Settlement Administrator. Neither Plaintiff nor Class Counsel shall receive a copy of the class list, nor shall they seek copies of the class list from the Settlement Administrator. However, if an individual contacts Class Counsel to inquire as to whether s/he is on the Class List or the status of his/her check, Class Counsel will be able to verify if a particular person is on the Class List and confirm with the Settlement Administrator whether the address provided by the individual to Class Counsel is as the address contained in the Class List. Plaintiff will not move for preliminary approval of the settlement until all available class information has been provided by Defendant's customers and verified by ESO.

60. The Settlement Administrator shall implement the notice program, as set forth in this Section and directed by the Court. The Settlement Administrator shall, by the Notice Deadline, provide:

A. ***Notice.*** The Class Administrator shall provide direct Notice via U.S. First Class Mail to each Settlement Class Member within twenty one (21) days after the following entry of the Preliminary Approval Order. Notice shall be by way of a postcard and shall contain a

class member ID and shall direct recipients to the Settlement Website, and shall be substantially in the form attached hereto as Exhibit 1 or as otherwise approved by the Court. The text of the Notice shall be mutually agreed upon by the Parties. Prior to mailing the Notice, the Settlement Administrator shall search for updated addresses via the USPS national change of address database. The Settlement Administrator shall re-mail once any Notice returned as undeliverable and for which an alternative address can be located, and undertake reasonable means to locate alternative addresses for returned notices.

B. ***Website Notice.*** The Settlement Administrator will establish and maintain a Settlement Website dedicated to the Settlement, on which will be posted the Website Notice. This document shall be available on the Settlement Website as soon as reasonably possible following entry of the Preliminary Approval Order and remain until after the stale date of the Settlement Awards to Settlement Class Members (180 days after issuance of the Settlement Award payment). The settlement Administrator shall secure the URL esoBIPAsettlement.com for the Settlement Website, or, if unavailable, shall secure another URL mutually agreed upon by the Parties or determined by the Court.

VII. CAFA NOTICE

61. Pursuant to 28 U.S.C. §1715(b), Defendant shall provide CAFA Notice to the appropriate governmental authorities no later than the end of the ten (10) day period provided by CAFA. Unless otherwise ordered, this Settlement shall be deemed "filed" pursuant to 28 U.S.C. §1715(b) upon entry of the Preliminary Approval Order. The Parties understand and agree that a motion for preliminary approval will not be filed until Defendant's customers have provided all available complete class information sufficient for Defendant to determine where and to whom CAFA Notice must be provided.

VIII. OPT-OUT PROCESS

62. A Settlement Class Member who wishes to exclude themselves from this Settlement shall submit a written Opt-Out Request to the Settlement Administrator at the address designated in the Notice. In order to be valid, the Opt-Out Request must be postmarked no later than the Opt-Out/Objection Deadline. Opt-Out Requests must: (i) be timely submitted by the Opt-Out/Objection Deadline; (ii) be signed by the person in the Settlement Class who is requesting to be excluded from the Settlement Class; (iii) include the name and address of the person in the Settlement Class requesting exclusion; and (iv) include a statement or words to the effect of the following: "I request to be excluded from the settlement in the Hirmer v. ESO action, and understand that by doing so I will not be entitled to receive any of the benefits from the settlement." No person in the Settlement Class, or any person acting on behalf of or in concert or participation with that person in the Settlement Class, may exclude any other person in the Settlement Class from the Settlement Class.

63. An Opt-Out Request that is set to an address other than that designated in the Notice or that is not postmarked within the time specified shall be invalid and the person serving such a request shall be considered a member of the Settlement Class and shall be bound as a Settlement Class Member by the Agreement, if approved.

64. If the Settlement Agreement is finally approved by the Court, all Settlement Class Members who have not validly excluded themselves by the Claim Filing/Objection Deadline will be bound by the Settlement Agreement and the relief provided by the Settlement Agreement will be their sole and exclusive remedy for the Released Claims.

65. Any member of the Settlement Class who elects to be excluded from the settlement shall not: (i) be bound by the Settlement, (ii) be entitled to relief under this Settlement Agreement, (iii) gain any rights by virtue of this Settlement Agreement, or (iv) be entitled to object to any aspect of this Settlement Agreement. A member of the Settlement Class who requests to be excluded from the Settlement cannot also object to the Settlement Agreement. Class Counsel agrees not to solicit any individuals opting to be excluded from the Settlement. The Opt-Out Request must be personally signed by the person requesting exclusion. So-called "mass" or "class" exclusion requests shall not be allowed.

66. The Settlement Administrator shall maintain a list of persons who have submitted Opt-Out Requests and shall provide such list to the Parties upon written request.

IX. OBJECTION PROCESS

67. A Settlement Class Member who wishes to object to any matter concerning the Settlement must notify the Court and the Parties' counsel of his or her objection, in writing, on or before the Opt-Out/Objection Deadline, or other deadline set by the Court. All objections must be postmarked or otherwise received by the Opt-Out/Objection Deadline.

68. To state a valid objection to the Settlement, an objecting Settlement Class Member must personally sign the objection and provide the following information with it: (i) full name, current address, email address, and current telephone number; (ii) the case name and number of this Action, (iii) documentation sufficient to establish membership in the Settlement Class; (iv) a statement of reasons for the objection, including the factual and legal grounds for the objector's position; (v) copies of any other documents the objecting Settlement Class Member wishes to submit in support of his/her position, (vi) the identification of any other objections s/he has filed, or has had filed on his/her behalf, in any other class action cases in the last five years, and (vii) the objector's signature. If represented by counsel, the objecting Settlement Class Member must also provide the name, email address, and telephone number of his/her counsel.

69. Subject to approval of the Court, an objecting Settlement Class Member may, but does not need to, appear in person or by counsel at the Final Approval Hearing. To do so, the objecting Settlement Class Member must file with the Court, and serve on all counsel designated in the Notice, a notice of intention to appear by the Opt-Out/Objection Deadline, or other deadline set by the Court. The notice of intention to appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member (or his/her counsel) will present to the Court in connection with the Final Approval Hearing. Unless otherwise ordered by the Court, any Settlement Class Member who does not timely provide a notice of intention to appear in conformance with the requirements set out in the Notice and Website Notice, and who has not timely filed an objection in accordance with the requirements set out in the Notice and Website Notice, will be deemed to have waived any objection to the Settlement and can be barred from presenting any views at the Final Approval Hearing.

70. Settlement Class Members cannot both object to and opt-out of this Settlement Agreement. The Settlement Administrator shall attempt to contact any Settlement Class Member who submits both an objection and an opt-out request at least once by telephone or U.S. Mail to give the Settlement Class Member an opportunity to clarify whether they choose to opt-out or proceed with their objection. The Settlement Class Member shall have until seven (7) days after the Opt-Out/Objection Deadline to inform the Settlement Administrator regarding their final choice. Any Settlement Class Member who attempts to both object to and opt-out of the Settlement Agreement and fails to clarify their final choice, or if the Settlement Administrator is unable to contact such Settlement Class Member after reasonable effort as set forth in this paragraph, will be deemed to have opted out and will forfeit the right to object to this Settlement Agreement or any of its terms.

X. NO SOLICITATION OF SETTLEMENT OBJECTIONS OR EXCLUSIONS

71. At no time shall either Party or their counsel seek to solicit or otherwise encourage Settlement Class Members to submit written objections to the Settlement or requests for exclusion from the Settlement Class, or appeal from the Court's Final Approval Order (if applicable) or entry of a final judgment.

XI. DISTRIBUTION PROCESS

72. The timing of Defendant's payment of the Settlement Fund is:

A. Within seven (7) days after the Court enters the Preliminary Approval Order, the Settlement Administrator shall provide Defendant with an estimate of the anticipated Notice and Administrative Costs.

B. Within 30 (thirty) days after the Settlement Effective Date and receipt of Settlement Administrator instructions and the applicable Form W-9s from the Settlement Administrator, Defendant or its insurer shall deposit the Settlement Fund into a qualified settlement account established by the Settlement Administrator. The Settlement Fund shall be maintained by the Settlement Administrator as a Qualified Settlement Fund pursuant to Section 1.468B-1, et seq., of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended, and shall be deposited in an FDIC insured account created and controlled by the Settlement Administrator. Class Counsel shall instruct the Settlement Administrator as to whom the Attorneys' Fees and Litigation Expenses and any Settlement Class Representative Incentive Payment should be distributed. Defendant shall not, under any circumstances or for any reason, be obligated to pay any amounts in addition to the Settlement Fund in connection with the Settlement.

73. ***Settlement Award Payments.*** Settlement Awards shall be paid by check. Within fourteen (14) days after the Settlement Administrator receives the Settlement Fund, as described above, the Settlement Administrator shall send the Settlement Award Payments to each eligible Claimant. The Settlement Administrator shall undertake reasonable means to locate current addresses for all returned checks. Checks will be valid for one hundred and eighty (180) days from the date on the check. Any checks disbursed to Settlement Class Members from the Settlement Fund that are

uncashed for any reason within one hundred and eighty (180) days after their date of issuance will be paid to a mutually agreeable *cy pres* recipient, subject to Court approval.

74. ***Subsequent Distribution.*** If, after the expiration date of the checks distributed set forth herein, there remains money in the Settlement Fund sufficient to pay at least $5.00 to each Settlement Class Member who cashed their initial Settlement Award check or accepted their initial Settlement Award deposit, that remaining money will be distributed on a *pro rata* basis to those Settlement Class Members who cashed their initial Settlement Award checks or accepted their initial Settlement Award payments (the "Subsequent Distribution"). The Subsequent Distribution shall be made within thirty (30) days after the expiration date of the checks distributed, and shall be paid in the same manner as the original Settlement Award. Checks issued pursuant to the Subsequent Distribution will be valid for sixty (60) days from the date on the check. If there is not enough money to pay at least $5.00 to each Settlement Class Member who cashed their initial Settlement Award check or accepted their initial Settlement Award deposit, or if any checks or deposits from the subsequent distribution remain uncashed after the stale date, those funds shall be distributed to a mutually agreeable *cy pres* recipient, subject to court approval and if the parties cannot agree, they will inform the court at preliminary approval of their choices and if the cy pres recipient is not resolved at preliminary approval, the notices shall be modified to set out both Parties' preference.

75. ***Tax Treatment of Settlement Awards.*** Settlement Award Payments, Subsequent Distributions, and Settlement Class Representative Incentive Payments shall be classified as non-wage income, and the Settlement Administrator will report the payments on a 1099 form to the extent required by law. If required by IRS regulations, the Settlement Administrator shall issue to each participating Settlement Class Member and the Settlement Class Representative an IRS Form 1099. Other than the reporting requirements herein, Settlement Class Members and the Settlement Class Representative shall be solely responsible for the reporting and payment of their share of any federal, state and/or local income or other taxes on payments received pursuant to this Settlement Agreement. Defendant shall have no responsibility as to taxes, interest, penalties or other amounts due with respect to any payments or awards made by the Settlement Administrator from the Settlement Fund or received by Settlement Class Members, Settlement Class Representative and/or Class Counsel. It is understood and agreed that Defendant takes no position and offers no advice regarding how any Settlement Class Member, the Settlement Class Representative, or Class Counsel choose to treat any payment made pursuant to this Agreement for tax or any other purpose.

XII. RELEASE

76. Subject to the Court's final approval of the Settlement, and for good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, all Settlement Class Members who do not timely and properly opt out of the Settlement Agreement, and all their respective heirs, assigns, executors, administrators, and agents, past or present, fully and without limitation release and discharge each and every Released Party from any and all claims, rights, demands, liabilities, lawsuits and/or causes of action of every nature and description, whether known or unknown, filed or unfiled, asserted or as of yet unasserted, existing or contingent, whether legal, statutory, equitable, or of any other type or form, whether under federal, state, or local law, and whether brought in an individual, representative, or any other capacity, of every nature and description whatsoever, including, but not limited to, claims that

were or could have been brought in the Lawsuit or any other actions filed (or to be filed) by Plaintiff and Settlement Class Members against the Released Parties relating in any way to or connected with the alleged capture, collection, storage, possession, transmission, conversion, purchase, obtaining, sale, lease, profit from, disclosure, re-disclosure, dissemination, transmittal, conversion and/or other use of alleged biometric identifiers and/or biometric information through the latter of: (1) the date of Final Approval of Settlement or, (2) with respect to any Settlement Class Members for whom data stored on servers owned or leased by ESO is retained at the express request of Class Counsel during the pendency of the Elite Action, the date that such data is permanently deleted and destroyed pursuant to the process outlined in Paragraph 93, including, but not limited to, claims under the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 et seq. This Release includes, without limitation, statutory, constitutional, contractual, and/or common law claims for damages, unpaid costs, penalties, liquidated damages, punitive or exemplary damages, interest, attorneys' fees, litigation costs, interest, restitution, or equitable relief to the extent permitted by applicable law for all periods up to and including the date of Final Approval (the "Released Claims"). This release expressly excludes any claims against ESO's customers that used the ePro BioClock in the State of Illinois, including but not limited to Elite.

In addition to the class release set forth above, Plaintiff will not file a suit of any kind, or participate voluntarily in any suit brought by any other party against any of the Released Parties, in any court of law in any jurisdiction related to a Released Claim. Further, Plaintiff knowingly and voluntarily fully, finally, and forever, releases, relinquishes and discharges of and from any and all claims including all actual, potential, filed, unfiled, known or unknown, asserted or unasserted, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra-contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys' fees and/or obligations of any kind whether in law, in equity, or in another type or form, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, including but not limited to all claims which were made or which could have been made by Plaintiff in this Action or in any other action filed (or to be filed) by Plaintiff against any of the Released Parties relating in any way to or connected with the alleged capture, collection, storage, possession, transmission, conversion, purchase, receipt through trade, obtaining, sale, lease, profiting from, disclosure, redisclosure, dissemination, transmittal, conversion and/or other use of alleged or actual biometric identifiers and/or biometric information, as those terms are defined under BIPA. This release expressly excludes any claims against ESO's customers that used the ePro BioClock in the State of Illinois, including but not limited to Elite.

Plaintiff affirms that she has not filed, has not caused to be filed, and is not presently a party to any claim against Defendant, or any other Plaintiff Released Party with the exception of the claims asserted in the Action.

77. All Releasing Settlement Class Members are bound by the foregoing release regardless of Notice being successful and whether or not Settlement Award Payments are timely cashed. The only Settlement Class Members not subject to the foregoing release are those who timely and validly exclude themselves from the Settlement pursuant to the process described in this Settlement Agreement.

78. Each Releasing Settlement Class Member waives any and all defenses, rights, and benefits that may be derived from the provisions of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the release contained in this Agreement.

79. Notwithstanding any other provision of this Settlement Agreement, this release does not (i) release any customers of ESO that used the ePro BioClock in the State of Illinois, including but not limited to Elite Medical Transportation, LLC; (ii) waive or release any claim by either Party for breach or enforcement of this Settlement Agreement; or (iii) waive or release any right or claim that may not be waived or released by applicable law.

80. Releasing Settlement Class Members acknowledge the facts could be different than they now know or suspect to be the case, but they are nonetheless releasing all Released Claims.

81. The Parties acknowledge that this Settlement, including the releases provided in this Section, reflects a compromise of disputed claims.

82. The Final Approval Order shall dismiss the Action with prejudice and without costs, except as explicitly provided for in this Settlement Agreement, and shall incorporate the terms of this release.

83. Plaintiff, individually, and Defendant waive their right to appeal entry of the Final Approval Order, except that the Settlement Class Representative and Class Counsels retain the right to appeal the award of the Settlement Class Representative's Incentive Payment or attorney fees. However, the Parties agree that a reduction in the amount of the Settlement Class Representative's Incentive Payment or attorney fees by the Court (or any appellate court) will not be grounds for termination of the Agreement.

XIII. DUTIES OF THE PARTIES WITH RESPECT TO OBTAINING PRELIMINARY APPROVAL

84. As soon as is reasonably possible and following the receipt of class information from Defendant's customers, if necessary, and confirmation that individuals identified by the customer are included in the Settlement Class pursuant to the process described in Paragraph 59, Class Counsel shall file a motion for preliminary approval of the Settlement. However, prior to doing so, Class Counsel shall provide a draft of the motion for preliminary approval and proposed preliminary approval order to Defendant's Counsel for review and comment. The preliminary approval motion shall request the following relief:

A. Preliminarily approving the Settlement;

B. Conditionally certifying the Settlement Class for settlement purposes only in accordance with applicable legal standards and this Agreement;

C. Approving the form and content the proposed Notice, and plan for its distribution;

D. Scheduling a fairness hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate;

E. Conditionally appointing Class Counsel as class counsel;

F. Conditionally approving Plaintiff as Settlement Class Representative ;

G. Approving the Settlement Administrator; and

I. Setting the Notice Deadline, Objection Deadline, and Opt-Out Period.

85. For the purposes of the Settlement and the proceedings contemplated herein only, the Parties stipulate and agree that the Settlement Class shall be conditionally certified in accordance with the definition and on the terms contained herein, that Plaintiff shall be conditionally appointed as Settlement Class Representative, and that Plaintiff's Counsel shall be conditionally appointed as Class Counsel. Should the Court decline to preliminarily approve any aspect of the Settlement Agreement, the Parties will attempt to renegotiate those aspects of the Settlement Agreement in good faith, with the mutual goal of attempting to reach an agreement as close to this Settlement Agreement as possible, and will then submit the renegotiated settlement agreement to the Court for preliminary approval. If and only if the Parties are unable to obtain preliminary approval of a settlement agreement after submitting at least two renegotiated settlements to the Court, the Settlement Agreement will be null and void, and the Parties will have no further obligations under it, and the Parties will revert to their prior positions in the Action as if the Settlement had not occurred.

XIV. DUTIES OF PARTIES FOLLOWING PRELIMINARY COURT APPROVAL

86. Following Preliminary Approval of the Settlement, and no later than the filing of the motion for final approval, Class Counsel will submit a proposed Final Approval Order in substantially the form attached hereto as Exhibit 4, except as otherwise required by the Court. Class Counsel will provide drafts via e-mail of the foregoing motions to Defendant's counsel for review and comment at least seven (7) days prior to filing with the Court. Class Counsel will file a petition for an incentive award and attorney fee petition on the Notice Date.

87. Final approval of the Settlement by the Court will settle and resolve with finality on behalf of the Plaintiff and the Settlement Class Members the Action and the Released Claims against the Released Parties. The Settlement Agreement and release of Released Claims will be binding on, and have *res judicata* preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all other Settlement Class Members who do not validly and timely opt-out of the settlement as set forth herein, and their respective predecessors, successors, spouses, heirs, executors, administrators, agents and assigns of each of the foregoing.

XV. MUTUAL FULL COOPERATION

88. The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement, including but not limited to execution of all necessary documents, and to take such other action as may be needed to implement the terms of this Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court or otherwise, to effectuate the terms of this Settlement. As soon as practicable after execution of this Settlement, Class Counsel shall, with the reasonable assistance and cooperation of

Defendant and its counsel, take all reasonable and necessary steps to secure the Court's Final Approval Order.

XVI. CONDITIONS FOR TERMINATING THE AGREEMENT

89. This settlement is conditioned upon preliminary and final approval of the Parties' written Settlement Agreement, and all terms and conditions thereof without material change, material amendments, or material modifications by the Court (except to the extent such changes, amendments, or modifications are agreed to in writing between the Parties) except as set forth in Paragraph 105.

90. In the event that: (a) this Settlement is not preliminarily approved even after the renegotiation process described in Paragraph 85 of this Agreement, (b) the Court materially alters any of the terms of this Settlement Agreement to which the Parties have not agreed in writing, (c) the Court refuses to grant final approval of this Agreement in any material respect, (d) the Court's order granting preliminary or final approval of the Settlement is reversed or substantially modified, (e) the Court refuses to enter a final judgment in the Action in any material respect, or (f) if for any reason the Settlement Effective Date does not occur, either Party may elect to terminate and cancel this Settlement Agreement within ten (10) days of the occurrence of any of the foregoing events (or another date agreed to by the Parties). In the event either Party terminates and cancels the Agreement for one of the reasons listed in this Paragraph, the Settlement Agreement shall be deemed null, void, and unenforceable and shall not be used nor shall it be admissible in any subsequent proceedings either in this Court or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, and the Parties shall return to their respective positions prior to the Court's consideration of this Settlement. However, the Parties may agree to seek approval of an amended version of the Settlement.

91. In the event that more than 5% of the persons in the Settlement Class validly and timely submit Opt-Out Requests, Defendant, in its sole and absolute discretion, may terminate this Agreement.

92. In the event the Settlement Agreement is not approved or does not become final, or is terminated consistent with the provisions herein, the Parties, pleadings, and proceedings will return to the *status quo ante* as if no settlement had been negotiated or entered into, and the Parties will negotiate in good faith to establish a new schedule for the Action.

XVII. PROSPECTIVE ACTIONS

93. Within fourteen (14) days following the execution of this Settlement Agreement by all Parties (or other timeframe reasonably necessary or agreed to by the Parties), Defendant will notify its customers in Illinois that on a going-forward basis beginning thirty (30) days after ESO provides the customer with notice, ESO will no longer host any data generated from the scan of an individual's finger in connection with his/her use of the ePro BioClock on servers leased or owned by ESO. Further, with the exception of individuals who used the BioClock in connection with their work at Elite, ESO will permanently delete any data generated from the scan of any Settlement Class Member's finger in connection with the ePro BioClock which is hosted on servers leased or owned by ESO within thirty (30) days following the entry of the preliminary approval

order or will request that its customers do so directly. Plaintiff and Class Counsel acknowledge and agree that the deletion of data generated from the scan of any Settlement class Member's finger in connection with the ePro BioClock from any server leased or owned by ESO pursuant to the provisions of this Settlement Agreement shall not be considered evidence that ESO controls such data or used to establish or suggest that ESO or any other entity exercised any control over such data. Further, Plaintiff and Class Counsel acknowledge and agree that the process of modifying its processes such that finger scan data is no longer hosted on servers leased or owned by ESO will not constitute a disclosure, re-disclosure, dissemination, or collection of biometric identifiers or biometric information by ESO or its Illinois customers. In addition, at the request of Plaintiff and Class Counsel, with respect to individuals who used the BioClock in connection with their work at Elite, any data generated in connection with the scan of such individual's finger will not be deleted while the Elite Action is pending. Class Counsel shall notify ESO's Counsel when the Elite Action is resolved and ESO will permanently delete any data generated from the scan of that individual's finger from any server leased or owned by ESO within thirty (30) days after such notice is provided or will request that Elite do so directly. Plaintiff and Class Counsel acknowledge and agree that any retention of such data during the pendency of the Elite Action does not constitute a violation of the BIPA or any other similar statute or law and shall not form the basis of any claim by Plaintiff or any Settlement Class Member, but is being retained consistent with 740 ILCS 14/15(a), which allows for the retention of alleged biometric identifiers or biometric information pursuant to a subpoena issued by a court of competent jurisdiction.

XVIII. SIGNATORIES' AUTHORITY

94. The respective signatories to this Agreement each represent that they are fully authorized to enter into this Settlement on behalf of the respective Parties for submission to the Court for preliminary and final approval.

XIX. NO PRIOR ASSIGNMENTS

95. The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

XX. NOTICES

96. Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given: (i) on the date given, if given by hand delivery; (ii) within one (1) business day, if sent by overnight delivery services such as Federal Express or similar courier; (iii) on the third business day after mailing by United States registered or certified mail, return receipt requested, or (iv) on the day received for delivery by e-mail. All notices given under this Agreement shall be addressed as follows:

A. To the Class:

Keith J. Keogh

Greg M. Barbakoff
Keogh Law, LTD.
55 W. Monroe St., Ste. 3390
Chicago, IL 60603
keith@keoghlaw.com
gbarbakoff@keoghlaw.com

B. To Defendant

Jody Kahn Mason
Andrew D. Welker
Jackson Lewis P.C.
150 North Michigan Ave., Suite 2500
Chicago, IL 60601
Jody.Mason@jacksonlewis.com
Andrew.Welker@jacksonlewis.com

XXI. MISCELLANEOUS PROVISIONS

97. The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties and that this agreement shall not be construed in favor of or against any party by reason of the extent to which any party or his or its counsel participated in the drafting it.

98. Paragraph titles or captions contained in this Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision of this Agreement. Each term of this Agreement is contractual and not merely a recital.

99. This Agreement may not be changed, altered, or modified, except in a writing signed by the Parties. Any such modification is subject to Court approval.

100. This Agreement, the exhibits hereto, and any other documents delivered pursuant hereto contain the entire agreement between the Parties relating to the resolution of the Action, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged in this Agreement. No rights under this Settlement may be waived except in writing and signed by the Party against whom such waiver is to be enforced.

101. This Settlement shall be binding upon, and inure to the benefit of, the heirs, trustees, executors, administrators, successors, and assigns of the Parties, as previously defined.

102. This Agreement may be executed by facsimile signature and in any number of counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one and the same Agreement, which shall be binding upon and effective as to all Parties.

103. The Parties agree the Court shall resolve any disagreements over the meaning or implementation of this Agreement or the Settlement. The Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement embodied in this Settlement Agreement and all orders and judgments entered in connection therewith.

104. This Agreement shall be governed by Illinois law without regard to its choice of law or conflicts of law principles or provisions. An intervening change in law or court decision shall not invalidate this Settlement Agreement.

105. Before declaring any provision of this Settlement Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to find all provisions of this Settlement Agreement valid and enforceable. In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision if, and only if, the Parties and their Counsel mutually elect by written stipulation to be filed with the Court within twenty (20) days to modify the Settlement Agreement and proceed as if such invalid, illegal, or unenforceable provisions had never been included in this Settlement Agreement.

106. Nothing express or implied in this Agreement is intended or shall be construed to confer upon or give any person or entity other than the Parties, Released Parties, and Settlement Class Members any right or remedy under or by reason of this Agreement. Each of the Released Parties is an intended third-party beneficiary of this Agreement and with respect to the Released Claims and shall have the right and power to enforce the release of the Released Claims in his, her, or its favor against all Released Parties.

107. The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any prior or subsequent breach of this Agreement.

108. The Parties have relied upon the advice and representation of counsel concerning the Action and this Settlement. The Parties have read and understand fully this Settlement Agreement, including its Attachments, and have been fully advise as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

109. Plaintiff represents and warrants that he has not assigned any claim or right or interest therein as against the Released Parties to any other person or party.

110. The Parties specifically acknowledge, agree, and admit that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders, or other documents shall be considered a compromise within the meaning of Federal Rule of Evidence 408, and any other equivalent or similar rule of evidence, and shall not constitute, be construed, offered, or received into evidence as an admission of the validity of any claim or defense, or the truth of any fact alleged in the Action or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on

the part of any Party, or be used to establish a waiver of any defense of right, or to establish or contest jurisdiction or venue.

111. The Parties and their counsel agree that they will not issue any press releases, or initiate any contact with the media or any verdict/settlement publicist or database about this case and/or the facts, amount, or terms of the Settlement. The foregoing shall not restrict Plaintiff and Class Counsel from explaining the terms of the Settlement to Settlement Class Members and answering their questions about the Settlement when contacted by Settlement Class Members regarding the Settlement. Nor shall the foregoing restrict Class Counsel from including this Settlement in any court filings in the future or on its website listing past settlements.

112. The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff and the Settlement Class, and each or any of them, on the one hand, against the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Lawsuit was brought by Plaintiff or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.

113. The Settlement Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements, and undertakings with respect to the matters set forth herein. No representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.

114. The Parties may agree, subject to the approval of the Court, where required, to reasonable extensions of time to carry out the provisions of this Agreement.

115. Except as otherwise provided herein, each Party shall bear its own costs, attorneys' fees and any other litigation expenses.

116. The Parties agree that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders or other documents entered in furtherance of this Settlement Agreement, and any acts in the performance of this Settlement Agreement, are not intended to establish grounds for certification of any class involving any Settlement Class Member other than for certification of the Settlement Class for settlement purposes.

117. This Agreement shall be deemed fully executed as of the date that the last party signatory signs the Agreement.

XXII. CIRCULAR 230 DISCLAIMER

118. Each Party to this Settlement Agreement acknowledges and agrees that (1) no provision of this Settlement Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers regarding this Settlement Agreement, is or was

intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) each Party (A) has relied exclusively upon his, her or its own, independent legal and tax advisers for advice (including tax advice) in connection with this Settlement Agreement, (B) has not entered into this Settlement Agreement based upon the recommendation of any Party or any attorney or advisor to any other Party, and (C) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other Party to avoid any tax penalty that may be imposed on that Party; and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement Agreement.

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

ACCEPTED AND AGREED:

Kelsey Hirmer
Kelsey Hirmer (Mar 15, 2024 18:32 CDT)

Kelsey Hirmer

Mar 15, 2024

Date

APPROVED AS TO FORM:

Counsel for Plaintiff and the Class
Keith J. Keogh
KEOGH LAW, LTD.

Mar 15, 2024

Date

ACCEPTED AND AGREED:

ESO Solutions, Inc.
By: Robert Munden
Title: Chief Legal & Compliance Officer

March 20, 2024
Date

APPROVED AS TO FORM:

Jody Kahn Mason

Counsel for Defendant
Jody Kahn Mason
JACKSON LEWIS P.C.

3/22/2024
Date

EXHIBIT 1

NOTICE OF CLASS ACTION LAWSUIT AND PROPOSED SETTLEMENT

THE COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER.

Hirmer v. ESO Solutions, Inc. d/b/a eCore Solutions, Inc.,
United States District Court, Northern District of Illinois, Eastern Division, Case No. 22-cv-01018

YOU MAY BE ENTITLED TO RECEIVE MONETARY COMPENSATION.

What is this?	This is notice of a Proposed Settlement in a class action lawsuit.
What is this lawsuit about?	The Settlement would resolve a lawsuit brought on behalf of a putative class of individuals who allege that ESO Solutions, Inc. ("ESO") violated the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1, *et seq.,* by allegedly failing to: (1) obtain individuals' informed written consent before collecting, capturing, or otherwise obtaining their alleged biometric identifiers or biometric information in connection with their use of the ePro BioClock; and (2) implement and adhere to a written policy for permanently destroying alleged biometric identifiers or biometric information in its possession. ESO denies these allegations and denies any wrongdoing or violation of the law. The Court has not ruled on the merits of Plaintiff's claims or ESO's defenses.
Why am I getting this notice?	You were identified as someone who may have scanned your finger in connection with your use of an ePro BioClock in Illinois and whose finger-scan data was hosted on a server owned or leased by ESO between January 24, 2017 and [date of preliminary approval order].

179291

What does the Settlement provide?	ESO agreed to pay $4,101,300.00 (the "Settlement Fund"), which will pay for the cost of notice and administration of the settlement, Settlement Class members' claims, attorneys' fees and expenses incurred by counsel for Plaintiff and the Settlement Class ("Settlement Class Counsel"), and any service award for Plaintiff permitted by law. Settlement Class Counsel estimates that Settlement Class members will receive a cash award of approximately $_____. Plaintiff will petition for a service award not to exceed $_____ for Plaintiff's work in representing the Class and Settlement Class Counsel's fees up to thirty-six (36) percent of the Settlement Fund after administrative costs have been subtracted, not to exceed $_____, plus reasonable expenses.
How can I receive a payment from the Settlement?	There is nothing you need to do to obtain a payment in connection with the Settlement. Your portion of the Settlement Fund will be sent to your last known address unless you select electronic payment on the settlement website.
Do I have to be included in the Settlement?	If you do not want monetary compensation from this Settlement and you do not wish to release any potential claims against ESO as set forth in the Settlement Agreement, then you must exclude yourself from the Settlement by sending a letter to the address below requesting exclusion to the Settlement Administrator by _____, 2024. The letter must contain the specific information set forth on the Settlement Website "Opt-Out Process."

If I don't like something about the Settlement, how do I tell the Court?	If you do not exclude yourself from the Settlement, you can object to any part of the Settlement. You must file your written objection with the Court by _____, 2024, and mail a copy to both Class Counsel and defense counsel. Your written objection must contain the specific information set forth on the Settlement Website.
What if I do nothing?	If you do nothing, your settlement payment will be sent by check to your last known address. You will be bound by the Settlement, and you will release ESO from liability as set forth in the Settlement Agreement.
How do I get more information about the Settlement?	This notice contains limited information about the Settlement. For more information, to view additional Settlement documents, to update your payment preferences, and to review information regarding your opt-out and objection rights and the final approval hearing, visit www.esoBIPAsettlement.com. You can also obtain additional information or a long form notice by calling [insert 800 number]

ESO SOLUTIONS, INC. BIPA SETTLEMENT
[INSERT CLAIMS ADMIN]
[INSERT CLAIMS ADMIN ADDRESS]

[CLAIM ID IN DIGITS]
[CLAIM ID IN 2D BARCODE]
Postal Service: Please Do Not Mark or Cover Barcode

[FIRST1] [LAST1]
[BUSINESSNAME]
[ADDR1] [ADDR2]
[CITY] [ST] [ZIP]

EXHIBIT 2

Hirmer v. ESO Solutions, Inc. d/b/a eCore Solutions, Inc.,
USDC, Northern District of Illinois, Eastern Division
Case No. 22-cv-01018

If you scanned your finger in connection with your use of an ePro BioClock in Illinois beween January 24, 2017 and [DATE OF PRELIMINARY APPROVAL], and had your finger-scan data hosted on a server owned or leased by ESO Solutions, Inc. ("ESO"), you may be entitled to benefits under a class action lawsuit.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- **A proposed settlement will provide $4,101,300.00 (the "Settlement Fund") to fully settle and release claims of the following individuals:**

  All individuals who scanned their finger in connection with their use of an ePro BioClock in Illinois and whose finger-scan data was hosted on a server owned or leased by ESO from January 24, 2017 to the date the Court enters the Preliminary Approval Order. The Settlement Class does not encompass individuals who may have used an ePro BioClock in Illinois, but did not have their finger-scan data hosted on a server owned or leased by ESO.

  The following are excluded from the Settlement Class: (1) the district and magistrate judges presiding over this case; (2) the judges of the Seventh Circuit; (3) the immediate families of the preceding person(s); (4) any Released Party; and (5) any Settlement Class Member who timely opts out of this Action.

- **ESO denies Plaintiff's allegations and denies any wrongdoing whatsoever. The Court has not ruled on the merits of Plaintiff's claims or ESO's defenses. By entering into the settlement, ESO has not conceded the truth or validity of any of the claims against it.**

- **The Settlement Fund shall be used to pay amounts related to the settlement, including awards to Settlement Class, attorneys' fees and costs to attorneys representing Plaintiff and the Settlement Class ("Class Counsel"), any service award for Plaintiff and the costs of notice and administration of the settlement. Class Counsel estimate that Settlement Class members will receive approximately $____ ("Initial Settlement Award Checks"). However, the payment will ultimately depend on the total number of Settlement Class Members, costs of notice and administration, as well as the reasonable costs, attorney's fees, and incentive award approved by the Court. Any monies remaining in the Settlement Fund after the Initial Settlement Award Checks are distributed and the expiration date has passed will be distributed on a *pro rata* basis to those Settlement Class Members who cashed their Initial Settlement Award Checks (the "Subsequent Distribution"), so long as the amount to be distributed is at least $5.00 per class member. The Subsequent Distribution shall be made within thirty (30) days after the expiration date of the Initial Settlement Award Checks.** If there is not enough money to pay at least $5.00 to each Settlement Class Member who cashed their initial Settlement Award check or accepted their initial Settlement Award deposit, or if any checks or deposits from the subsequent distribution remain uncashed after the stale date, those funds shall be distributed to the [INSERT MUTUALLY AGREED UPON RECEIPIENT APPROVED BY COURT] as the a *cy pres* beneficiary, subject to court approval.

- **Your rights and options, and the deadlines to exercise them, are explained in this Notice. Your legal rights are affected whether you act or do not act. Read this Notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
EXCLUDE YOURSELF OR "OPT-OUT" OF THE SETTLEMENT	If you ask to be excluded, you will not receive a payment. This is the only option that allows you to pursue your own potential claims against ESO or other released parties related to a released claim. The deadline for excluding yourself is _____, 2024.
OBJECT TO THE SETTLEMENT	If you wish to object to the settlement, you must write to the Court about why you believe the settlement is unfair in any respect. The deadline for objecting is _____, 2024.
DO NOTHING	If you do nothing, you will still receive a payment from settlement and give up your rights to sue ESO or any other released parties related to a released claim.
GO TO THE FINAL APPROVAL HEARING	You may attend the Final Approval Hearing. At the Final Approval Hearing you may ask to speak in Court about the fairness of the settlement. To speak at the Final Approval Hearing, you must file a document which includes your name, address, telephone number and your signature with the Court, which must also state your intention to appear at the Final Approval Hearing. This must be filed no later than _____, 2024.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.

- The Court in charge of this case still has to decide whether to approve the settlement. Payments (*i.e.,* Settlement Award Checks) will be disbursed if the Court approves the settlement and after any appeals are resolved. Please be patient.

BASIC INFORMATION

1. What is the purpose of this Notice?

The purpose of this Notice is to inform you that a proposed Settlement has been reached in the putative class action lawsuit entitled *Hirmer v. ESO Solutions, Inc. d/b/a eCore Solutions, Inc.*, filed in the United States District Court, Northern District of Illinois, Eastern Division, Case No. 2022-cv-01018. Because your rights will be affected by this Settlement, it is extremely important that you read this Notice carefully. This Notice summarizes the settlement and your rights under it.

2. What does it mean if I received an email or postcard about this settlement?

If you received a postcard describing this settlement, it is because ESO's records indicate that you may be a member of the Settlement Class. The members of the Settlement Class include:

> All individuals who scanned their finger in connection with their use of an ePro BioClock in Illinois and whose finger-scan data was hosted on a server owned or leased by ESO from January 24, 2017 to the date the Court enters the Preliminary Approval Order. The Settlement Class does not encompass individuals who may have used an ePro BioClock in Illinois, but did not have their finger-scan data hosted on a server owned or leased by ESO.

3. What is this class action lawsuit about?

In a class action, one or more people called Class Representatives (here, Plaintiff, Kelsey Hirmer) sue on behalf of people who allegedly have similar claims. This group is called a class and the persons included are called class members. One court resolves the issues for all of the class members, except for those who exclude themselves from the class.

Here, Plaintiff alleges that ESO violated the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1, *et seq.*, by allegedly failing to: (1) obtain individuals' informed written consent before collecting, capturing, or otherwise obtaining their alleged biometric identifiers or biometric information in connection with their use of the ePro BioClock; and (2) implement and adhere to a written policy for permanently destroying alleged biometric identifiers or biometric information in its possession. ESO denies these allegations and any wrongdoing or violation of the law. The Court has not made any ruling as to the merits of those allegations or ESO's liability. The Court has conditionally certified a class action for settlement purposes only. The Honorable LaShonda A. Hunt is in charge of this action.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiff or ESO. Instead, the parties agreed to this settlement. This way, the parties avoid the risk and cost of a trial, and the Settlement Class members will receive compensation in exchange for the release set forth in the Settlement Agreement. Plaintiff and Class Counsel think the settlement is best for all persons in the Settlement Class.

WHO IS IN THE SETTLEMENT CLASS?

5. How do I know if I am a part of the settlement class?

The Court has certified a class action for settlement purposes only. The Settlement Class is defined as:

> All individuals who scanned their finger in connection with their use of an ePro BioClock in Illinois and whose finger-scan data was hosted on a server owned or leased by ESO from January 24, 2017 to the date the Court enters the Preliminary Approval Order. The Settlement Class does not encompass individuals who may have used an ePro BioClock in Illinois, but did not have their finger-scan data hosted on a server owned or leased by ESO.

A "Settlement Class Member" is any person in the Settlement Class who is not validly excluded from the Settlement Class. If you are still not sure whether you are included, you can visit other sections of the Settlement Website, www.esoBIPAsettlement.com, you may write to the Settlement Administrator at ESO BIPA Settlement, c/o _____, or you may call the Toll-Free Settlement Hotline, 1-_____, for more information.

THE LAWYERS REPRESENTING YOU

6. Do I have lawyers in this case?

The Court has appointed the law firms of Keogh Law, Ltd., as Settlement Class Counsel to represent you and the other persons in the Settlement Class. You will not be personally charged by these lawyers.

7. How will Settlement Class Counsel be paid?

Settlement Class Counsel will ask the Court to approve payment of up to thirty-six percent of the Settlement Fund after administrative costs have been substracted, for attorneys' fees, plus reasonable expenses. Settlement Class Counsel also will ask the Court to approve payment of $_____ to Plaintiff for her services as Class Representative if permitted by law. The Court may award less than these amounts.

THE SETTLEMENT BENEFITS – WHAT YOU GET

8. What does the settlement provide?

Settlement Fund. ESO will pay $4,101,300.00 into a fund (the "Settlement Fund"), which will cover: (1) cash payments to Settlement Class Members; (2) an award of attorneys' fees and expenses to Class Counsel; (3) service award to the Plaintiff, Kelsey Hirmer; and (4) the costs of notice and administration of the Settlement.

Cash Payments. All Settlement Class Members will receive a cash payment, so long as their last known address can be determined. Any money remaining in the Settlement Fund after paying all Settlement Award Checks to Settlement Class Members, attorneys' fees and costs to Class

Counsel, any service award to Plaintiff, and the costs of notice and administration of the settlement will be distributed on a *pro rata* basis to those Settlement Class Members who cashed their Initial Settlement Award Check, so long as the amount to be distributed per Claimant is at least $5.00. Any subsequent distribution will be made within thirty (30) days after the expiration date of the Initial Settlement Award Check has passed.

9. How much will my payment be?

Class Counsel estimates your share of the Settlement Fund will be $_____. **This is an estimate only. The final cash payment amount will depend on the total number of Settlement Class Members, costs of notice and administration, as well as the reasonable costs, attorney's fees, and incentive award approved by the Court.**

10. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the settlement, you will be part of the Settlement Class and will be bound by the release of claims in the settlement. This means that if the settlement is approved, you cannot rely on any Released Claim to sue, or continue to sue, ESO or other Released Parties, on your own or as part of any other lawsuit, as explained in the Settlement Agreement. It also means that all of the Court's orders will apply to you and legally bind you. Unless you exclude yourself from the Settlement, you will agree to release ESO and all other Released Parties, as defined in the Settlement Agreement, from any and all claims that arise from any alleged collection of alleged biometric identifiers or biometric information.

In summary, the Release includes all claims of any kind, whether known or unknown, that were asserted in the Action, or that could have been asserted in the Action based on the facts alleged in Plaintiff's Class Action Complaint, including, but not limited to, claims arising under BIPA or any other similar state, local, or federal law, regulation, or ordinance, or common law, regarding the use, collection, capture, receipt, maintenance, storage, transmission, or disclosure of biometric identifiers and/or biometric information. The complete release language can be found in the Settlement Agreement.

If you have any questions about the Release or what it means, you can speak to Class Counsel, listed under Question 6, for free; or, at your own expense, you may talk to your own lawyer. The Release does not apply to persons in the Settlement Class who timely exclude themselves.

HOW TO OBTAIN A PAYMENT

11. How can I get a payment?

There is nothing you need to do to obtain a payment from the Settlement. Your portion of the Settlement Fund will be sent to your last known address, along with a 1099 form to the extent required. If you would prefer to receive your Settlement Award via electronic deposit, you can update your payment preferences at www.esoBIPAsettlement.com.

WHEN WILL I RECEIVE MY SETTLEMENT PAYMENT?

12. When would I receive a settlement payment?

The Court will hold a hearing on _____, 2024 to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Everyone who declines to exclude themselves will be informed of the progress of the settlement through information posted on the Settlement Website at www.esoBIPAsettlement.com. Please be patient.

EXCLUDING YOURSELF FROM THE SETTLEMENT

13. How do I get out of the settlement?

If you do not wish to release any potential claims against ESO or a Released Party, as defined in the Settlement Agreement, then you must take steps to get out of the Settlement Class. This is called excluding yourself from, or opting-out of, the Settlement Class.

A Settlement Class Member who wishes to exclude himself or herself from this Settlement, and from the Release pursuant to this Settlement, shall submit a written Opt-Out Request to the Settlement Administrator at the address designated in the Notice no later than the Opt-Out/Objection Deadline. Opt-Out Requests must: (i) be timely submitted by the Opt-Out/Objection Deadline; (ii) be signed by the person in the Settlement Class who is requesting to be excluded from the Settlement Class; (iii) include the name and address of the person in the Settlement Class requesting exclusion; and (iv) include a statement or words to the effect of the following: "I request to be excluded from the ESO BIPA Settlement, and understand that by doing so I will not be entitled to receive any of the benefits from the settlement." No person in the Settlement Class, or any person acting on behalf of or in concert or participation with that person in the Settlement Class, may exclude any other person in the Settlement Class from the Settlement Class.

To be valid, you must mail your exclusion request postmarked no later than _____, 2024 to the Settlement Administrator at ESO BIPA Settlement, c/o _____.

14. If I do not exclude myself, can I sue ESO for the same thing later?

No. If you do not exclude yourself, you give up any right to sue (or continue to sue) ESO or any Released Parties for the claims that this settlement resolves.

15. If I exclude myself, can I get a benefit from this settlement?

No. If you exclude yourself, you will not receive a settlement payment and you cannot object to the settlement.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I do not think the settlement is fair?

If you are in the Settlement Class, you can object to the settlement or any part of the settlement that you think the Court should reject, and the Court will consider your views. If you do not provide a written objection in the manner described below, you shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the settlement, or the award of any attorneys' fees and expenses, and/or any proposed service award.

To object, you must make your objection in writing, stating that you object to the Settlement. To be considered by the Court, you must personally sign the objection and provide the following information with it: (i) full name, current address, email address, and current telephone number; (ii) the case name and number of this Action; (iii) documentation sufficient to establish membership in the Settlement Class; (iv) a statement of reasons for the objection, including the factual and legal grounds for your position; (v) the identification of any other objections you have filed, or have had filed on your behalf, in any other class action cases in the last five years, and (vii) your signature.

To be considered, you must file your objections with the Court and mail your objections to the addresses below no later than _____, 2024.

For Plaintiff:

Keith J. Keogh
Gregg M. Barbakoff
KEOGH LAW, LTD.
55 Monroe St., 3390
Chicago, IL 60603

For Defendant:

Jody Kahn Mason
Andrew D. Welker
Jackson Lewis P.C.
150 North Michigan Ave., Suite 2500
Chicago, IL 60601

17. What is the difference between objecting and excluding yourself?

Objecting is telling the Court that you do not like something about the settlement. You can object only if you stay in the Settlement Class. Excluding yourself means that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you. If you exclude yourself and object, your submission will be considered an Exclusion.

18. What happens if I do nothing at all?

If you do nothing, you will still receive a payment from settlement and give up your rights to sue ESO or any other released parties related to a released claim. For information relating to what rights you are giving up, see Question 10.

THE FINAL APPROVAL HEARING

19. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Hearing at ____:00 a.m. on _____, 2024 in Room 1219, 12th Floor, at United States Courthouse, 291 South Dearborn Street, Chicago, IL 60604. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are valid objections that comply with the requirements in Question 16 above, the Court also will consider them and will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel and Plaintiff.

The Final Approval Hearing may be moved to a different date or time without additional notice, so it is a good idea to check the Settlement Website for updates.

20. Do I have to come to the hearing?

No. Class Counsel will appear on behalf of the Settlement Class. But, you are welcome to come, or have your own lawyer appear, at your own expense.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing, but only in connection with an objection that you have timely submitted to the Court according to the procedure set forth in Question 16 above. To speak at the Final Approval Hearing, you must also file a document with the Court stating your intention to appear. For this document to be considered, it must include your name, address, telephone number and your signature. The document must be filed with the Court no later than _____, 2024. You cannot speak at the hearing if you exclude yourself from the settlement.

GETTING MORE INFORMATION

22. How do I get more information?

This notice is only a summary of the proposed settlement. You can get a copy of the settlement agreement by visiting the Settlement Website, www.esoBIPAsettlement.com, or you can write to the address below or call the Toll-Free Settlement Hotline, _____. You can also call Class Counsel with any questions at 866.726.1092.

DO NOT CALL OR WRITE TO THE COURT, THE CLERK OF THE COURT, ESO, OR ESO'S COUNSEL ABOUT THE SETTLEMENT. ALSO, TELEPHONE REPRESENTATIVES WHO ANSWER CALLS MADE TO THE TOLL-FREE NUMBER ARE NOT AUTHORIZED TO CHANGE THE TERMS OF THE SETTLEMENT OR THIS NOTICE.

EXHIBIT 3

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

KELSEY HIRMER, individually and on behalf of all others similarly situated, *Plaintiff,* v. ESO SOLUTIONS, INC. d/b/a ECORE SOLUTIONS, INC., *Defendant.*	Case No. 22-cv-01018 Hon. LaShonda A. Hunt. Presiding Judge

[PROPOSED] ORDER CERTIFYING SETTLEMENT CLASS, PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT, AND APPROVING NOTICE PLAN

This matter came before the Court on Plaintiff's Motion for Preliminary Approval of the proposed class action settlement (the "Settlement"). This case was brought by plaintiff Kelsey Hirmer ("Hirmer" or "Plaintiff"), individually and on behalf of all others similarly situated, against defendant Defendant ESO Solutions, Inc. ("ESO"). Based on this Court's review of the Settlement Agreement ("Agreement"), Plaintiff's Motion for Preliminary Approval of Settlement, and the arguments of counsel, THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. Settlement Terms. Unless otherwise defined herein, all terms in this Order shall have the meanings ascribed to them in the Agreement.

2. Jurisdiction. The Court has subject matter jurisdiction over this case pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), along with the Parties and all persons in the Settlement Class.

3. Preliminary Approval of Proposed Agreement. The Court has conducted a preliminary evaluation of the Settlement as set forth in the Agreement. Based on this preliminary evaluation, the Court finds that: (a) the Agreement is fair, reasonable and adequate, and within

the range of possible approval; (b) the Agreement has been negotiated in good faith at arm's length between experienced attorneys familiar with the legal and factual issues of this case, and supervised by a well-qualified JAMS mediator, the Honorable James F. Holderman (Ret.); and (c) the proposed forms and method of distributing notice of the Settlement to the Settlement Class are appropriate and warranted. Therefore, the Court grants preliminary approval of the Settlement.

4. Class Certification for Settlement Purposes Only. The Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of this Settlement only, certifies the following Settlement Class:

> All individuals who scanned their finger in connection with their use of an ePro BioClock in Illinois and whose finger-scan data was hosted on a server owned or leased by ESO from January 24, 2017 to the date the Court enters the Preliminary Approval Order. The Settlement Class does not encompass individuals who may have used an ePro BioClock in Illinois, but did not have their finger-scan data hosted on a server owned or leased by ESO.
>
> Excluded from the Settlement Class are: (1) the district and magistrate judges presiding over this case; (2) the judges of the Seventh Circuit; (3) the immediate families of the preceding person(s); (4) any Released Party; and (5) any Settlement Class Member who timely opts out of this Action.

5. In connection with granting class certification, the Court makes the following preliminary findings:

(a) The Settlement Class includes _____ members, and thus, the class is so numerous joinder of all members is impracticable;

(b) There appear to be questions of law or fact common to the Settlement Class for purposes of determining whether the Settlement should be approved, including, but not limited to, whether ESO captured, collected, and/or obtained the Settlement Class Members' alleged biometric identifiers or biometric information in connection with their

use of the finger-scanning feature of the ePro BioClock, and these questions appear to predominate over any alleged individual questions;

(c) Plaintiff's claims appear to be typical of the claims of the Settlement Class because she alleges ESO collected, captured, and/or obtained her alleged biometric identifiers or biometric information without first obtaining informed written consent, and failed to implement and adhere to a publicly-available policy governing the retention and destruction of alleged biometric identifiers or biometric information;

(d) Plaintiff and her counsel are adequate to represent the class. Plaintiff appears to have the same interests as the Settlement Class, she does not have any apparent conflict of interest with the Settlement Class, and her attorneys have extensive experience litigating class action cases, including class actions under BIPA; and

(e) Certification of the Settlement Class is the superior method for fairly and efficiently resolving the claims of the Settlement Class.

(f) Defendant retains all rights to object to the propriety of class certification in this Action in all other contexts and for all other purposes should the Settlement not be finally approved. If the Settlement is not finally approved and this Action resumes, this Court's preliminary findings regarding the propriety of class certification shall be of no further force or effect.

6. Settlement Class Representative. For settlement purposes only, the Court appoints Plaintiff Hirmer as representative of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

7. Settlement Class Counsel. For settlement purposes only, the Court appoints Keith J. Keogh and Gregg M. Barbakoff as Class Counsel pursuant to Rule 23 of the Federal Rules of Civil Procedure.

8. Settlement Administrator. KCC Class Action Services LLC ("KCC") is hereby appointed as the Settlement Administrator. The Settlement Administrator shall be responsible for providing notice of the Settlement ("Notice") to the Settlement Class as provided in the Agreement and this Order, as well as services related to administration of the Settlement.

9. Class Notice. The Class Administrator shall provide Notice via First Class Mail in accordance with the Agreement (the "Notice Plan"). The Notice Plan, in form, method and content, complies with the requirements of Rule 23 of the Federal Rules of Civil Procedure and constitutes the best notice practicable under the circumstances.

10. Opt-Outs and Objections. Persons in the Settlement Class who wish to object to the Settlement or request exclusion from the Settlement Class, must do so in accordance with the Notice. A class member who opts out may not also submit an objection, unless the class member confirms their intent to withdraw their opt-out in writing by no later than the opt-out deadline.

11. Settlement Administrator to Maintain Records. The Settlement Administrator shall maintain copies of all objections, and opt-outs received. The Settlement Administrator shall provide copies of all objections and opt-outs to the parties.

12. Objections to the Settlement. Any Settlement Class Member who wishes to be heard orally at the Final Approval Hearing, or who wishes for any objection to be considered, must file a written notice of objection in accordance with the Notice, Agreement, and this Order. To be considered, the objection: (A) must be personally signed by the objecting class

member, (B) it must include (i) the class member's full name, current address, email address, and current telephone number; (ii) the case name and number of this Action; (iii) documentation sufficient to establish membership in the Settlement Class; (iv) a statement of reasons for the objection, including the factual and legal grounds for the objector's position; (v) copies of any other documents the objecting Settlement Class Member wishes to submit in support of his/her/its position, and (vi) the identification of any other objections s/he has filed, or has had filed on his/her behalf, in any other class action case sin the last five years, and (C) it must be filed with the Court and sent to Plaintiff's and Defendant's counsel as stated in the Notice, by no later than the Opt-Out and Objection deadline stated below. Objections that are untimely or do not include the required information above shall be deemed waived.

13. Appearing at Final Approval Hearing. An objecting Settlement Class Member does not need to appear in at the Final Approval Hearing, but may do so by filing a notice of intention to appear in accordance with the Notice, Agreement, and this Order no later than the Opt-Out and Objection deadline below.

14. Reasonable Procedures to Effectuate the Settlement. Unless otherwise ordered by the Court, the parties are authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Agreement, including making minor changes to the form or content of the Notice or exhibits to the Agreement they agree are reasonable and necessary.

15. Final Approval Hearing. At the date and time provided below, or at such other date and time later the Court sets, this Court will hold a Final Approval Hearing on the fairness, adequacy and reasonableness of the Agreement and to determine whether (a) final approval of the Settlement embodied by the Agreement should be granted, and (b) Class

Counsel's application for an award of attorneys' fees and expenses, and any service award to Plaintiff, should be granted, and in what amounts. The hearing shall be held in Courtroom 1219 at the United States Courthouse, 291 South Dearborn Street, Chicago, IL 60604, or such other location as the Court may order. The Court may also order the hearing to take place remotely via Zoom or such other remote communication system as the Court may direct.

16. Release of Claims. Final approval of the Agreement will settle and resolve with finality on behalf of the Plaintiff and the Settlement Class, the Action and the Released Claims against the Released Parties by the Releasing Settlement Class Members in the Action. As of the Effective Date, the Agreement and the above-described release of the Released Claims, which are set forth in greater detail in the Agreement, will be binding on, and have res judicata preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all other Settlement Class Members who do not validly and timely exclude themselves from the Settlement, and their respective predecessors, successors, spouses, heirs, executors, administrators, agents and assigns of each of the foregoing, as set forth in the Agreement, and the Released Parties may file the Agreement and/or the Final Approval Order in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The Court specifically approves the release of claims set forth in the Agreement, including Section XII of the Agreement.

17. All Settlement Class Members will be bound by all determinations and judgments concerning the Settlement.

18. Pending the final determination of whether the Settlement and Agreement should be approved, all pre-trial proceedings and briefing schedules in the Action will remain stayed.

19. No Admission of Liability. The Agreement and any and all negotiations, documents, and discussions associated with it, will not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation or principle of common law or equity, or of any liability or wrongoing by Defendant or any Released Party, or the truth of any of the claims asserted. Evidence relating to the Agreement will not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other action or proceeding, except for purposes of demonstrating, describing, implementing, or enforcing the terms and conditions of the Agreement, this Order, and the Final Approval Order.

20. Reasonable Procedures to Effectuate the Settlement. Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Agreement, including making, without further approval of the Court, minor changes to the form or content of the Notice and other exhibits that they jointly agree are reasonable and necessary. The Court reserves the right to approve the Agremeent with such modifications, if any, as may be agreed to by the Parties without further notice to persons in the Settlement Class.

21. Plaintiff shall file her motion in support of Class Counsel's application for attorneys' fees and expenses, and any service award, no later than the Notice Deadline below.

22. Plaintiff shall file her: (a) motion in support of final approval of the Settlement; (b) response to any objections to the Settlement, no later than the date stated for the same in the Schedule of Events below.

23. Schedule of Events. Based on the foregoing, the Court hereby orders the resolution of this matter shall proceed on the following schedule:

_____, 2024 [21 days after the date of this Order]	Deadline for the Settlement Administrator to send notice to the Settlement Class in accordance with the Agreement and this Order (Notice Deadline)
_____, 2024 [Same as Notice Deadline]	Deadline for Plaintiff to file her Motion for Attorneys' Fees and Expenses, and any Incentive Award
_____, 2024 [60 days after Notice Deadline]	Deadline for any member of the Settlement Class to request exclusion from the Settlement or object to the Settlement in accordance with the Notice and this Order (Opt-Out and Objection Deadline)
_____, 2024 [21 days after the Opt-Out, Objection, and Claim Deadline]	Deadline for Plaintiff to file: (1) Motion and memorandum in support of final approval, including proof of class notice; and (2) Response to any objections.
_____, 2024 at _____ _.m. [Court's Convenience]	Final Approval Hearing

IT IS SO ORDERED.

Dated:_____

_____
Hon. LaShonda A. Hunt.
United States District Judge

EXHIBIT 4

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

KELSEY HIRMER, individually and on behalf of all others similarly situated, *Plaintiff,* v. ESO SOLUTIONS, INC. d/b/a ECORE SOLUTIONS, INC., *Defendant.*	Case No. 22-cv-01018 Hon. LaShonda A. Hunt. Presiding Judge

[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION SETTLEMENT

The Court having held a final approval hearing on _____, 2024, notice of the hearing and the Settlement having been duly given in accordance with this Court's order (1) preliminarily approving Settlement, (2) certifying the Settlement Class for purposes of settlement, (3) approving notice plan, and (4) setting the final approval hearing, and having considered all matters submitted at the final approval hearing and otherwise, and finding due and adequate notice having been given to the Settlement Class and no just reason for delay in entry of this final order,

It is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. The Settlement Agreement dated _____ ___, 2023, including its Exhibits (the "Agreement"), and the definition of words and terms contained therein, are incorporated by reference and are used hereafter. The terms and definitions of this Court's Preliminary Approval Order (ECF No.___) are also incorporated by reference into this Final Approval Order.

2. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), and personal jurisdiction over Defendant, ESO Solutions, Inc. ("ESO"), and the Settlement Class Members, certified in the Court's preliminary approval order, who did not properly or timely request exclusion.

3. The Court hereby finds the Agreement is the product of arm's length settlement negotiations between Plaintiff and ESO, supervised by a well-qualified JAMS mediator, the Honorable James F. Holderman (Ret.).

4. The Court hereby finds Notice of the Settlement was disseminated to persons in the Settlement Class in accordance with the Court's preliminary approval order, was the best notice practicable under the circumstances, and that the Notice satisfied Federal Rule 23 and due process.

5. [There were no objections to the Agreement] [*or*] [For the reasons stated on the record, as well as the reasons set forth in Plaintiff's and ESO's submissions, the Court overrules all objections to the Agreement.]

6. The Court hereby finally approves the Agreement, finding it fair, reasonable and adequate as to all members of the Settlement Class in accordance with Federal Rule 23.

7. The Court hereby finally certifies the Settlement Class for settlement purposes. The Court finds for settlement purposes that the Settlement Class satisfies all the requirements of Federal Rule 23. The Settlement Class is defined as follows:

> All individuals who scanned their finger in connection with their use of an ePro BioClock in Illinois and whose finger-scan data was hosted on a server owned or leased by ESO from January 24, 2017 to the date the Court enters the Preliminary Approval Order. The Settlement Class does not encompass individuals who may have used an ePro BioClock in Illinois, but did not have their finger-scan data hosted on a server owned or leased by ESO.
>
> Excluded from the Settlement Class are: (1) the district and magistrate judges presiding over this case; (2) the judges of the Seventh Circuit; (3) the immediate families of the preceding person(s); (4) any Released Party; and (5) any Settlement Class Member who timely opted out of this Action.

8. The Court hereby approves the plan of distribution for the Settlement Fund as set forth in the Agreement. The Claims Administrator is hereby ordered to comply with the terms of the Agreement with respect to satisfaction of claims, and any remaining funds.

9. As of the Effective Date, the Plaintiff and every Settlement Class Member hereby releases all Released Parties from the Released Claims, as stated in the Agreement.

10. This Final Approval Order will settle and resolve with finality on behalf of the Plaintiffs and the Settlement Class, the Action and the Released Claims against the Released Parties by the Plaintiff and the other Settlement Class Members in the Action as set forth in the Agreement, including Section XII of the Agreement. As of the Effective Date, the Agreement and the above-described release of the Released Claims will be binding on, and have *res judicata* preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and all other Settlement Class Members who do not validly and timely exclude themselves from the Settlement, and their respective predecessors, successors, affiliates, spouses, heirs, executors, administrators, agents and assigns of each of the foregoing, as set forth in the Agreement, and the Released Parties may file the Agreement and/or the Final Approval Order in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

11. The Settlement Agreement is hereby finally approved in all respects. The Parties and their counsel are directed to implement and consummate the Settlement Agreement according to its terms and conditions. The Parties and Settlement Class Members are bound by the terms and conditions of the Settlement Agreement.

12. Upon the Effective Date of the Settlement Agreement, Plaintiff and each Settlement Class Member and their respective present or past heirs, assigns, executors, administrators, and agents, shall be deemed to have released, and by operation of this Final Approval Order shall have,

fully, finally and forever released and discharged each and evert Released Party from any and all claims, rights, demands, liabilities,lawsuits and/or causes of action of every nature and description, whether known or unknown, filed or unfiled, asserted or as of yet unasserted, existing or contingent, whether legal, statutory, equitable, or of any other type of form, whether under federal, state, or llcal law, and whether brought in an individual, representative, or any other capacity, of every nature and description whatsoever, including, but not limited to, claims that were or could have been brought in the Lawsuit or any other actions filed (or to be filed) by Plaintiff and any Settlement Class Members against the Released Parties relating in any way to or connected with the alleged capture, collection, storage, possession, transmission, conversion, purchase, obtaining, sale, lease, profit from, disclosure, re-disclosure, dissemination, transmittal, converstion and/or other use of alleged biometric identifiers and/or biometric information through the latter of: (1) the date of this Order, or (2) with respect to any Settlement Class Members for whom data stored on servers owned or leased by ESO is retained at the express request of Class Counsel during the pendency of the Elite Action, the date that such data is permanently deleted and detsoyed pursuant to the process outlined in the Agreement, including, but not limited to, claims under the Illinois Biometric Privacy Act, 740 ILCS 14/1, et seq.

13. Settlement Class Counsel has moved, pursuant to FED. R. CIV. P. 23(h) and 52(a), for an award of attorneys' fees and reimbursement of expenses. Pursuant to Federal Rules 23(h)(3) and 52(a) this Court makes the following findings of fact and conclusions of law:

(a) The Settlement confers substantial benefits on the members of the Settlement Class;

(b) The value conferred on the Settlement Class is immediate and readily quantifiable, in that members of the Settlement Class will receive cash

payments that represent a significant portion of the damages available to them were they to prevail in an individual action under the Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA");

(c) Settlement Class Counsel vigorously and effectively pursued the Settlement Class Members' claims before this Court in this complex case;

(d) The Settlement was obtained as a direct result of Settlement Class Counsel's advocacy;

(e) The Settlement was reached following extensive negotiations between Settlement Class Counsel and Counsel for ESO, supervised by a well-qualified JAMS mediator, and was negotiated in good-faith and without collusion;

(f) Members of the Settlement Class were advised in the Notice approved by the Court that Settlement Class Counsel intended to apply for an award of attorneys' fees equal to thirty-six percent of the Settlement Funds less notice and administration costs, in the amount of $_____, plus expenses, to be paid from the Settlement Fund;

(g) A copy of Plaintiff's motion for an award of attorneys' fees and expenses and any incentive award was made available for inspection in the Court's file and on the settlement website during the period class members had to submit any objections;

(h) _____ member(s) of the Settlement Class submitted written objection(s) to the award of attorneys' fees and expenses; and

(i) Counsel who recover a common fund for the benefit for persons other than themselves for their client are entitled to a reasonable attorneys' fee from

the fund as a whole. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Sutton v. Bernard,* 504 F.3d 688, 691 (7th Cir. 2007) ("the attorneys for the class petition the court for compensation from the settlement or common fund created for the class's benefit").; and accordingly, Settlement Class Counsel are hereby awarded $ _____ for attorney fees and $_____ for reimbursed expenses from the balance of the Settlement Fund, which the Court finds to be fair and reasonable, and which amount shall be paid to Settlement Class Counsel from the Settlement Fund in accordance with the terms of the Agreement.

(j) Other than expressly provided above and in the Settlement Agreement, the Parties shall bear their own costs and attorneys' fees in connection with this matter.

14. The Class Representative, Kelsey Hirmer, is hereby compensated in the amount of $_____ for her efforts in this case. *See, e.g., See Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (recognizing that "because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit"); *In re Synthroid Mkt. Litig.* ("*Synthroid I*"), 264 F.3d 722 (7th Cir. 2001) ("Incentive awards are justified when necessary to induce individuals to become named representatives."); *see also Leung v. XPO Logistics, Inc.,* 326 F.R.D. 185, 205 (N.D. Ill. 2018) (awarding $10,000 incentive award to named plaintiff); *Briggs v. PNC Financial Services Group*, No. 1:15-cv-10447, 2016 U.S. Dist. LEXIS 165560, at *5 (N.D. Ill. Nov. 29, 2016) ($12,500 incentive award for each named plaintiff); *Castillo v. Noodles & Co.*, No. 16-cv-03036, 2016 U.S. Dist. LEXIS 178977, at *8 (N.D. Ill. Dec. 23, 2016) (authorizing $10,000 incentive award for each named plaintiff).

15. If, after the expiration date of the second distribution (if any) as provided for in the Settlement Agreement, there remains money in the Settlement Fund, all money remaining will be distributed to [INSERT MUTUALLY AGREED UPON RECEIPIENT APPROVED BY COURT] as the *cy pres* beneficiary. *See Ira Holtzman, C.P.A., & Assocs. V. Turza*, 728 F.3d 682, 689 (7th Cir. 2013)

16. Subject to the terms and conditions of the Settlement Agreement,this Court hereby enters this Final Approval Order and dismisses this case on the merits and with prejudice, and permanently enjoins all Settlement Class Members from prosecuting any Released Claims against the Released Parties. Notwithstanding the foregoing, without affecting the finality of this Final Approval Order for purposes of appeal, the Court retains jurisdiction solely to supervise the administration of the Settlement, enforce the Agreement, and resolve any disputes relating to the same.

IT IS SO ORDERED,
ADJUDGED AND DECREED.

Dated: _____

_____
Honorable Lashonda A. Hunt

APPENDIX 2

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

KELSEY HIRMER, individually and on behalf of all others similarly situated, *Plaintiff,* v. ESO SOLUTIONS, INC. d/b/a ECORE SOLUTIONS, INC., *Defendant.*	Case No. 22-cv-01018 Hon. LaShonda A. Hunt. Presiding Judge

DECLARATION OF KEITH J. KEOGH

I, Keith J. Keogh, declare under penalty of perjury:

1. I am a member in good standing of the Illinois State Bar, and the founder and managing partner of Keogh Law, Ltd. ("Class Counsel"). I am one of the lawyers primarily responsive for prosecuting Plaintiff Kelsey Hirmer's ("Plaintiff") claims under the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1, *et seq.* on behalf of the proposed Settlement Class.

2. I am familiar with the facts and circumstances surrounding this matter, and I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement. I am over the age of eighteen and am fully competent to make this declaration. This declaration is based upon my personal knowledge, and if called upon to testify to the matters stated herein I could and would do so competently.

3. Keogh Law, Ltd. focuses on consumer-protection class actions. I am a shareholder of the firm and member of the bars of the United States Supreme Court and Court of Appeals for the First, Second, Third, Seventh, Ninth and Eleventh Circuits, Eastern District of Wisconsin, Northern District of Illinois, Central District of Illinois, Southern District of Indiana, District of Colorado, Middle District of Florida, Southern District of Florida, the Illinois State Bar, and the

Florida State Bar, as well as several bar associations and the National Association of Consumer Advocates.

4. In 2015, the National Association of Consumer Advocates honored me as the Consumer Attorney of the Year for my work in courts and with the FCC ensuring the privacy safeguards of the Telephone Consumer Protection Action were maintained.

5. In addition to the substantial experience under BIPA set forth below, Keogh Law was class counsel in numerous consumer privacy class actions that were some of the largest of their kind. *See Hageman v. AT&T Mobility LLC, et al.*, No. 1:13-cv-00050-DLC-RWA (D. MT.) (Co-Lead) (Final Approval Granted February 11, 2015 providing for a $45 million settlement for a class of 16,000 persons) and *Capital One Telephone Consumer Protection Act Litigation, et al.*, No. 12-cv-10064 (N.D. Ill. Judge Holderman) (Liaison Counsel and additional Class Counsel) (Final Approval Granted February 12, 2015 for a $75 million settlement); *Flaum v. Doctors Associates*, 16-CV-61198-CMA (S.D. Fla.) ($30.9 million); *Richardson v. Ikea North America Servs.*, No. 21-CH-5392 (Cir. Ct Cook Cnty, Ill. 2023) ($24,250,000 common fund in privacy class action under FACTA); *Martin v. Safeway*, 2020 CH 5480 ($20 million common fund); *Legg v. Laboratory Corporation of America Holdings*, No. 14-cv-61543-RLR (S.D. Fla., filed July 6, 2014) ($11 million); *Legg v. Spirit Airlines, Inc*., No. 14-cv-61978-JIC (S.D. Fla., filed Aug. 29, 2014) ($7.5 million); *Muransky v. Godiva Chocolatier, Inc*., 15-cv-60716-WPD (S.D. Fla., filed Apr. 6, 2015) ($6.3 million).

This Litigation

6. This class action was filed on January 24, 2022, in the Circuit Court of Cook County against Defendant ESO Solutions, Inc. ("ESO"). On February 2, 2022, ESO removed the case to this Court.

7. The Settlement in this case was not reached until after the parties engaged in significant procedural motion practice, exchanged informal discovery while the case was stayed, and participated in an eight-hour, highly adversarial settlement conference that concluded with a mediator's offer.

8. By way of background, on May 31, 2022, while Plaintiff was in the midst of preparing her response to ESO's previously-filed motion to dismiss, ESO moved to stay the case pending the resolution of a separate state-court BIPA class action Plaintiff is litigating against her former employer (the "State Court Action"), which arose from the same timekeeping system at issue in this case. *See* ECF Nos. 27-28 (Stay Motion and supporting memorandum). The Court stayed the briefing on the motion to dismiss and entered a briefing schedule on the Stay motion. See ECF No. 29. On July 13, 2022, the Court granted the Stay Motion. *See* ECF No. 32.

9. It was not until after Plaintiff obtained significant discovery on the timekeeping system's technical capabilities (namely, the type of data it collected) through the State Court Action — both from Plaintiff's employer, and from ESO via subpoena — that the parties began discussing mediation. In the course of this process, the parties exchanged informal discovery on the last remaining data point needed to inform their discussions — *i.e.* the size of the proposed class — as well as detailed mediation briefs setting forth their respective legal and factual arguments.

10. On July 18, 2023, the parties mediated this dispute before the Honorable James Holderman (ret.) of Judicial Arbitration and Mediation Services, Inc. ("JAMS"). At the mediation, the parties discussed their relative views of the law and facts, as well as Plaintiff's theory regarding the relief for the proposed class. But after an all-day, highly-adversarial mediation, the parties were unable to bridge the gap between their respective positions.

11. Nevertheless, the parties continued their settlement efforts over the ensuing two weeks before reaching an agreement-in-principle on August 1, 2023 with the assistance of Judge Holderman. After doing so, the parties continued extensive, contentious negotiations on their remaining points of dispute over the next seven-and-a-half months, which culminated in a fully-executed settlement agreement ("Agreement").

12. Following the execution of the Agreement, Plaintiff's counsel spent the next two-and-a-half months engaging in third-party discovery to confirm which individuals should be included in the Settlement Class and obtain contact information for those individuals, which entailed the issuance of seventeen subpoenas, multiple Rule 37.2 conferences, and a motion to compel with respect to information Plaintiff requested from third parties. As a result of these efforts, the parties were able to finalize the list of individuals in the Settlement Class, i.e., individuals who used the timekeeping system in Illinois during the relevant time period and had their finger-scan data hosted on a server owned or leased by ESO.

13. Under the Settlement Agreement, ESO will pay Four Million, One Hundred One Thousand and Three Hundred Dollars ($4,101,300.00) into a Settlement Fund. No amount of the Settlement Fund will revert to ESO, and Settlement Class Members are not required to submit a claim or take any action to receive compensation. Instead, the Settlement Fund will be divided *pro rata* among all Settlement Class Members after payment of the costs of notice and administration and the court-approved attorneys' fees, expenses, and class representative incentive awards.

14. Based on the information provided by ESO and its customers (*i.e.* the Settlement Class's employers), the Settlement Class consists of 6,414 persons. Thus, each Settlement Class Member will receive a net recovery of approximately $401, which is not only in line with, but superior to, other BIPA settlements that have received approval. *See* Mot. at 16.

15. The Settlement reached in this case was the product of well-informed judgments about the adequacy of the relief provided to the proposed Settlement Class. Class Counsel are intimately familiar with the relative strengths and weaknesses of the claims and defenses in this case, as well as the corresponding legal and factual issues. This knowledge, which was obtained through the discovery exchanged by the parties, as well as Class Counsel's extensive experience, legal research and pre-suit investigation, was sufficient to make an informed recommendation about the value of the claims at issue, the costs, risks, and delays of protracted litigation, discovery, and appeals, and the adequacy of the class relief secured through the Settlement.

16. At all times, the settlement negotiations were highly adversarial and non-collusive, and the parties have not entered into any side-deals or separate agreements in connection with the Settlement Agreement.

17. While I am confident in the strength of the claims alleged in this case and that Plaintiff would ultimately prevail at trial, ESO denied all of Plaintiff's material allegations and raised numerous legal and factual issues that, if successful, could preclude any recovery for the Settlement Class.

18. Given the risks and delays posed by further litigation, as well as my considerable experience doing Plaintiff's consumer protection work, I believe the settlement is more than fair, adequate, and reasonable, and in the best interest of the Settlement Class. Instead of facing the uncertainty of a potential award in their favor years from now, the Settlement allows Plaintiff and Settlement Class Members to receive immediate and certain relief.

19. Plaintiff played a key role in prosecuting this case and securing the proposed Settlement on behalf of the proposed Settlement Class. Specifically, Plaintiff retained experienced counsel class action litigators to bring this action, assisted her attorneys in investigating the Settlement Class's BIPA claims, reviewed and approved the Class Action Complaint prior to

filing, regularly conferred with her attorneys throughout the litigation, and reviewed and approved the Settlement Agreement prior to signing it.

Class Counsel's Additional Experience

20. As shown below, my firm has regularly engaged in major complex litigation and consumer class actions involving statutory privacy claims. My firm has the resources necessary to conduct litigation of this nature, and has experience prosecuting class actions of similar size, scope, and complexity to the instant case. Additionally, I have often served as class counsel in similar actions.

21. Recently, my firm was appointed as class counsel in similar class actions involving claims arising under BIPA: *Jessi Gumm and Anastasia Rodriguez v. Vonachen Servs., Inc.*, 2019 CH 12773 (Cir. Ct. Cook Cnty. August 26, 2024); *Roberts v. Graphic Packaging Int'l, LLC*, 3:21-cv-00750, ECF No. 66 (S.D. Ill. July 11, 2024); *Svoboda, et al. v. Amazon.com, Inc., et al.*, 1:21-cv-05336, ECF No. 291 (N.D. Ill. March 30, 2024); *Bayeg v. The Admiral at the Lake*, 2019 CH 08828 (Cir. Ct. Cook Cnty. May 28, 2023); *Marquez v. Bobak Sausage Co.*, 2020 CH 04259 (Cir. Ct. Cook Cnty. Aug. 21, 2023); *Heidelberg v. Forman Mills Inc.*, 2020 CH 04079 (Cir. Ct. Cook Cnty. April 7, 2023); *Quarles v. Pret A Manger (USA) Ltd.*, 20-cv-7179, ECF No. 46 (N.D. Ill. Jan 18, 2022); and *Sherman v. Brandt Industries USA Ltd.*, 20-cv-1185, ECF No. 78 (C.D. Ill. March 22, 2022).

22. My firm has also litigated dozens of other putative class actions arising under BIPA, including *Korpalski v. Brandt Industries, Inc., d/b/a Container International*, 2024 CH 03388 (Cir. Ct. Cook Cnty.); *Hanlon ex rel. G.T. v. Samsung Elecs. Am., Inc.*, 1:21-cv-04976 (N.D. Ill.); *Svoboda v. Frames for America, Inc.*, 1:21-cv-05509 (N.D. Ill.); *Steinberg v. Charles Indus., L.L.C.*, 2021 CH 01793 (Cir. Ct. Cook Cnty.); *Ortega v. The Expediting Co., Inc.*, 2021 CH 00969

(Cir. Ct. Cook Cnty.); *Fells v. Carl Buddig & Co.*, 2021 CH 00508 (Cir. Ct. Cook Cnty.); *Mathews v. Brightstar US, LLC*, 2021 CH 00167 (Cir. Ct. Lake Cnty.); *Willem v. Karpinske Enters., L.L.C.*, 2021 CH 00031 (Cir. Ct. Jo Daviess Cnty., Ill.); *Shafer v. Rodebrad Mgmt. Co., Inc.*, 2021 CH 00008 (Cir. Ct. Montgomery Cnty., Ill.); *Roberts v. TDS Servs., Inc.*, 2021 CH 00005 (Cir. Ct. Washington Cnty., Ill.); *Jenkins v. Regal Cinemas, Inc.*, 1:20-cv-03782 (N.D. Ill.); *Turner v. Crothall Healthcare, Inc.*, 1:20-cv-03026 (N.D. Ill.); *McFerren, et al. v. World Class Distribution, Inc.*, 1:20-cv-02912 (N.D. Ill.); *Stein v. Clarifai, Inc.*, 1:20-cv-01937 (N.D. Ill.); *Barton v. Swan Surfaces, LLC*, 3:20-cv-00499-SPM (S.D. Ill.); *Wells v. Medieval Times U.S.A., Inc.*, 2020 CH 06658 (Cir. Ct. Cook Cnty.); *Young v. Van Ru Credit Corp.*, 2020 CH 04303 (Cir. Ct. Cook Cnty.); *Isychko v. Jidd Motors, Inc.*, 2020 CH 04244 (Cir. Ct. Cook Cnty.); *Hirmer v. Elite Med. Transp., LLC*, 2020 CH 04069 (Cir. Ct. Cook Cnty.); *Magner v. SMS-NA, LLC*, 2020 CH 00520 (Cir. Ct. Cook Cnty.); *Bayeg v. Eden Mgmt., LLC*, 2019 CH 08821 (Cir. Ct. Cook Cnty.); *Tran v. Simple Labs., LLC*, 2019 CH 07937 (Cir. Ct. Cook Cnty.).

23. My firm served as class counsel in some of the largest all-cash privacy class actions under FACTA in history, including the $30.9 million settlement in *Flaum v Doctors Associates*, 16-CV-61198-CMA (S.D. Fla. Mar. 11, 2019), which I understand to be the largest all-cash FACTA settlement in history. The others include *Martin v. Safeway, Inc.*, 2020 CH 5480 (Cir. Ct. Cook Cnty., Ill.) ($20 million); *Legg v. Laboratory Corp. of America Holdings*, No. 14-cv-61543-RLR (S.D. Fla. Feb. 18, 2016) ($11 million); *Legg v. Spirit Airlines, Inc.*, No. 14-cv-61978-JIC (S.D. Fla. Aug. 2, 2016) ($7.5 million); and *Muransky v. Godiva Chocolatier, Inc.*, No. 2020 CH 7156 (Cir. Ct. Cook Cnty. May 13, 2021) ($6.3 million).

24. Other successful FACTA cases in which my firm has served as class counsel include *Altman v. White House Black Market, Inc.*, No. 21-A-735 (Cobb Cnty., Ga., Dec. 9, 2021); *Guarisma v. Alpargatas USA, Inc. d/b/a Havaianas*, Case No. 2020 CH 7426 (Cir. Ct. Cook Cnty.,

May 24, 2021); *Guarisma v. Microsoft Corp.*, No. 15-cv-24326-CMA (S.D. Fla., Oct. 27, 2017); *Cicilline v. Jewel Food Stores, Inc.*, 542 F.Supp.2d 831 (N.D. Ill. 2008); *Harris v. Best Buy Co.*, 254 F.R.D. 82 (N.D. Ill. 2008); *Matthews v. United Retail, Inc.*, 248 F.R.D. 210 (N.D. Ill. 2008); *Redmon v. Uncle Julio's, Inc.*, 249 F.R.D. 290 (N.D. Ill. 2008); *Harris v. Circuit City Stores, Inc.*, No. 07 C 2512, 2008 U.S. Dist. LEXIS 12596 (N.D. Ill. Feb. 7, 2008); and *Pacer v. Rockenbach Chevrolet Sales, Inc.*, 07 C 5173 (N.D. Ill. 2008).

25. My firm also was class counsel in two of the largest Telephone Consumer Protection Act ("TCPA") settlements in the country. *See Hageman v. AT&T Mobility LLC, et al.*, Case 1:13-cv-00050-DLC-RWA (D. MT.) (Co-Lead) ($45 million settlement) and *Capital One Telephone Consumer Protection Act Litigation*, et al., 12-cv-10064 (N.D. Ill. Judge Holderman) (Liaison Counsel and additional Class Counsel) ($75 million settlement).

26. The firm was lead or class counsel in the following consumer class settlements: *Breda v. Cellco Partnership, et al.*, 16-cv-11512-DJC (D. Mass. Nov. 18, 2021); *Iverson v. Advanced Disposal Servs., Inc.*, No. 18-CV-00867-BJD-JBT (M.D. Fla. Mar. 1, 2022); *Braver v. Northstar Alarm Services, LLC*, No. 5:17-cv-00383-F (W.D. Okla. Nov. 3, 2020); *Goel v. Stonebridge of Arlington Heights, et al.*, 2018 CH 11015 (Cir. Ct. Cook Cty. Jun. 8, 2020); *Cook v. Wal-Mart Stores, Inc., et al.*, No. 3:16-cv-673-BRD-JRK (M.D. Fla. Jun. 4, 2020); *Cranor v. The Zack Group, Inc.*, No. 4:18-cv-00628-FJG (W.D. Mo. May 18, 2020); *Keim v. ADF MidAtlantic, LLC*, 2018 U.S. Dist. LEXIS 204548 (S.D. Fla. Mar. 20, 2020); *Hennessy, et al. v. Mid-America Apartment Communities, Inc., et al*., 4:17-cv-00872-BCW (W.D. Mo. Aug. 8, 2019); *Detter v. KeyBank, N.A.*, No. 16-cv-10036 (Jackson Ctny., Mo. July 12, 2019) (FCRA); *Leung v XPO Logistics, Inc.*, 15 CV 03877 (N.D. Ill. 2018); *Martinez v. Medicredit*, 4:16CV01138 ERW (E.D. Mo. 2018); *Martin v. Wells Fargo Bank, N.A.*, 16-cv-09483 (N.D. Ill. 2018) (FCRA); *Town & Country Jewelers, LLC v. Meadowbrook Insurance Group, Inc., et al*, 15-CV-02419-PGS-LHG

(D. N.J. 2018); *Legg v. Am. Eagle Outfitters*, 2017 U.S. Dist. LEXIS 147645 (S.D.N.Y. Sept. 8, 2017), *aff'd* 923 F.3d 85 (2d Cir. 2019); *Stahl v. RMK Mgmt. Corp.*, 2015 CH 13459 (Cir. Ct. Cook Cty. Sept. 14, 2017); *Tripp v. Berman & Rabin, P.A.*, 2017 U.S. Dist. LEXIS 3971 (D. Kan. Jan. 9, 2017); *Markos v Wells Fargo*, 15-cv-01156-LMM (N.D. Ga.); *Ossola v Amex* 1:13-cv-04836 (N.D. Ill. 2016); *Luster v. Wells Fargo*, 15-1058-TWT (N.D. Ga.); *Prather v Wells Fargo*, 15-CV-04231-SCJ (ND. Ga); *Joseph et al. v. TrueBlue, Inc. et al.*, Case No. 3:14-cv-05963 (D. Wa.); *Willett, et al. v. Redflex Traffic Systems, Inc., et al.*, Case No. 13-cv-01241-JCH-RHS; *In re Convergent Outsourcing, Inc. Telephone Consumer Protection Act Litigation*, Master Docket No. 3:13-cv-1866-AWT (D. Conn) (Interim Co-Lead); *De Los Santos v Millword Brown, Inc.*, 9:13-cv-80670-DPG (S.D. Fla.); *Allen v. JPMorgan Chase Bank, N.A.* 13-cv-08285 (N.D. Ill. Judge Pallmeyer); *Cooper v NelNet*, 6:14-cv-314-Orl-37DAB (M.D. Fl.); *Thomas v Bacgroundchecks*.com, 3:13-CV-029-REP (E.D. Va.) (additional class counsel); *Lopera v RMS*, 12-c-9649 (N.D. Ill. Judge Wood); *Kubacki v Peapod*, 13-cv-729 (N.D. Ill. Judge Mason); *Wojcik v. Buffalo Bills, Inc.*, 8:12 CV 2414-SDM-TBM (M.D. Fla. Judge Merryday); *Curnal v. LVNV Funding, LLC.*, 10 CV 1667 (Wyandotte County, KS 2014); *Cummings v Sallie Mae*, 12 C-9984 (N.D. Ill. Judge Gottschall) (co-lead); *Brian J. Wanca, J.D., P.C. v. L.A. Fitness International, LLC*, Case No. 11-CV-4131 (Lake County, Ill. Judge Berrones); *Osada v. Experian Info. Solutions, Inc.*, 2012 U.S. Dist. LEXIS 42330 (N.D. Ill. Mar. 28, 2012) (FCRA); *Saf-T-Gard International, Inc. v. Vanguard Energy Services, L.L.C., et al*, 12-cv-3671 (N.D. Ill. 2013 Judge Gottschall); *Saf-T-Gard v TSI*, 10-c-7671, (N.D. Ill. Judge Rowland); *Cain v Consumer Portfolio Services, Inc.* 10-cv-02697 (N.D. Ill. Judge Keys); *Iverson v Rick Levin & Associates*, 08 CH 42955 Circuit Court Cook County (Judge Cohen); *Saf-T-Gard v Seiko*, 09 C 776 (N.D. Ill. Judge Bucklo); *Jones v. Furniture Bargains, LLC*, 09 C 1070 (N.D. Ill); *Saf-T-Gard v Metrolift*, 07 CH 1266 Circuit Court Cook County (Judge Rochford) (Co-Lead); *Bilek* v *Countrywide*, 08 C 498

(N.D. Ill. Judge Gottschell); *Pacer v. Rochenback,* 07 C 5173 (N.D. Ill. Judge Cole); *Overlord Enterprises* v. *Wheaton Winfield Dental Associates,* 04 CH 01613, Circuit Court Cook County (Judge McGann); *Whiting v. SunGard,* 03 CH 21135, Circuit Court Cook County (Judge McGann); *Whiting v. Golndustry,* 03 CH 21136, Circuit Court Cook County (Judge McGann).

27. In addition, I was the attorney primarily responsible for the following class settlements: *Wollert v. Client Services,* 2000 U.S. Dist. LEXIS 6485 (N.D. Ill. 2000); *Rentas* v. *Vacation Break USA,* 98 CH 2782, Circuit Court of Cook County (Judge Billik); *McDonald* v. *Washington Mutual Bank,* supra; *Wright* v. *Bank One Credit Corp.,* 99 C 7124 (N.D. Ill. Judge Guzman); *Arriaga* v. *Columbia Mortgage,* 01 C 2509 (N.D. Ill. Judge Lindberg); *Frazier* v. *Provident Mortgage,* 00 C 5464 (N.D. Ill. Judge Coar); *Largosa* v. *Universal Lenders,* 99 C 5049 (N.D. Ill. Judge Leinenweber); *Arriaga* v. *GNMortgage,* (N.D. Ill. Judge Holderman); *Williams* v. *Mercantile Mortgage,* 00 C 6441 (N.D. Ill. Judge Pallmeyer); *Reid* v. *First American Title,* 00 C 4000 (N.D. Ill. Magistrate Judge Ashman); *Fabricant* v. *Old Kent, 99* C 6846 (N.D. Ill. Magistrate Judge Bobrick); *Mendelovits* v. *Sears,* 99 C 4730 (N.D. Ill. Magistrate Judge Brown); *Leon* v. *Washington Mutual,* 01 C 1645 (N.D. Ill. Judge Alesia).

28. The individual class members' recovery in some of these settlements was substantial. For example, in one of the cases against a major bank the class members' recovery was 100% of their actual damages resulting in a payout of $l,000 to $9,000 per class member. In another case against a major lender regarding mortgage servicing responses, each class member who submitted a claim form received $1,431. *McDonald v. Washington Mutual Bank*.

29. Keogh Law was also appointed class counsel in: *Keim v. ADF MidAtlantic, LLC,* 2018 U.S. Dist. LEXIS 204548 (S.D. Fla., Dec. 3, 2018) (TCPA); *Lanteri v. Credit Protection Ass'n, L.P.,* 2018 U.S. Dist. LEXIS 166345 (S.D. Ind. Sept. 26, 2018) (FACTA); *Braver v. Northstar Alarm Services, LLC,* 329 F.R.D. 320 (W.D. Okla. 2018) (TCPA); *Altman v. White*

House Black Mkt., Inc., 2017 U.S. Dist. LEXIS 221939 (N.D. Ga. Oct. 25, 2017), *aff'd*, 2018 U.S. Dist. LEXIS 169828 (N.D. Ga. Feb. 12, 2018) (FACTA); *Tripp v. Berman & Rabin, P.A.*, 310 F.R.D. 499 (D. Kan. 2015); *In Re Convergent Outsourcing, Inc. Tel. Cons. Prot. Act Litig.*, Master Docket No. 3:13-cv-1866-AWT (D. Conn) (Interim Co-Lead, TCPA); *Stahl v. RMK Mgmt. Corp.*, 2015-CH-13459 (Cir. Ct. Cook Cty.) (landlord/tenant under Chicago RLTO); *Tripp v. Berman & Rabin, P.A.*, 310 F.R.D. 499 (D. Kan. 2015); *Galvan v. NCO Fin. Sys.*, 2012 U.S. Dist. LEXIS 128592 (N.D. Ill. 2012); *Osada v. Experian Info. Solutions, Inc.*, 2012 U.S. Dist. LEXIS 42330 (N.D. Ill. Mar. 28, 2012) (FCRA class); *Pesce v. First Credit Services*, 11-cv-01379 (N.D. Ill. December 19 2011) (TCPA Class); *Smith v. Greytsone Alliance*, 09 CV 5585 (N.D. Ill. 2010); *Cicilline v. Jewel Food Stores, Inc.*, 542 F.Supp.2d 831 (N.D. Ill. 2008) (Co-Lead Counsel for FACTA class); *Harris v. Best Buy Co.*, 07 C 2559, 2008 U.S. Dist. LEXIS 22166 (N.D. Ill. March 20, 2008) (FACTA class); *Matthews v. United Retail, Inc.*, 248 F.R.D. 210 (N.D. Ill. 2008) (FACTA class); *Redmon v. Uncle Julio's, Inc.*, 249 F.R.D. 290 (N.D. Ill. 2008) (FACTA class); *Harris v. Circuit City Stores, Inc.*, 2008 U.S. Dist. LEXIS 12596, 2008 WL 400862 (N.D. Ill. 2008) (FACTA class); *Pacer v. Rockenbach Chevrolet Sales, Inc.*, 07 C 5173 (N.D. Ill. 2008) (FACTA class).

30. Some reported cases of the firm involving consumer protection include: *Cranor v. 5 Star Nutrition, LLC*, 998 F.3d 686 (5th Cir. 2021); *Breda v. Cellco P'ship*, 934 F.3d 1 (1st Cir. 2019); *Evans v. Portfolio Recovery Assocs.*, 889 F.3d 337 (7th Cir. 2018); *Susinno v. Work Out World Inc.*, 862 F.3d 346, 351 (3rd Cir. 2017) (finding a "nuisance and invasion of privacy resulting from a single prerecorded telephone call"); *Franklin v. Parking Revenue Recovery Servs.*, 832 F.3d 741 (7th Cir. 2016); *Galvan v. NCO Portfolio Mgmt. Inc.*, 794 F.3d 716, 721 (7th Cir. 2015); *Leeb v. Nationwide Credit Corp.*, 806 F.3d 895 (7th Cir. 2015); S*mith v. Greystone*, 772 F.3d 448 (7th Cir. 2014); *Clark v. Absolute Collection Agency*, 741 F.3d 487 (4th 2014); *Lox v.*

CDA, Ltd., 689 F.3d 818 (7th Cir. 2012); *Townsel v. DISH Network L.L.C.*, 668 F.3d 967 (7th Cir. Ill. 2012); *Catalan v. GMAC Mortgage Corp.*, No. 09-2182 (7th Cir. 2011) ; *Gburek v. Litton Loan*, 614 F.3d 380 (7th Cir. 2010); *Sawyer v. Ensurance Insurance Services* consolidated with *Killingsworth v. HSBC Bank Nev., NA.*, 507 F3d 614, 617 (7th Cir. 2007); *Echevarria et al. v. Chicago Title and Trust Co.*, 256 F3d 623 (7th Cir. 2001); *Demitro* v. *GMAC*, 388 Ill. App. 3d 15, 16 (lst Dist. 2009); *Hill v. St. Paul Bank*, 329 Ill. App. 3d 7051, 1768 N.E.2d 322 (lst Dist. 2002); *In re Mercedes-Benz Tele Aid Contract Litig.*, 2009 U.S. Dist. LEXIS 35595 (D.N.J. 2009); *Catalan v. RBC Mortg. Co.*, 2009 U.S. Dist. LEXIS 26963 (N.D. Ill. 2009); *Elkins v. Equifax, Inc.*, 2009 U.S. Dist. LEXIS 18522 (N.D. Ill. 2009*); Harris v. DirecTV Group, Inc.*, 2008 U.S. Dist. LEXIS 8240 (N.D. Ill. 2008); *In re TJX Cos., Inc., Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 2008 U.S. Dist. LEXIS 38258 (D. Kan. 2008); *Martin* v. *Wal-Mart Stores, Inc.*, 2007 U.S. Dist. LEXIS 89715 (N.D. Ill. 2007); *Elkins v. Ocwen Fed. Sav. Bank Experian Info. Solutions, Inc.*, 2007 U.S. Dist. LEXIS 84556 (N.D. Ill. 2007); *Harris* v. *Wal-Mart Stores, Inc.*, 2007 U.S. Dist. LEXIS 76012 (N.D. Ill. 2007); *Stegvilas v. Evergreen Motors, Inc.*, 2007 U.S. Dist. LEXIS 35303 (N.D. Ill. 2007); *Cook v. River Oaks Hyundai, Inc.*, 2006 U.S. Dist. LEXIS 21646 (N. D. Ill. 2006); *Gonzalez v. W. Suburban Imps., Inc.*, 411 F. Supp. 2d 970 (N.D. Ill. 2006); *Eromon v. GrandAuto Sales, Inc.*, 333 F. Supp. 2d 702 (N.D. Ill. 2004); *Williams v. Precision Recovery, Inc.*, 2004 U.S. Dist. LEXIS 6190 (N.D. Ill. 2004); *Doe v. Templeton*, 2003 U.S. Dist. LEXIS 24471 (N.D. Ill. 2003); *Ayala v. Sonnenschein Fin. Servs.*, 2003 U.S. Dist. LEXIS 20148 (N.D. Ill. 2003); *Gallegos v. Rizza Chevrolet, Inc., 2003* U.S. Dist. LEXIS 18060 (N.D. Ill. 2003); *Szwebel v. Pap's Auto Sales, Inc.*, 2003 U.S. Dist. LEXIS 13044 (N.D. Ill. 2003); *Johnstone v. Bank of America*, 173 F. Supp.2d 809 (N.D. Ill. 2001); *Leon v. Washington Mutual Bank*, 164 F. Supp.2d 1034 (N.D. Ill. 2001); *Ploog v. HomeSide Lending*, 2001 WL 987889 (N.D. Ill. 2001); *Christakos v. Intercounty Title*, 196 F.R.D. 496 (N.D. Ill. 2000); *Batten v. Bank One*, 2000 WL

1364408 (N.D. Ill. 2000); *McDonald v. Washington Mutual Bank*, 2000 WL 875416 (N.D. Ill. 2000); and *Williamson v. Advanta Mtge Corp.*, 1999 U.S. Dist. LEXIS 16374 (N.D. Ill. 1999). The *Christakos* case significantly broadened title and mortgage companies' liability under Real Estate Settlement Procedures Act ("RESPA") and *McDonald* is the first reported decision to certify a class regarding mortgage servicing issues under the Cranston-Gonzales Amendment of RESPA.

31. I have argued before the United States Courts of Appeal for the First, Fifth, Seventh, Eleventh Circuits, the First District of Illinois, and the Multidistrict Litigation Panel in various cases, including: *Townsel v. DISH Network L.L.C.*, 668 F.3d 967 (7th Cir. 2012)*; Catalan v. GMACM* (7th Cir. 2010); *Gburek v. Litton Loan Servicing* (7th Cir. 2009); *Sawyer v. Esurance* (7th Cir. 2007), *Echevarria, et al. v. Chicago Title and Trust Co.* (7th Cir. 2001); *Morris v. Bob Watson* (lst. Dist. 2009); *Iverson v. Gold Coast Motors Inc.* (lst Dist. 2009); *Demitro v. GMAC* (1st Dist. 2008), *Hill v. St. Paul Bank* (1st Dist. 2002); and *In Re: Sears, Roebuck* & *Company Debt Redemption Agreements Litigation* (MDL Docket No. 1389). *Echevarria* was part of a group of several cases that resulted in a nine million dollar settlement with Chicago Title.

32. My published works include co-authoring and co-editing the 1997 supplement to *Lane's Goldstein Trial Practice Guide* and *Lane's Medical Litigation Guide.*

33. Attorneys at the firm have lectured extensively on consumer litigation and class actions. For example, they:

a. Presented at the National Consumer Law Center 2023 annual conference on the TCPA.

b. Presented at the National Consumer Law Center 2022 annual conference on DNC claims under the TCPA.

c. Presented at the National Consumer Law Center 2020 annual conference on TCPA strategy after *Facebook.*

d. Presented at the National Consumer Law Center 2019 annual conference on the TCPA.

e. Presented at the 2019 Fair Debt Collection Training Conference for a session on TCPA Developments.

f. Presented at the National Consumer Law Center 2018 annual conference on the TCPA.

g. Presented at the 2018 Fair Debt Collection Training Conference for two sessions on the TCPA.

h. Presented at the National Consumer Law Center 2017 annual conference on the TCPA.

i. Presented at the National Consumer Law Center 2016 annual conference on the TCPA.

j. Presented at the 2016 Fair Debt Collection Training Conference for a session on TCPA Developments.

k. Presented for the National Association of Consumer Advocates November 2015 webinar titled Developments and Anticipated Impact of Recent FCC TCPA Rules.

l. Presented at the National Consumer Law Center 2015 annual conference in San Antonio, TX on the TCPA.

m. Presented at the 2015 Fair Debt Collection Training Conference for three sessions on the TCPA.

n. Presented at the National Consumer Law Center 2014 annual conference in Tampa Fl. for two sessions on the TCPA.

o. Panelist for the December 2013 Strafford CLE Webinar titled TCPA Class Actions: Pursuing or Defending Claims Over Phone, Text and Fax Solicitations.

p. Panelist for the December 2014 Chicago Bar Association Class Action Seminar titled "Class Action Settlements in the Seventh Circuit: Navigating Turbulent Waters."

q. Presented at the 2014 Fair Debt Collection Training Conference for three sessions on the TCPA.

r. Panelist for the December 2013 Strafford CLE Webinar titled Class Actions for Telephone

and Fax Solicitation and Advertising Post-Mims. Leveraging TCPI lectured at the 2014 Fair Debt Collection Training Conference for three sessions on the TCPA.

s. Panelist for the December 2013 Strafford CLE Webinar titled Class Actions for Telephone and Fax Solicitation and Advertising Post-Mims. Leveraging TCPA Developments in Federal Jurisdiction, Class Suitability, and New Technology.

t. Presented for the National Association of Consumer Advocates November 2013 webinar titled Current Telephone Consumer Protection Act Issues Regarding Cell Phones.

u. Presenter for the November 2013 Chicago Bar Association Class Action Committee presentation titled Future of TCPA Class Actions.

v. Speaker at the Social Security Administration's Chicago office in August 2013 on a presentation on identity theft, which included consumers' rights under the Fair Credit Reporting Act.

w. Panelist for the May 14, 2013 Chicago Bar Association Class Action Seminar titled "The Shifting Landscape of Class Litigation" as well as for the March 20, 2013 Strafford CLE webinar titled "Class Actions for Telephone and Fax Solicitation and Advertising Post-Mims. Leveraging TCPA Developments in Federal Jurisdiction, Class Suitability, and New Technology."

x. Lectured at the June 6, 2013 Consumer Law Committee of the Chicago Bar Association on the topic "Employment Background Reports under the Fair Credit Reporting Act: Improper consent forms to failure to provide background report prior to adverse action."

y. Lectured at the 2013 Fair Debt Collection Training Conference for three sessions on the TCPA.

z. Presented at the 2012 National Consumer Law Center annual conference for a session on the TCPA.

aa. Presented at the 2012 Fair Debt Collection Training Conference for a session on the TCPA.

bb. Panelist for Solutions for Employee Classification & Wage/Hour Issues at the 2011 Annual Employment Law Conference hosted by Law Bulletin Seminars.

cc. Lectured at the 2011 National Consumer Law Center conference for a session titled Telephone Consumer Protection Act: Claims, Scope, Remedies as well as lectured at the same 2011 National Consumer Law Center conference for a double session titled ABC's of Class Actions.

dd. Taught *Defenses to Foreclosures* for Lorman Education Services, which was approved for CLE credit, in 2008 and 2010.

ee. Guest lecturer on privacy issues at University of Illinois at Urbana-Champaign School of Law. In March 2010.

ff. Guest speaker for the Legal Services Office of The Graduate School and Kellogg MBA Program at Northwestern University for its seminar titled: "Financial Survival Guide: Legal Strategies for Graduate Students During A Period of Economic Uncertainty."

34. Keith Keogh was selected as an Illinois Super Lawyer from 2014 through 2023 and an Illinois Super Lawyer Rising Star each year from 2008 through 2013, and his cases have been featured in local newspapers such as the Chicago Tribune, Chicago Sun-Times, The Naperville Sun, Daily Herald and RedEye.

Timothy J. Sostrin

35. Timothy J. Sostrin is a partner with the firm joining in 2011. He is a member in good standing of the Illinois Bar, the U.S. District Court District of Colorado, U.S. District Court Northern District of Illinois, U.S. District Court Northern and Southern Districts of Indiana, U.S. District Court Eastern and Western Districts of Michigan, U.S. District Court Eastern District of Missouri, U.S. District Court Southern District of Texas and U.S. District Court Eastern and

Western Districts of Wisconsin.

36. Timothy J. Sostrin has zealously represented consumers in Illinois and in federal litigation nationwide against creditors, debt collectors, retailers, and other businesses engaging in unlawful practices. Tim has extensive experience with consumer claims brought under the Fair Debt Collection Practices Act, The Telephone Consumer Protection Act, the Fair Credit Reporting Act, the Electronic Fund Transfer Act, and Illinois law. Some of Tim's representative cases include: *Susinno v. Work Out World Inc.*, 862 F.3d 346, 351 (3rd Cir. 2017) (argued); *Leeb v. Nationwide Credit Co.*, 806 F.3d 895 (7th Cir. 2015) (argued); *Osada v. Experian Info. Solutions, Inc.*, 2012 U.S. Dist. LEXIS 42330 (N.D. Ill. Mar. 28, 2012) (granting class certification); *Galvan v. NCO Financial Systems, Inc.*, 2012 U.S. Dist. LEXIS 128592 (N.D. Ill. 2012) (granting class certification); *Saf-T-Gard International, Inc. v. Vanguard Energy Services, LLC*, (2012 U.S. Dist. LEXIS 174222 (N.D. Ill. Dec. 6, 2012) (granting class certification); *Jelinek v. The Kroger Co.*, 2013 U.S. Dist. LEXIS 53389 (N.D. Ill. 2013) (denying defendant's motion to dismiss); *Hanson v. Experian Information Solutions, Inc.*, 2012 U.S. Dist. LEXIS 11450 (N.D. Ill. Jan. 27, 2012) (denying defendant's motion for summary judgment); *Warnick v. DISH Network, LLC*, 2013 U.S. Dist. LEXIS 38549 (D. Colo. 2013) (denying defendant's motion to dismiss); *Torres v. Nat'l Enter. Sys.*, 2013 U.S. Dist. LEXIS 31238 (N.D. Ill. 2013) (denying defendant's motion to dismiss); *Griffith v. Consumer Portfolio Serv.*, 838 F. Supp. 2d 723 (N.D. Ill. 2011) (denying defendant's motion for summary judgment); *Frydman et al v. Portfolio Recovery Associate*, 2011 U.S. Dist. LEXIS 69502 (N.D. Ill 2011) (denying defendant's motion to dismiss); *Rosen Family Chiropractic S.C. v. Chi-Town Pizza*, 2013 U.S. Dist. LEXIS 6385 (N.D. Ill. 2013) (denying defendant's motion to dismiss); *Sengenberger v. Credit Control Services, Inc.*, 2010 U.S. Dist. LEXIS 43874 (N.D. Ill. May 5, 2010) (granting summary judgment on TCPA claim).

37. Tim is a member of the National Association of Consumer Advocates and ISBA.

He received his Juris Doctorate, *cum laude*, from Tulane University Law School in 2006.

Michael S. Hilicki

38. In 2014, Michael Hilicki joined the firm. He has spent nearly all of his approximately 25-year legal career helping consumers and workers subjected to unfair and deceptive business practices, and violations of their state and federal rights. He is experienced in a variety of consumer and wage-related areas including, but not limited to, the Illinois Biometric Information Privacy Act, the Fair Debt Collection Practices Act, Truth-in-Lending Act, Fair Credit Reporting Act, Real Estate Settlement Procedures Act, Illinois Consumer Fraud & Deceptive Business Practices Act, Telephone Consumer Protection Act, Fair Labor Standards Act, the Illinois Security Deposit Interest Act, Illinois Security Deposit Return Act, Chicago Residential Landlord Tenant Ordinance (RLTO), and the Illinois Wage & Hour Law. He is experienced in all aspects of litigation, including arbitrations, trials, and appeals.

39. Examples of the numerous certified class actions in which Michael has represented consumers or workers include: *Goel v. Stonebridge of Arlington Heights, et al.*, 2018 CH 11015 (Cir. Ct. Cook Cty.); *Muransky v. Godiva Chocolatier, Inc.*, No. 15-cv-60716-WPD (S.D. Fla.); *Guarisma v. Microsoft Corp.*, No. 15-cv-24326-CMA (S.D. Fla.); *Stahl v. RMK Mgmt. Corp.*, 2015 CH 13459 (Cir. Ct. Cook Cty.); *Altman v. White House Black Market, Inc.*, 15-cv-2451-SCJ (N.D. Ga.); *Legg v. Spirit Airlines, Inc.*, No. 14-cv-61978-CIV-JIC (S.D. Fla.); *Legg v. Laboratory Corporation of America, Holdings, Inc.*, No. 14-cv-61543-RLR (S.D. Fla.); *Joseph v. TrueBlue, Inc.*, 14-cv-5963-BHS (W.D. Wash.); *In Re Convergent Outsourcing, Inc. Telephone Consumer Protection Act Litigation*, Master Docket No. 3:13-cv-1866-AWT (D. Conn); *Tripp v. Berman & Rabin, P.A.*, 310 F.R.D. 499 (D. Kan. 2015); *Lanteri v. Credit Protection Ass'n, L.P.*, 2018 U.S. Dist. LEXIS 166345 (S.D. Ind. Sept. 26, 2018); *Eibert v. Jaburg & Wilk, P.C.*, 13-cv-301 (D. Minn.); *Kraskey v. Shapiro & Zielke, LLP*, 11-cv-3307 (D. Minn.); *Short v. Anastasi & Associates,*

P.A., 11-cv-1612 SRN/JSM (D. Minn.); *Kimball v. Frederick J. Hanna & Associates, P.C.*, 10-cv-130 MJD/JJG (D. Minn.); *Murphy v. Capital One Bank*, 08 C 801 (N.D. Ill.); *Nettles v. Allstate Ins. Co.*, 02 CH 14426 (Cir. Ct. Cook Cty.); *Sanders v. OSI Educ. Servs., Inc.*, 01 C 2081 (N.D. Ill.); *Kort v. Diversified Collection Servs., Inc.*, 01 C 0689 (N.D. Ill.); *Hamid v. Blatt Hasenmiller, et al.*, 00 C 4511 (N.D. Ill.); *Durkin v. Equifax Check Servs., Inc.*, 00 C 4832 (N.D. Ill.); *Torres v. Diversified Collection Services, et al.*, 99-cv-00535 (RL-APR) (N.D. Ind.); *Morris v. Trauner Cohen & Thomas*, 98 C 3428 (N.D. Ill.), *Mitchell v. Schumann*, 97 C 240 (N.D. Ill.); *Pandolfi, et al. v. Viking Office Prods., Inc.*, 97 CH 8875 (Cir. Ct. Cook Cty.); *Trull v. Microsoft Corp.*, 97 CH 3140 (Cir. Ct. Cook Cty.); *Deatherage v. Steven T. Rosso, P.A.*, 97 C 0024 (N.D. Ill.); *Young v. Meyer & Njus, P.A.*, 96 C 4809 (N.D. Ill.); *Newman v. Boehm, Pearlstein & Bright, Ltd.*, 96 C 3233 (N.D. Ill.); *Holman v. Red River Collections, Inc.*, 96 C 2302 (N.D. Ill.); *Farrell v. Frederick J. Hanna*, 96 C 2268 (N.D. Ill.); *Blum v. Fisher and Fisher*, 96 C 2194 (N.D. Ill.); *Riter v. Moss & Bloomberg, Ltd.*, 96 C 2001 (N.D. Ill.); *Clayton v. Cr Sciences Inc.*, 96 C 1401 (N.D. Ill.); *Thomas v. MAC/TCS Inc., Ltd.*, 96 C 1519 (N.D. Ill.); *Young v. Bowman, et al.*, 96 C 1767 (N.D. Ill.); *Depcik v. Mid-Continent Agencies, Inc.*, 96 C 8627 (N.D. Ill.); and *Dumetz v. Alkade, Inc.*, 96 C 4002 (N.D. Ill.).

40. Michael also has successfully argued a number of appeals, including *Muransky v. Godiva Chocolatier, Inc.*, 922 F.3d 1175 (11th Cir. 2019) (*vacated for rehearing en banc*); *Evans v. Portfolio Recovery Assocs., LLC*, 889 F.3d 337 (7th Cir. 2018); *Franklin v. Parking Rev. Recovery Servs.*, 832 F.3d 741 (7th Cir. 2016); *Smith v. Greystone Alliance, LLC*, 772 F.3d 448 (7th Cir. 2014); *Shula v. Lawent*, 359 F.3d 489 (7th Cir. 2004); and *Weizeorick v. ABN AMRO Mortg. Group, Inc.*, 337 F.3d 827 (7th Cir. 2003).

41. Michael has lectured on consumer law issues at Upper Iowa University, the Chicago Bar Association, and the National Consumer Law Center. He is a member of the Trial

Bar of the United States District Court for the Northern District of Illinois, and he has represented consumers in state and federal courts around the country on a *pro hac vice* basis.

42. Michael's published work includes *"AND THE SURVEY SAYS..." When Is Evidence of Actual Consumer Confusion Required to Win a Case Under Section 1692g of the Fair Debt Collection Practices Act in the Seventh Circuit?*, 13 Loy. Consumer L. Rev. 224 (2001).

Theodore H. Kuyper

43. Ted Kuyper joined the firm in 2018. Ted is currently a member in good standing of the Illinois State Bar, the United States District Court for the Northern District of Illinois, and the Seventh Circuit Court of Appeals, and has been admitted to practice *pro hac vice* in several additional United States District Courts.

44. Ted has diverse experience prosecuting and defending class action and other large-scale litigation in trial and appellate courts under a variety of substantive laws, including without limitation the Illinois Biometric Information Privacy Act, the Telephone Consumer Protection Act, the Racketeer Influenced & Corrupt Organizations Act (RICO), the Fair Credit Reporting Act, the Illinois Consumer Fraud & Deceptive Business Practices Act, and the Real Estate Settlement Procedures Act, as well as Illinois and other state statutory and common law.

45. Since joining the firm, Ted has represented consumers as counsel of record or otherwise in the following class actions: *Gebka v. Allstate Ins. Co.*, No. 1:19-cv-06662 (N.D. Ill.) (TCPA); *Cranor v. The Zack Group, Inc., et al.*, No. 4:18-cv-00628-FJG (W.D. Mo. May 18, 2020) (TCPA); *Svoboda, et al. v. Amazon.com, Inc., et al.*, 1:21-cv-05336 (N.D. Ill.) (BIPA); *Hanlon ex rel. G.T., et al. v. Samsung Elecs. Am., Inc., et al.*, 1:21-cv-04976 (N.D. Ill.) (BIPA); *Svoboda v. Frames for America, Inc.*, 1:21-cv-05509 (N.D. Ill.) (BIPA); *Jenkins v. Regal Cinemas, Inc.*, 1:20-cv-03782 (N.D. Ill.) (BIPA); *McFerren, et al. v. World Class Distribution, Inc.*, 1:20-cv-02912 (N.D. Ill.) (BIPA); *Stein v. Clarifai, Inc.*, 1:20-cv-01937 (N.D. Ill.) (BIPA); *Gumm, et al. v.*

Vonachen Servs., Inc., 2019 CH 12773 (Cir. Ct. Cook Cnty., Ill.), consolidated with 2021 CH 5166 (BIPA); *Detter v. KeyBank, N.A.*, No. 1616-cvl0036 (Jackson Cty., Mo. July 12, 2019) (FCRA); *Cranor v. Skyline Metrics, LLC*, No. 4:18-cv-00621-DGK (W.D. Mo.); *Cranor v. Classified Advertising Ventures, LLC, et al.*, No. 4:18-cv-00651-HFS (W.D. Mo.); *Morgan v. Adventist Health System/Sunbelt, Inc.*, No. 6:18-cv-01342-PGB-DCI (M.D. Fla.); *Burke v. Credit One Bank, N.A., et al.*, No. 8:18-cv-00728-EAK-TGW (M.D. Fla.); *Morgan v. Orlando Health, Inc., et al.*, No. 6:17-cv-01972-CEM-GJK (M.D. Fla.); *Motiwala v. Mark D. Guidubaldi & Associates, LLC*, No. 1:17-cv-02445 (N.D. Ill.); and *Buja v. Novation Capital, LLC*, No. 9:15-cv-81002-KAM (S.D. Fla.).

46. Immediately prior to joining Keogh Law, Ted worked at a boutique Chicago law firm where he represented clients in a range of complex commercial and other litigation, including contract, tort, professional liability, premises and products liability, bad faith and class action. Previously, he was an associate at a nationally-renowned class action law firm, where he focused on complex commercial, consumer, class action and other large-scale, high-stakes litigation.

47. Ted earned his Juris Doctorate from Washington University School of Law in St. Louis in 2007. During law school, he worked as a Summer Extern for Magistrate Judge Morton Denlow (Ret.) of the United States District Court for the Northern District of Illinois, served as primary editor and executive board member of the Global Studies Law Review, and authored a student note that was published in 2007. Ted also earned a number of scholarships and other academic accolades, including the Honors Scholar Award (top 10% for academic year) and repeated appearances on the Dean's List.

Gregg M. Barbakoff

48. Gregg Barbakoff joined the firm in 2019. Gregg is a civil litigator who focuses his practice on consumer law. Gregg has extensive experience litigating individual and class claims

arising under the Illinois Biometric Information Privacy Act, Telephone Consumer Protection Act, Fair Debt Collection Practices Act, Truth-in-Lending Act, Fair Credit Reporting Act, Real Estate Settlement Procedures Act, Illinois Consumer Fraud and Deceptive Practices Act, Magnuson-Moss Warranty Act, and various consumer protection statutes.

49. Gregg graduated magna cum laude from the Chicago-Kent College of Law, where he was elected to the Order of the Coif. While in law school, Gregg received the Class of 1976 Honors Scholarship, competed as a senior member of the Chicago-Kent Moot Court Team, and served as an editor for The Seventh Circuit Review, in which he was also published. Gregg earned his undergraduate degree from the University of Colorado at Boulder.

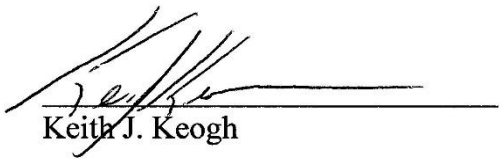
50. Gregg was selected as an Illinois Super Lawyer in 2022 and an Illinois Super Lawyer Rising Star from 2015 through 2021. In addition, Gregg was named an Associate Fellow by the Litigation Counsel of America. He is licensed to practice in the State of Illinois, the United States District Court for the Northern District of Illinois, and the United States Court of Appeals for the Seventh Circuit.

51. Prior to joining Keogh Law, Gregg worked at a mid-size litigation firm that specialized in consumer litigation, and leading plaintiff's firm that focused on commercial disputes and consumer class actions.

52. The following are representative class actions in which Gregg has served as counsel of record or otherwise: *Roberts v. TIAA, FSB* (Case No. 2019 CH 04089, Cook County, Ill.); *Corrigan v. Seterus* (Case No. 17-cv-02348); *Gentleman v. Mass. Higher Ed. Corp., et al* (Case No. 16-cv-3096, N.D. Ill.); *Cibula v. Seterus* (Case No. 2015CA010910, Palm Beach County, Fla.); *Ciolini v. Seterus* (Case No. 15-cv-09427, N.D. Ill.); *Mednick v. Precor Inc.* (Case No. 14-cv-03624, N.D. Ill.); *Illinois Nut & Candy Home of Fantasia Confections, LLC v. Grubhub, Inc., et al.* (Case No. 14-cv-00949, N.D. Ill.); *Dr. William P. Gress et al. v. Premier Healthcare*

Exchange West, Inc. (Case No. 14-cv-501, N.D. Ill.); *Stephan Zouras LLP v. American Registry LLC* (Case No. 14-cv-943, N.D. Ill.); *Mullins v. Direct Digital* (Case No. 13-cv-01829, N.D. Ill.); *In Re Prescription Pads TCPA Litig.* (Case No. 13-cv-06897, N.D. Ill); *Townsend v. Sterling* (Case No. 13-cv-3903, N.D. Ill); *Windows Plus, Incorporated v. Door Control Services, Inc.* (Case No. 13-cv-07072, N.D. Ill); *In re Energizer Sunscreen Litig.* (Case No. 13-cv-00131, N.D. Ill.); *Padilla v. DISH Network LLC* (Case No. 12-cv-07350, N.D. Ill.); *Lloyd v. Employment Crossing* (Case No. BC491068 (Los Angeles County, Cal.); *In re Southwest Airlines Voucher Litig.* (Case No. 11-cv-8176, N.D. Ill.).

Executed at Chicago, Illinois, on August 29, 2024.



Keith J. Keogh

APPENDIX 3

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

KELSEY HIRMER, individually and on behalf of all others similarly situated, *Plaintiff,* v. ESO SOLUTIONS, INC. d/b/a ECORE SOLUTIONS, INC., *Defendant.*	Case No. 22-cv-01018 Hon. LaShonda A. Hunt. Presiding Judge

[PROPOSED] ORDER CERTIFYING SETTLEMENT CLASS, PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT, AND APPROVING NOTICE PLAN

This matter came before the Court on Plaintiff's Motion for Preliminary Approval of the proposed class action settlement (the "Settlement"). This case was brought by plaintiff Kelsey Hirmer ("Hirmer" or "Plaintiff"), individually and on behalf of all others similarly situated, against defendant Defendant ESO Solutions, Inc. ("ESO"). Based on this Court's review of the Settlement Agreement ("Agreement"), Plaintiff's Motion for Preliminary Approval of Settlement, and the arguments of counsel, THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. Settlement Terms. Unless otherwise defined herein, all terms in this Order shall have the meanings ascribed to them in the Agreement.

2. Jurisdiction. The Court has subject matter jurisdiction over this case pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), along with the Parties and all persons in the Settlement Class.

3. Preliminary Approval of Proposed Agreement. The Court has conducted a preliminary evaluation of the Settlement as set forth in the Agreement. Based on this preliminary evaluation, the Court finds that: (a) the Agreement is fair, reasonable and adequate, and within

the range of possible approval; (b) the Agreement has been negotiated in good faith at arm's length between experienced attorneys familiar with the legal and factual issues of this case, and supervised by a well-qualified JAMS mediator, the Honorable James F. Holderman (Ret.); and (c) the proposed forms and method of distributing notice of the Settlement to the Settlement Class are appropriate and warranted. Therefore, the Court grants preliminary approval of the Settlement.

4. Class Certification for Settlement Purposes Only. The Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of this Settlement only, certifies the following Settlement Class:

> All individuals who scanned their finger in connection with their use of an ePro BioClock in Illinois and whose finger-scan data was hosted on a server owned or leased by ESO from January 24, 2017 to the date the Court enters the Preliminary Approval Order. The Settlement Class does not encompass individuals who may have used an ePro BioClock in Illinois, but did not have their finger-scan data hosted on a server owned or leased by ESO.
>
> Excluded from the Settlement Class are: (1) the district and magistrate judges presiding over this case; (2) the judges of the Seventh Circuit; (3) the immediate families of the preceding person(s); (4) any Released Party; and (5) any Settlement Class Member who timely opts out of this Action.

5. In connection with granting class certification, the Court makes the following preliminary findings:

(a) The Settlement Class includes 6,414 members, and thus, the class is so numerous joinder of all members is impracticable;

(b) There appear to be questions of law or fact common to the Settlement Class for purposes of determining whether the Settlement should be approved, including, but not limited to, whether ESO captured, collected, and/or obtained the Settlement Class Members' alleged biometric identifiers or biometric information in connection with their

use of the finger-scanning feature of the ePro BioClock, and these questions appear to predominate over any alleged individual questions;

(c) Plaintiff's claims appear to be typical of the claims of the Settlement Class because she alleges ESO collected, captured, and/or obtained her alleged biometric identifiers or biometric information without first obtaining informed written consent, and failed to implement and adhere to a publicly-available policy governing the retention and destruction of alleged biometric identifiers or biometric information;

(d) Plaintiff and her counsel are adequate to represent the class. Plaintiff appears to have the same interests as the Settlement Class, she does not have any apparent conflict of interest with the Settlement Class, and her attorneys have extensive experience litigating class action cases, including class actions under BIPA; and

(e) Certification of the Settlement Class is the superior method for fairly and efficiently resolving the claims of the Settlement Class.

(f) Defendant retains all rights to object to the propriety of class certification in this Action in all other contexts and for all other purposes should the Settlement not be finally approved. If the Settlement is not finally approved and this Action resumes, this Court's preliminary findings regarding the propriety of class certification shall be of no further force or effect.

6. Settlement Class Representative. For settlement purposes only, the Court appoints Plaintiff Hirmer as representative of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

7. Settlement Class Counsel. For settlement purposes only, the Court appoints Keith J. Keogh and Gregg M. Barbakoff as Class Counsel pursuant to Rule 23 of the Federal Rules of Civil Procedure.

8. Settlement Administrator. KCC Class Action Services LLC ("KCC") is hereby appointed as the Settlement Administrator. The Settlement Administrator shall be responsible for providing notice of the Settlement ("Notice") to the Settlement Class as provided in the Agreement and this Order, as well as services related to administration of the Settlement.

9. Class Notice. The Class Administrator shall provide Notice via First Class Mail in accordance with the Agreement (the "Notice Plan"). The Notice Plan, in form, method and content, complies with the requirements of Rule 23 of the Federal Rules of Civil Procedure and constitutes the best notice practicable under the circumstances.

10. Opt-Outs and Objections. Persons in the Settlement Class who wish to object to the Settlement or request exclusion from the Settlement Class, must do so in accordance with the Notice. A class member who opts out may not also submit an objection, unless the class member confirms their intent to withdraw their opt-out in writing by no later than the opt-out deadline.

11. Settlement Administrator to Maintain Records. The Settlement Administrator shall maintain copies of all objections, and opt-outs received. The Settlement Administrator shall provide copies of all objections and opt-outs to the parties.

12. Objections to the Settlement. Any Settlement Class Member who wishes to be heard orally at the Final Approval Hearing, or who wishes for any objection to be considered, must file a written notice of objection in accordance with the Notice, Agreement, and this Order. To be considered, the objection: (A) must be personally signed by the objecting class

member, (B) it must include (i) the class member's full name, current address, email address, and current telephone number; (ii) the case name and number of this Action; (iii) documentation sufficient to establish membership in the Settlement Class; (iv) a statement of reasons for the objection, including the factual and legal grounds for the objector's position; (v) copies of any other documents the objecting Settlement Class Member wishes to submit in support of his/her/its position, and (vi) the identification of any other objections s/he has filed, or has had filed on his/her behalf, in any other class action case sin the last five years, and (C) it must be filed with the Court and sent to Plaintiff's and Defendant's counsel as stated in the Notice, by no later than the Opt-Out and Objection deadline stated below. Objections that are untimely or do not include the required information above shall be deemed waived.

13. Appearing at Final Approval Hearing. An objecting Settlement Class Member does not need to appear in at the Final Approval Hearing, but may do so by filing a notice of intention to appear in accordance with the Notice, Agreement, and this Order no later than the Opt-Out and Objection deadline below.

14. Reasonable Procedures to Effectuate the Settlement. Unless otherwise ordered by the Court, the parties are authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Agreement, including making minor changes to the form or content of the Notice or exhibits to the Agreement they agree are reasonable and necessary.

15. Final Approval Hearing. At the date and time provided below, or at such other date and time later the Court sets, this Court will hold a Final Approval Hearing on the fairness, adequacy and reasonableness of the Agreement and to determine whether (a) final approval of the Settlement embodied by the Agreement should be granted, and (b) Class

Counsel's application for an award of attorneys' fees and expenses, and any service award to Plaintiff, should be granted, and in what amounts. The hearing shall be held in Courtroom 1219 at the United States Courthouse, 291 South Dearborn Street, Chicago, IL 60604, or such other location as the Court may order. The Court may also order the hearing to take place remotely via Zoom or such other remote communication system as the Court may direct.

16. Release of Claims. Final approval of the Agreement will settle and resolve with finality on behalf of the Plaintiff and the Settlement Class, the Action and the Released Claims against the Released Parties by the Releasing Settlement Class Members in the Action. As of the Effective Date, the Agreement and the above-described release of the Released Claims, which are set forth in greater detail in the Agreement, will be binding on, and have res judicata preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all other Settlement Class Members who do not validly and timely exclude themselves from the Settlement, and their respective predecessors, successors, spouses, heirs, executors, administrators, agents and assigns of each of the foregoing, as set forth in the Agreement, and the Released Parties may file the Agreement and/or the Final Approval Order in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The Court specifically approves the release of claims set forth in the Agreement, including Section XII of the Agreement.

17. All Settlement Class Members will be bound by all determinations and judgments concerning the Settlement.

18. Pending the final determination of whether the Settlement and Agreement should be approved, all pre-trial proceedings and briefing schedules in the Action will remain stayed.

19. No Admission of Liability. The Agreement and any and all negotiations, documents, and discussions associated with it, will not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation or principle of common law or equity, or of any liability or wrongoing by Defendant or any Released Party, or the truth of any of the claims asserted. Evidence relating to the Agreement will not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other action or proceeding, except for purposes of demonstrating, describing, implementing, or enforcing the terms and conditions of the Agreement, this Order, and the Final Approval Order.

20. Reasonable Procedures to Effectuate the Settlement. Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Agreement, including making, without further approval of the Court, minor changes to the form or content of the Notice and other exhibits that they jointly agree are reasonable and necessary. The Court reserves the right to approve the Agremeent with such modifications, if any, as may be agreed to by the Parties without further notice to persons in the Settlement Class.

21. Plaintiff shall file her motion in support of Class Counsel's application for attorneys' fees and expenses, and any service award, no later than the Notice Deadline below.

22. Plaintiff shall file her: (a) motion in support of final approval of the Settlement; (b) response to any objections to the Settlement, no later than the date stated for the same in the Schedule of Events below.

23. Schedule of Events. Based on the foregoing, the Court hereby orders the resolution of this matter shall proceed on the following schedule:

_____, 2024 [21 days after the date of this Order]	Deadline for the Settlement Administrator to send notice to the Settlement Class in accordance with the Agreement and this Order (Notice Deadline)
_____, 2024 [Same as Notice Deadline]	Deadline for Plaintiff to file her Motion for Attorneys' Fees and Expenses, and any Incentive Award
_____, 2024 [60 days after Notice Deadline]	Deadline for any member of the Settlement Class to request exclusion from the Settlement or object to the Settlement in accordance with the Notice and this Order (Opt-Out and Objection Deadline)
_____, 2024 [21 days after the Opt-Out, Objection, and Claim Deadline]	Deadline for Plaintiff to file: (1) Motion and memorandum in support of final approval, including proof of class notice; and (2) Response to any objections.
_____, 2024 at ____ _.m. [Court's Convenience]	Final Approval Hearing

IT IS SO ORDERED.

Dated:_____ _____

Hon. LaShonda A. Hunt.
United States District Judge