IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

ALEXANDER CLARKE, MILTON CITCHENS, ANDREW GARCIA, EBONY JONES, KYLE SWERDLOW, MARLA WALKER, and RYAN WEBB, individually and on behalf of all others similarly situated, Plaintiffs, v. LEMONADE, INC., LEMONADE INSURANCE COMPANY, LEMONADE INSURANCE AGENCY, LLC, LEMONDADE, LTD., and LEMONADE LIFE INSURANCE AGENCY, LLC, Defendants.	Civil Action No. 2022LA000308

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

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Plaintiffs Alexander Clarke, Milton Citchens, Andrew Garcia, Ebony Jones, Kyle Swerdlow, Marla Walker, and Ryan Webb ("Plaintiffs"), respectfully request that the Court grant final approval of the Parties' Class Action Settlement Agreement. The Settlement achieved in this matter has been met with overwhelming approval by Settlement Class Members. To date, direct notice has been sent to the Class members, and over 16,500 claims have already been submitted. Importantly, there have been no objections, nor have there even been any opt-out requests. Given the large number of "professional objectors" who seek out class settlements and the regularity with which class settlements are met with objection, the absence of any objections or opt-outs here is a testament to the fairness and adequacy of this Settlement.

The positive reaction from Settlement Class Members is not surprising because the Settlement is an excellent result, achieved after months of hard-fought, arm's-length negotiations, including a full-day mediation session with the Hon. James R. Epstein (Ret.) of JAMS. The Settlement provides for the creation of a $4 million non-reversionary settlement fund, and other meaningful non-monetary relief, to compensate Settlement Class Members who file valid claims. Further, notice and administration costs, attorneys' fees and expenses, and an Incentive Award to compensate Plaintiffs for their efforts will be paid out of the settlement fund.

This Settlement brings certainty, closure, and valuable relief for Settlement Class Members, ending what otherwise would be contentious and costly litigation over the liability of Defendants Lemonade, Inc., Lemonade Insurance Company, Lemonade Insurance Agency, LLC, Lemonade, Ltd., and Lemonade Life Insurance Agency, LLC (collectively, "Lemonade" or "Defendants") for alleged violations of the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1, *et seq*., the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA") 815 ILCS §

505/1 *et seq*., the California Unfair Competition Law ("UCL"), California Business & Professions Code §§17200, *et seq*., other state consumer protection statutes, and other common-law duties.

Had this Settlement not been reached, there was a real possibility that Settlement Class Members would not have received any compensation. While Plaintiffs are optimistic they would be able to secure class certification and prevail on the merits at trial, litigation success is never guaranteed, and Lemonade was prepared to vigorously defend this case on the merits and at class certification. The Settlement that Class Counsel achieved is particularly strong given the significant compensation being provided to each Settlement Class Member.

In short, the Settlement has received overwhelming support from Settlement Class Members and will result in significant monetary and non-monetary relief if finally approved. The Settlement meets or exceeds applicable standards and is fair, adequate, and reasonable. This Court should grant final approval of the Settlement and certify the Settlement Classes it provisionally certified.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 2021, Plaintiffs filed four related putative class actions in the Circuit Court of Cook County, Chancery Division — specifically, *Jones v. Lemonade Inc.*, No. 2021CH03460; *Citchens v. Lemonade Inc.*, No. 2021CH03578; *Swerdlow v. Lemonade Ins. Agency, LLC*, No. 2021CH03583; and *Clarke v. Lemonade Inc.*, No. 2021CH03593 (the "Related Actions"). Klinger Decl. ¶ 4.[1]

On August 9, 2021, Plaintiffs filed their Motion for Leave to File First Amended Complaint and for the Appointment of Interim Class Counsel in the Circuit Court of Cook County. *Id*. at ¶ 5.

[1] "Klinger Decl." refers to the Declaration of Gary Klinger in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement Agreement, which is attached hereto as **Exhibit A**.

On August 24, 2021, Judge Loftus granted Plaintiffs' motion and entered an order appointing interim class counsel and allowing Plaintiffs leave to file an amended complaint, by August 27, 2021. *Id*.

On August 25, 2021, Lemonade removed the Related Actions to the U.S. District Court for the Northern District of Illinois. *Id*. at ¶ 6. On September 7, 2021, the Court consolidated the Related Actions (the "Federal Action"). *Id*. The Court further granted Plaintiffs' motion to appoint interim class counsel and appointed Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC, Katrina Carroll of Carlson Lynch, LLP (now, Lynch Carpenter LLP), and Joseph P. Guglielmo of Scott+Scott Attorneys at Law LLP to serve as Interim Co-Lead Counsel; and Frederick J. Klorczyk III of Bursor & Fisher, P.A. and Jonathan M. Jagher of Freed Kanner London & Millen LLC to the Plaintiffs' Executive Committee.

On October 7, 2021, Plaintiffs filed a Consolidated Amended Complaint. On October 12, 2021, the court in the Federal Action stayed the case to allow the parties to pursue private mediation. *Id*. at ¶ 7.

On January 25, 2022, the parties participated in a full-day mediation with Judge Epstein. The parties were unable to resolve the matter at this mediation, but continued discussions regarding a potential resolution of the action. *Id*. at ¶ 8. On March 18, 2022, after further negotiations, the Parties executed a term sheet confirming the material terms of a class action settlement. *Id*. at ¶ 12. On March 30, 2022, Plaintiffs voluntarily dismissed the Federal Action and filed the current Consolidated Class Action Complaint ("CCAC") in the Circuit Court of DuPage County, Illinois, 18th Judicial Circuit (the "Action"). *Id*. at ¶ 13. Thereafter, the parties continued to engage in discussions to finalize a settlement agreement based on the term sheet. *Id*. On May 11, 2022, the parties finalized and executed the Settlement. *Id*. Plaintiffs moved for preliminary approval of the

Settlement, which this Court granted on May 25, 2022. *Id*. at ¶ 21. Plaintiffs now seek final approval of the Settlement.

II. THE SETTLEMENT

The terms of the Settlement preliminarily approved by the Court are contained in the Settlement Agreement, and briefly summarized below:

A. The Settlement Classes

The Settlement Classes are comprised of the Nationwide Settlement Class and the Illinois Settlement Sub-Class. Specifically excluded from the Settlement Classes are Defendants; all officers, directors, or employees of Defendants; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir, or assign of any Defendant. Also excluded are any federal, state, or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

1. Nationwide Settlement Class

The Nationwide Settlement Class is defined as "All Defendants' policyholders in the United States who, between June 25, 2019 and May 27, 2021, provided first notice of loss through a video claim submission from which Defendants or Released Parties could have collected, captured, received, or otherwise obtained or disclosed data or information that could be construed as biometric identifiers of any kind (including, but not limited to retina or iris scan, fingerprint, voiceprint, scan of hand, scan of face geometry, or measurement of any biological feature) and/or biometric information of any kind (including, but not limited to, any information, regardless of how it is captured, converted, stored, or shared, based on an individual's biometric identifier used

to identify an individual)." ¶1.19.[2] The Parties estimate that the Nationwide Settlement Class is comprised of approximately 110,507 class members.

2. Illinois Settlement Sub-Class

The Illinois Settlement Sub-Class is defined as "All Defendants' policyholders in the State of Illinois who, between June 25, 2019 and May 27, 2021, provided first notice of loss through a video claim submission from which Defendants or Released Parties could have collected, captured, received, or otherwise obtained or disclosed data or information that could be construed as biometric identifiers of any kind (including, but not limited to retina or iris scan, fingerprint, voiceprint, scan of hand, scan of face geometry, or measurement of any biological feature) and/or biometric information of any kind (including, but not limited to, any information, regardless of how it is captured, converted, stored, or shared, based on an individual's biometric identifier used to identify an individual). ¶1.17. The Parties estimate that the Illinois Settlement Sub-Class is comprised of approximately 5,011 class members.

B. The Settlement

The Settlement is comprised of a monetary component and a non-monetary component. The monetary component is a Settlement Fund established by Defendants in the total amount of $4,000,000. $3,000,000 of the Settlement Fund will be allocated to Illinois Settlement Sub-Class claims, and $1,000,000 of the Settlement Fund will be allocated to Nationwide Settlement Class claims. The Settlement Fund shall be used to pay all Settlement Class Member payments, Settlement Administration Expenses, any service awards to the Class Representatives, any Fee Award to Class Counsel, and any other costs, fees, or expenses approved by the Court. The Settlement Fund includes all interest that shall accrue on the sums deposited in the Escrow

[2] All "¶" citations are to the Class Action Settlement Agreement.

Account. The Settlement Fund represents the total extent of Defendants' monetary obligations under the Agreement. ¶1.33.

The non-monetary relief provided by the Settlement consists of Lemonade's commitments (i) that on or about May 27, 2021, Lemonade stopped collecting biometric identifiers (retina or iris scan, fingerprint, voiceprint, scan of hand or scan of face geometry) or biometric information (any information based on an individual's biometric identifier used to identify any individual); (ii) that if, in the future, Lemonade starts collecting biometric identifiers (retina or iris scan, fingerprint, voiceprint, scan of hand or scan of face geometry) or biometric information (any information based on an individual's biometric identifier used to identify any individual), it will comply with BIPA and all other applicable laws; and (iii) that within seven days after the entry of the Final Order and Judgment, Lemonade shall delete all previously-collected biometric information and/or biometric identifiers from all Settlement Class Members. ¶2.2. Class Counsel estimates that the injunctive relief provided in this case is valued at approximately $5,011,000,[3] for a total settlement value of $9,011,000.

C. Notice and Settlement Administration

A third-party Settlement Administrator, Epiq Systems, Inc., is handling all Settlement Notices, Claims, Settlement Payments, and other Settlement logistics. ¶1.30. Defendants provided a list of Settlement Class Members to the Settlement Administrator. ¶4.1(a). Per the procedure already approved by the Court in connection with preliminary approval of the Settlement, notice

[3] This value is estimated based on the benefit conferred on the Illinois Subclass alone. The Illinois General Assembly established statutory damages in the amount of $1,000 for negligent violations and $5,000 for willful violations of BIPA. Here, there are 5,011 Illinois Sub-Class members whose biometric information will be deleted by Defendants as a result of this Settlement, and whose BIPA rights will be protected in the future. The Illinois General Assembly has assigned a value of at least $1,000 each to that relief, or $5,011,000. *See* Klinger Decl. ¶¶ 17, 19.

consisted of three components: (i) direct notice via the Lemonade Application; (ii) direct notice via email, with backup direct notice via U.S. mail; and (iii) a settlement website maintained by the Settlement Administrator. ¶4.1(b)-(e). Attached hereto as **Exhibit B** is the Declaration of Scott DiCarlo, which details the Settlement Administrator's effectuation of notice and administration of the Settlement to date.

D. Claims, Exclusion, and Objection Procedures

The timeline set forth in the Settlement Agreement was designed to give Settlement Class Members sufficient time to receive Notice, review the relevant documents, and decide what they wanted to do. Notably, Settlement Class Members had 45 days from the Notice Date and at least 14 days after papers supporting the Fee Award were filed, to exclude themselves from the Settlement or object to its approval. ¶1.22. The Final Approval Hearing was scheduled no sooner than 90 days after Notice was provided, affording ample time for Settlement Class Members to come forward. ¶4.6.

E. Form and Scope of the Release

In exchange for the relief described above, Plaintiffs and all Settlement Class Members who do not exclude themselves will, upon the Effective Date, provide the Released Parties a full release of all Released Claims. The Released Claims include, but are not limited to, any claims for alleged violations of BIPA, New York's Gen. Bus. Law §349, California Unfair Competition Law, Bus. & Prof. Code §17200, any other federal, state, or local law, regulation, or ordinance, or common law, and any claims asserted or that could have been asserted in the Actions relating to biometric identifiers or information of policyholders of which Lemonade came into possession between June 25, 2019 and May 27, 2021. ¶1.26.

F. The Reaction of the Class

The deadline for submitting opt-outs and objections was August 8, 2022. Only 3 class members opted out and not a single class member objected. DiCarlo Decl. ¶¶ 21-22.

III. THE SETTLEMENT WARRANTS FINAL APPROVAL

Upon final approval, the Settlement will provide Settlement Class Members with significant and timely monetary and injunctive relief as compensation for their Released Claims and will relieve the Parties of the burdens, uncertainties, costs, and risks of continued litigation.

In addition, the Notice Plan approved by the Court and implemented by the Parties informed Settlement Class Members of their rights under the Settlement and the process for submitting claims. Because the Settlement is fair, reasonable, and provides adequate compensation to the Settlement Class Members, and because the Notice Plan effectively notified Class Members of their rights under the Settlement Agreement, this Settlement warrants final approval by the Court.

A. The Notice Plan Successfully Informed Settlement Class Members About their Rights Under the Settlement Agreement

Because class actions by their nature involve a class representative acting on behalf of a larger class of consumers, critical to any class action settlement is that class members are effectively informed of the settlement and their rights and options thereunder. Accordingly, "[a]fter determining that a lawsuit may proceed on a class-wide basis, through settlement or otherwise, a court may order such notice as it deems necessary to protect the interests of the class." 735 ILCS 5/2-803.

Here, in certifying the Settlement Classes and preliminarily approving the Settlement, the Court approved the robust Notice Plan outlined in the Settlement Agreement. The Notice Plan provided for (i) direct notice via the Lemonade Application; (ii) direct notice via email, with

backup direct notice via U.S. mail; and (iii) a settlement website maintained by the Settlement Administrator.

Pursuant to the Notice Plan, direct notice was sent to Class Members via email or postcard to 98% of Settlement Class Members. DiCarlo Decl. ¶ 16. Moreover, the email notice contained a direct link to the online Settlement Website, along with an explanation of the Settlement Class Members' rights under the Settlement Agreement and how they could easily file a claim online.

Additionally, the Settlement Website contains all the information related to the Settlement, including key dates and deadlines (*e.g.*, claims deadline, objection deadline, final approval hearing date and time, etc.), relevant court documents (*e.g.*, the Settlement Agreement, and the Preliminary Approval Order), contact information for Class Counsel, and an easily accessible online Claim Form that Settlement Class Members could use to submit claims through U.S. mail, email, and also directly via the Settlement Website. DiCarlo Decl. ¶ 17. In addition, the Settlement Website includes the detailed Long Form Notice and specific instructions for opting out or filing objections. DiCarlo Decl. ¶ 17.

As directed by the Court in its Preliminary Approval Order, the Notice Plan was implemented by June 22, 2022. DiCarlo Decl. ¶ 9. Upon implementation, the Notice Plan proved to be extremely successful at informing potential Settlement Class Members of the Settlement in this matter. Altogether, the Notice Plan has thus far resulted in Settlement Class Members submitting more than 16,500 claim form. DiCarlo Decl. ¶ 23. Accordingly, given the significant number of individuals who received direct notice, and the large number of claims submitted, there is little doubt that the Notice Plan implemented by the Parties was more than sufficient to notify the Settlement Class Members of the Settlement and their rights and options thereunder, and satisfied Due Process considerations.

B. All Factors Favor Final Approval

Final approval of the Settlement is warranted, not only because the Settlement Class Members were sufficiently notified of their rights and options under the Settlement, but also because the Settlement itself meets the applicable criteria for final approval. There is a strong judicial and public policy favoring the settlement of class action litigation, and a settlement should be approved by the Court after determining that the settlement is "fair, reasonable, and adequate." *Quick v. Shell Oil Co.*, 404 Ill. App. 3d 277, 282 (3rd Dist. 2010); *Isby v. Bayh*, 75 F.3d 1191, 1198 (7th Cir. 1996).

In determining whether a settlement is fair, reasonable, and adequate, Illinois courts consistently apply an eight-factor evaluation, also known as the "*Korshak* factors." *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990). The factors ultimately to be considered by a court are: "(1) the strength of the case for the plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant's ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed." *Korshak*, 206 Ill. App. 3d at 972; *see also Armstrong v. Board of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980). Of these considerations, the first is most important. *Steinberg* v. *Sys. Software Assocs., Inc.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999); *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006). Because each of these factors supports a finding that the Settlement here is "fair, reasonable, and adequate," the Court should grant final approval of the Settlement.

1. The Settlement provides significant benefits to the Settlement Class, particularly given the uncertain outcome of litigation

The first factor, the strength of Plaintiffs' case on the merits, balanced against the relief obtained under the Settlement, "is the most important factor in determining whether a settlement should be approved." *Steinberg*, 306 Ill. App. 3d at 170. Here, the Settlement provides significant benefits to the Settlement Class, as every Settlement Class Member will receive a *pro rata* payment from the Settlement Fund after submitting a timely, claim form. In addition, the Settlement provides meaningful equitable relief, as Lemonade has represented that it is no longer collecting or using its customers' biometric information and agrees that should it do so in the future, it will provide all notices and consents as required by BIPA. The Settlement also provides that Lemonade will destroy all biometric information of Class members – another significant, tangible benefit.

With the more than 16,000 claims submitted to date, Plaintiffs and Class Counsel have obtained an excellent result for the Settlement Class. This is especially true given the significant legal obstacles that Plaintiffs and the Class would undoubtedly have encountered in attempting to achieve a similar result through litigation, and the real possibility of no recovery whatsoever.

While Plaintiffs might have prevailed on the merits of their BIPA claims at trial, success was far from assured and Defendants were and are prepared to vigorously defend this case. If Lemonade were to succeed on any of its defenses to liability against Plaintiffs' individual claims, Settlement Class Members would recover nothing. In addition to any defenses on the merits Lemonade would raise, Plaintiffs would also otherwise be required to prevail on a class certification motion, which would be highly contested and for which success would certainly not be guaranteed. *See Schulte v. Fifth Third Bank,* 805 F. Supp. 2d 560, 582 (N.D. Ill. 2011).

"Settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation." *Id*. at 586 (internal citations omitted). "If the Court approves

the [Settlement], the present lawsuit will come to an end and [Settlement Class Members] will realize both immediate and future benefits as a result." *Id.* Approval would allow Plaintiffs and the Settlement Class Members to receive meaningful and significant payments now, instead of years from now—or perhaps never. *See id.* at 582. In the absence of settlement, it is certain that the expense, duration, and complexity of the protracted litigation that would result would be substantial. Not only would the Parties have to undergo significant motion practice before any trial on the merits could even be contemplated, but evidence and witnesses from across the country would have to be assembled during any trial.

Further, given the complexity of the issues and the amount in controversy, the defeated party would likely appeal both any decision on the merits (at summary judgment and/or trial), as well as any decision on class certification, especially given that the applicable limitations period under BIPA has still been untested, as is the amount of damages available to individuals under the statute. As such, the immediate and considerable relief provided to the Settlement Class under the Settlement weighs heavily in favor of its approval compared to the inherent risk and delay of a long and drawn-out litigation, trial, and appellate process. This entire process, with uncertain results and high risk to all involved, would likely take years to complete.

Weighing the strength of Plaintiffs' claims and the potential risks inherent in continued litigation against the significant immediate benefit provided to the Settlement Class Members if this Settlement is finally approved, the first *Korshak* factor strongly supports granting final approval of the Settlement.

Additionally, the fairness, reasonableness, and adequacy of the Settlement are supported by previously approved comparable settlements (involving both BIPA and non-BIPA claims), which provided similar or even much less value than that achieved for the classes here. For

example, in *Zepeda v. Intercontinental Hotels Group, Inc.*, No. 2018-CH-02140 (Cir. Ct. Cook Cnty., Ill. 2018), the BIPA settlement provided that each class member was eligible to receive a *pro rata* share of a settlement fund that would amount to approximately $500 per person ***before*** deductions for administrative expenses, attorneys' fees and costs, and a service award. In *Sekura v. L.A. Tan Enterprises, Inc.*, No. 2015-CH-16694 (Cir. Ct. Cook Cnty., Ill. 2016), the BIPA class settlement resulted in each class member being eligible to receive a *pro rata* share of a settlement fund that would have amounted to approximately $40 per person if each class member had submitted a valid claim. And in *Carroll v. Crème de la Crème, Inc.*, No. 2017-CH-01624 (Cir. Ct. Cook Cnty., Ill. 2018), the settlement resulted in each class member being eligible to enroll in credit and identity monitoring services free of charge without further monetary relief. *See also, e.g.*, *Marshall v. Lifetime Fitness, Inc.*, No. 2017-CH-14262 (Cir. Ct. Cook Cnty, Ill. 2019) (paying claimants $270 each in addition to credit monitoring); S*ekura v. LA Tan Enters., Inc.*, No. 2015-CH-16694 (Cir. Ct. Cook Cnty., Ill. 2016) (paying claimants approximately $150 each); *Prelipceanu v. Jumio Corp.*, No. 2018-CH-15883 (Cir. Ct. Cook Cnty., Ill. 2020) (paying claimants approximately $260 each).

Given the statutory context of BIPA, non-BIPA privacy-based claims typically settle for far lower per-person recoveries than BIPA claims. Indeed, it is not uncommon for there to be no monetary relief whatsoever for consumer class action settlements based on such claims. *See*, *e.g.*, *McDonald v. Kiloo A/S*, No. 17 C 4344, 2020 WL 5702113, at *5 (N.D. Cal. Sept. 24, 2020) (granting preliminary approval to injunctive relief-only settlement, noting that "any damage award" for claims of intrusion upon seclusion and violations of the California constitutional right to privacy, the UCL, and various consumer protection statutes "was uncertain and likely to have been nominal for most class members").

Finally, the injunctive relief found in the Settlement – a robust framework of compliance and future protection of the privacy rights of Plaintiffs and the Classes – provides a valuable benefit. *See*, *e.g.*, *In re Equifax Customer Data Sec. Breach Litig.*, MDL No. 2800, 2020 U.S. Dist. LEXIS 118209, at *256 (N.D. Ga. Mar. 17, 2020) ("The Court specifically finds that the injunctive relief class counsel obtained here is a valuable benefit to the class because it reduces the risk that their personal data will be compromised in a future breach."); *In re Target Corp. Customer Data Sec. Breach Litig.*, 892 F.3d 968, 974 n.6 (8th Cir. 2018) (security measures implemented after a data breach have "value to all class members").

The result here is exceptional in comparison to other BIPA and non-BIPA cases — and is certainly fair, reasonable, and adequate, and warrants preliminary approval.

2. Lemonade's ability to pay is not at issue here, and Lemonade is able to satisfy its obligations under the Settlement

Though Lemonade's financial standing is not at issue here, resolving this matter now preserves Lemonade's financial resources for notice and distribution to the class members. Under the terms of the Settlement, Defendants can establish the Settlement Fund that will be used to pay out all valid claims submitted, along with all other fees and expenses, including the Settlement Administrator's fees and expenses in implementing the Notice Plan and reviewing submitted claims. Accordingly, this factor also supports granting final approval.

3. Continued litigation would necessitate the resolution of complex and novel legal issues, as well as extensive and lengthy discovery

The third factor, the "complexity, length and expense of further litigation," *Korshak*, 206 Ill. App. 3d at 972, also weighs heavily in favor of final approval of the Settlement. As the *Korshak* court observed, a "fair and reasonable settlement" is preferred over continued litigation which would leave any potential recovery "in limbo." 206 Ill. App. 3d at 973; *see also Isby*, 75 F.3d at

1199–1200 (affirming the final approval of a settlement where continued litigation "would require the resolution of many . . . complex issues" and "entail considerable additional expense"). Indeed, when comparing the "significance of immediate recovery" versus the "mere possibility of relief in the future, after protracted and expensive litigation . . . [i]t has been held proper to take the bird in the hand instead of a prospective flock in the bush." *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1323 (S.D. Fla. 2005).

Litigating this matter would involve significant expense and prolonged discovery. Any decision on the merits favorable to Defendants would be appealed by Plaintiffs, and vice versa, further delaying any final resolution of the matter and significantly increasing expenses for the Parties. Even if Plaintiffs were to ultimately succeed in defeating any dispositive motions brought by Defendants, they would still have to prevail on his motion for class certification. And any such motion for class certification would not only be heavily contested, but would also require additional, extensive discovery efforts by the Parties, including the gathering of security and access records in addition to other data concerning individuals who may no longer have any contact or relationship with Defendants.

Given the complexity of the claims at issue, the scope of the class, and the significant expenses that would result from having this case proceed with class discovery, dispositive motion briefing, adverse class certification, trial, and any potential appeals, this factor heavily favors granting final approval. In contrast to how long litigation would take, final approval will permit the Settlement Class Members to promptly receive their compensation and allow the Parties to avoid any further expenses and reach a final resolution of their dispute.

4. Settlement Class Members overwhelmingly support the Settlement

Looking at the fourth and sixth *Korshak* factors – as they are "closely related," Korshak, 206 Ill.App.3d at 973, – it is clear that final approval of the Settlement is not only in the best interest of the Parties but is also overwhelmingly supported by the Settlement Class Members.

No Settlement Class Members have filed an objection to the Settlement; no Settlement Class Members have chosen to opt out of the Settlement; and no Settlement Class Members have complained to Class Counsel about the relief provided by the Settlement or Class Counsel's Motion for award of attorneys' fees and Incentive Award. The comprehensive scope of the Notice Plan, the thousands of claims submitted, and the fact that there is not a single objection to the Settlement, demonstrate that the Settlement Class Members overwhelmingly support this Settlement.

The lack of objectors challenging the Settlement is particularly noteworthy and strongly supports a finding that the Settlement is "fair and reasonable." *Am. Civil Liberties Union v. United States Gen. Servs. Admin*., 235 F. Supp. 2d 816, 819 (N.D. Ill. 2002); *see also In re Mexico Money Transfer Litig*., 164 F.Supp.2d 1002, 1021 (N.D. Ill. 2000) (granting final approval of settlements and finding the fact that "99.9% of class members have neither opted out nor filed objections to the proposed settlements . . . is strong circumstantial evidence in favor of the settlements"). This is especially the case given the frequency with which "professional objectors" seek out settlements and file generic objections even where there is no legitimate basis. *See In re Initial Pub. Offering Sec. Litig.*, 728 F. Supp. 2d 289, 295 n.37 (S.D.N.Y. 2010) (collecting authorities and noting that "[r]epeat objectors to class action settlements can make a living simply by filing frivolous appeals and thereby slowing down the execution of settlements" and that "courts are increasingly weary of professional objectors: some of [which are] obviously canned objections filed by professional objectors") (internal citations omitted).

5. The Settlement was a result of arm's-length negotiations overseen by an experienced mediator

With respect to the fifth factor, this Settlement was not the product of any "collusion" between the Parties. There is an initial presumption that a proposed settlement is fair and reasonable when it is the result of arm's-length negotiations. A. Conte & H. Newberg, *Newberg on Class Actions*, § 11.42 (4th ed. 2002); *see also Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 21 (finding no collusion where there was "no evidence that the proposed settlement was not the product of 'good faith, arm's-length negotiations'").

Here, there is no evidence of collusion. The Settlement was reached after months of arm's-length negotiations between counsel for the Parties, including a full-day mediation with Judge Epstein, an experienced class action mediator. Moreover, settlement negotiations began only after an exchange of information regarding, among other things, the size and composition of the Settlement Classes. Such an involved process underscores the non-collusive nature of the proposed Settlement. Finally, the fair result for the Settlement Classes in terms of the monetary and equitable relief, shows that this Settlement was reached because of good-faith negotiations rather than any collusion between the Parties. Accordingly, this factor weighs in favor of final approval.

6. Plaintiffs' Counsel have significant experience in prosecuting similar class actions and believe that the Settlement is fair, reasonable, and adequate

Plaintiffs' Counsel engage in complex litigation on behalf of consumers and have regularly been appointed as class counsel in numerous complex consumer class actions, including similar class actions involving violations of the BIPA and other data privacy-related statutes, in state and federal courts across the country. Klinger Decl. ¶¶ 24-28; *see also id.*, Exs. C-G. Given their extensive experience litigating and settling similar class actions across the country, Class Counsel are competent and qualified to provide their opinion as to the strength of the Settlement achieved.

Class Counsel strongly believe that final approval of the Settlement is in the best interests of Settlement Class Members. Final approval of the Settlement will avoid any risks and delays associated with allowing the litigation to move forward and will provide the Settlement Class Members with immediate relief. Moreover, the cash award under the Settlement is significant among BIPA settlements like this one. Equally important, the Settlement also provides for meaningful prospective relief that will help prevent any further illegal capture, collection, or use of biometrics of the Settlement Class Members.

Given the defenses that Defendants would raise, and the resources that Lemonade has committed to defend and litigate this matter through appeal, Class Counsel are confident that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members. *See GMAC Mortg. Corp. of Pa. v. Stapleton,* 236 Ill. App. 3d 497 (1st Dist. 1992) (court should give weight to fact class counsel supports the class settlement because of its experience prosecuting similar cases). This factor also strongly favors granting final approval of the Settlement.

7. While still at an early stage of litigation, the Parties exchanged information sufficient to ensure that the settlement is fair, reasonable, and adequate

Finally, the last factor also supports final approval because this Settlement was reached only after contentious negotiations and significant investigation by Class Counsel. The Parties exchanged information and participated in a full-day mediation session with an experienced mediator. *See Isby*, 75 F.3d at 1200 ("Approval of a settlement is proper where discovery and investigation conducted by class counsel prior to entering into settlement negotiations was extensive and thorough."). The Parties also engaged in prolonged negotiations over the final form of the Settlement.

Before the Parties entered into the Settlement Agreement, the Parties exchanged information regarding the scope and nature of Defendants' biometric practices; these discussions continued through the mediation and in the weeks thereafter while the Settlement was being negotiated and finalized. Class Counsel were well-informed as to the data, equipment, policies, procedures, and other critical information necessary to "evaluate the merits of the case and assess the reasonableness of the settlement." *Korshak*, 206 Ill.App.3d at 974. In short, the final executed Settlement was only reached after sufficient investigation, information exchanges and negotiations involving the nature and scope of Defendants' subject biometric practices, further favoring final approval.

IV. CONCLUSION

For all the reasons stated above, the proposed Settlement is fair, reasonable, and adequate and Plaintiffs respectfully request that the Court grant this motion and approve the Settlement and certify the Settlement Classes.

Dated: August 11, 2022

Respectfully submitted,

/s/ *Gary M. Klinger*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 11, 2022, the foregoing document was filed via the Court's ECF system, which will cause a true and correct copy of the same to be served electronically on all ECF-registered counsel of record.

/s/ Gary M. Klinger
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