

**IN THE CIRCUIT COURT OF KANKAKEE COUNTY, ILLINOIS
TWENTY-FIRST JUDICIAL CIRCUIT**

SHANNON GRIFFIN, on behalf of herself and)
all others similarly situated, known and)
unknown,)

Plaintiff,)

v.)

TIMECO SYSTEMS, INC.,)

Defendant.)

Case No. 2023-CH-00038

Hon. Judge Lindsay A. Parkhurst

**PLAINTIFF’S UNOPPOSED MOTION AND MEMORANDUM OF LAW FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I. Introduction

On April 1, 2024, this Court granted preliminary approval of the Parties' Class Action Settlement Agreement, attached hereto as Exhibit A ("Settlement" or "Settlement Agreement"), for 1,402¹ Settlement Class Members (or \$1,000 gross per class member).² After preliminary approval, the Parties and the Settlement Administrator collaborated in executing robust procedures to obtain contact information for the Settlement Class Members, who used Defendant's technology at Defendant's customer locations. The Notices informed Settlement Class Members of their rights in the Settlement: the right to submit a claim form, the right to request to be excluded from the Settlement, and the right to object to the fairness of the Settlement. No Settlement Class Member objected to or excluded themselves from the Settlement.

The Settlement represents a fair, adequate, and reasonable resolution of this litigation on a class action basis, and the Motion for Final Approval of Class Action Settlement is uncontested. None of the Settlement Class Members objected to the Settlement and there were no requests for exclusion. If the Court grants final approval of the proposed Settlement, each Settlement Class Participant will receive an estimated net payment of \$648.07. The high notice distribution and claims rate, and lack of objections and exclusions support final approval of the Settlement.

II. Legal Background and Procedural History

The factual, legal, and procedural history of this case are summarized in Plaintiff's Motion for Preliminary Approval.

¹ The Parties previously represented that there are 1,407 Settlement Class Members. The Settlement Administrator identified five duplicate records, which resulted in a final total of 1,402 Settlement Class Members. Exhibit B, Analytics Consulting LLC's Director, Caroline P. Barazesh's Declaration of Due Diligence, ¶ 11 ("Decl. of Due Diligence, ¶ ___").

² Capitalized terms not defined here are defined in the Parties' Settlement Agreement, which is attached here as Exhibit A.

III. Summary of Settlement Terms

A. Definition of “Class Period” and “Class Members” (Ex. A, Settlement Agreement, § II)³

The “Class Period” is defined as:

February 1, 2018 to the date that Defendant’s BIPA policy became publicly available, which is May 31, 2023 (“BIPA Notice”).

Class Members are defined as:

All individuals who scanned a finger on a TimeCo device within the State of Illinois during the Class Period before the Defendant’s BIPA Notice was available (“the Settlement Class” or “Settlement Class Members”).

The Settlement Class includes a total of 1,402 Settlement Class Members. Ex. B, Decl. of Due Diligence, ¶ 11.

B. Settlement Fund; Allocation of the Fund; Payments to Settlement Class (Ex. A, Settlement Agreement, § III.2)

While denying all liability and wrongdoing, Defendant has agreed to pay a Gross Fund of one million, four hundred and seven thousand dollars (\$1,407,000) to settle the claims of Plaintiff and Settlement Class Members in this Action which is approximately \$1,000 per Settlement Class Member prior to deductions from the Gross Fund as contained in this Section. The Gross Fund represents the maximum total amount that Defendant (or any other Releasee/Released Party) shall be obligated to pay under this Section (including, but not limited to, all attorneys’ fees and costs, service award, and settlement administration fees).

The term “Net Fund” is the Maximum Gross Fund minus the following deductions, which are subject to Court approval: Settlement Class Counsel attorneys’ fees and costs; the Settlement Administrator’s costs; and the Settlement Class Representative’s Service Award.

³ Where feasible, citations are in the headings of this Motion to avoid unnecessary multiplication of in-text citations.

The Net Fund shall be distributed to Settlement Class Members who timely return valid claim forms (“Settlement Class Participants”). Settlement Class Participants will receive a Settlement Payment in the amount of the Net Fund divided by the total number of Settlement Class Members. Any Settlement Class Member who does not timely return a valid claim form shall not be entitled to a payment. Defendant shall have no obligation to make payments for any Class Member who does not timely return a valid claim form.

Any checks that remain uncashed after 180 days from the date they are issued by the Settlement Administrator shall be deemed void. The Settlement Administrator will distribute funds from each of these uncashed checks to Defendant. If the Court determines that distributing uncashed checks to Defendant is inappropriate, funds from uncashed checks shall be distributed to Prairie State Legal Services as a *cy pres* recipient.

C. Limited Release of Claims (Ex. A, Settlement Agreement, § III.3.b)

Subject to Final Approval by the Court of the Settlement, Settlement Class Members who do not exclude themselves from the Settlement, will, release all claims, suits, actions, controversies, demands, and/or causes of action, premised upon statute, contract, common law or otherwise, whether seeking liquidated or actual damages, penalties, specific performance, injunctive relief, attorneys’ fees, costs, interest or any other relief, against the Released Parties that arise out of, relate to or are connected with the alleged violation of or non-compliance with BIPA, alleged biometric identifiers (including, but not limited to retina or iris scan, fingerprint, voiceprint, scan of hand, scan of face geometry, or measurement of any biological feature), alleged biometric information of any kind (including, but not limited to, any information, regardless of how it captured, converted, stored, or shared, based on an individual’s biometric identifier used to identify an individual), or other alleged biometric data, whether pursuant to BIPA or any other federal,

state or local law, including common law, regardless of whether such causes of action or claims are known or unknown, filed or unfiled, asserted or unasserted, and/or existing or contingent.

D. Settlement Administration (Ex. A, Settlement Agreement, § III.4)

The Parties selected Analytics Consulting LLC (“Settlement Administrator”) to administer this Settlement. The Settlement Administrator’s costs, which shall be paid from the Gross Fund, are \$20,573.00. Ex. B, Decl. of Due Diligence, ¶ 22. The Settlement Administrator’s actual costs are less than the estimated \$25,000 settlement administration costs that were included in the Notice to Settlement Class Members. Ex. B, Decl. of Due Diligence, Ex. 1 (Notice).

E. Service Award (Ex. A, Settlement Agreement, § III.8)

Under the Settlement Agreement, Settlement Class Counsel will request that the Court award the Class Representative up to \$7,500 as a Service Award for her work in conferring with Class Counsel, filing the lawsuit in her own name on behalf of the proposed Settlement Class, and recovering money for the Settlement Class Members. Settlement Class Counsel filed a Motion for Attorneys’ Fees, Litigation Costs, Settlement Administration Costs, and Service Award on August 28, 2024, seeking a \$7,500 Service Award for the Class Representative.

F. Attorneys’ Fees and Costs (Ex. A, Settlement Agreement, § III.7)

Under the Settlement Agreement, Settlement Class Counsel may request that the Court award them up to one-third of the Maximum Gross Fund as attorneys’ fees, plus their litigation costs. The Notice informed Settlement Class Members that, subject to court approval, the Gross Settlement shall be reduced by an award of up to one-third of the total Settlement for Settlement Class Counsel’s attorneys’ fees (estimated to be \$469,000) and litigation costs of up to \$2,500. Ex. B, Decl. of Due Diligence, Ex. A (Notice). Settlement Class Counsel filed a Motion for Attorneys’ Fees, Litigation Costs, Settlement Administration Costs, and Service Award on August

28, 2024, seeking one-third of the Gross Settlement (\$469,000) as attorneys' fees and \$1,332.07 in litigation expenses.

IV. The Settlement Notice Was Successful (Ex. B, Decl. of Due Diligence, ¶¶ 3-21)

A. The Settlement Administrator's Duties

The Settlement Administrator, Analytics Consulting LLC, was engaged by the Parties to provide settlement administration services. Ex. B, Decl. of Due Diligence, ¶ 3. In this capacity, Analytics was (or will be) responsible for such things as establishment of a Qualified Settlement trust account for the deposit of the Maximum Gross Fund, providing notice to Settlement Class Members, verifying addresses, skip tracing addresses as necessary, communicating with Settlement Class Members, disbursing Settlement Payments to Settlement Class Participants, tax reporting, and other administrative activities contemplated in the Settlement Agreement. In addition to the notice and claims process, Analytics also reconciled the class list Defendant produced and merged the contact information it received from the subpoena responses. Exhibit C, Declaration of Maureen A. Salas, ¶ 14 (hereafter Salas Decl., ¶ ___). This required Analytics to enter data and reconcile the varied data formats in the subpoena responses with the Class List. *Id.* The Settlement Administrator's efforts have been extensive. *Id.* at ¶ 13.

B. Compilation of the Class List

The Settlement set forth a process to obtain Settlement Class Member contact information from Defendant and its customers, including a process for the issuance of subpoenas in the event the information was not voluntarily provided. Ex. C, Salas Decl., ¶ 5. On or around April 5, 2024, Defendant issued a letter to its customers informing them of the settlement and requesting that they provide contact information for Settlement Class Members to the Settlement Administrator by May 1, 2024, so the Settlement Administrator could issue Notice. *Id.*, ¶ 6.

On April 11, 2024, Analytics received a mailing list from a customer of Defendant containing contact information for 221 Settlement Class Members. Ex. B, Decl. of Due Diligence, ¶ 4. On April 25, 2024, Analytics received two additional mailing lists from two of Defendant's customers containing contact information for 221 and 208 Settlement Class Members, respectively. *Id.*, ¶¶ 5-6.

On May 5, 2024, Analytics received the Class List from Counsel for Defendant. *Id.*, ¶ 7. The files contained customer names, last known mailing addresses, email addresses, and phone numbers, where available, for a total of 1,407 Settlement Class Members. *Id.* 813 records had contact information, and 594 records had no contact information. *Id.*

Following the May 1, 2024 deadline for customers to voluntarily provide Settlement Class Members' contact information to the Settlement Administrator, Settlement Class Counsel conferred with the Settlement Administrator to understand what contact information had already been provided and what contact information was still outstanding. Ex. C, Salas Decl., ¶ 7. As a result of that conferral, Settlement Class Counsel issued a total of seven (7) subpoenas to obtain contact information for Settlement Class Members. *Id.*, ¶ 8. Settlement Class Counsel served five (5) subpoenas on Defendant's customers on May 21, 2024, and one amended subpoena on June 4, 2024. *Id.*, ¶ 9. Settlement Class Counsel issued an additional subpoena on a staffing company who supplied workers to one of Defendant's customers on July 2, 2024. *Id.* Settlement Class Counsel received responses from six of the subpoena recipients between June 5, 2024 and July 25, 2024. *Id.*, ¶ 10. Only one subpoena recipient did not respond to the subpoena nor appeared to give their deposition. *Id.*, ¶ 11. The subpoena recipient who did not respond was presumed to have contact information for only twenty-seven (27) Settlement Class Members.

As Settlement Class Counsel received subpoena responses, Counsel reviewed each

response for compliance and conferred with subpoena recipients to identify whether a more complete response could be provided. *Id.*, ¶ 12. Through those efforts, Settlement Class Counsel determined certain third-party staffing companies might be in possession of class member contact information. *Id.* In addition to issuing a subpoena to one third-party staffing company, Settlement Class Counsel worked with the Settlement Administrator to obtain Settlement Class Member contact information directly from another third-party staffing company, Accurate Staffing. *Id.* Settlement Class Counsel also conferred with another third-party staffing company, Midway Staffing, who confirmed it did not have any records for Settlement Class Members. *Id.*

As a result of the subpoenas, the Settlement Administrator received nine files containing a total of 2,581 records. Ex. B, Decl. of Due Diligence, ¶ 8. These customer files were over-inclusive and contained records for individuals not in Defendant’s Class List as well as Settlement Class Members, and many duplicate records. *Id.* Analytics matched the contact information provided by the customers to the Class List to compile a mailing list. *Id.*, ¶ 9.

The mailing addresses contained in the Class List were processed and updated utilizing the National Change of Address Database (“NCOA”) maintained by the U.S. Postal Service. *Id.*, ¶ 11. The NCOA contains requested changes of address filed with the U.S. Postal Service. *Id.* In the event that any individual had filed a U.S. Postal Service change of address request, the address listed with the NCOA would be utilized in connection with the mailing of the Notice. *Id.* Five duplicate records were identified and excluded from the mailing list. *Id.* This resulted in 1,402 Settlement Class Members, of which 1,269 Settlement Class Members had mailing addresses and 133 Settlement Class Members had no contact information. *Id.*

C. The Issuance of Notice to Settlement Class Members

On May 3, 2024, Analytics received the Court-approved Notice of Class Action Settlement

(“Class Notice”). Ex B, Decl. of Due Diligence, ¶ 3. The Notice advised Settlement Class Members of their right to submit a claim form by October 12, 2024, object to the Settlement by October 12, 2024, or exclude themselves from the Settlement by October 12, 2024, and the implications of each such action. *Id.*, ¶¶ 10, 19-21, Ex. A. The Notice advised Settlement Class members of applicable deadlines and other events, including the Final Approval Hearing, and how they could obtain additional information. *Id.*

Analytics established a toll-free phone number, email address, and website to provide assistance and information to Settlement Class Members. *Id.*, ¶ 12. The phone number, email address, and website were included in the Class Notice. *Id.*, ¶¶ 12, Ex. A (Notice). The website allowed Settlement Class Members to file a claim form online. *Id.*, ¶ 12.

On July 29, 2024, Analytics mailed the approved Class Notice to the most current mailing address of 1,269 Settlement Class Members via USPS First Class Mail. Ex B, Decl. of Due Diligence, ¶ 12, Ex. A. On the same day, Analytics sent an email notice to 783 email addresses associated with 716 Settlement Class Member, and 685 emails (87.48%) were delivered. *Id.*, ¶ 14.

D. The Notice was Successfully Delivered to Settlement Class Members

If a Class Notice was returned by the USPS as undeliverable and without a forwarding address, and no claim form had been received, Analytics performed an advanced address search on these addresses by using Experian, a reputable research tool. Ex. B, Decl. of Due Diligence, ¶ 15. A total of 208 Class Notices were returned to Analytics as undeliverable by the Post Office. *Id.* From the address research, Analytics located 84 updated addresses and Class Notices were mailed to the updated addresses. *Id.* 25 Class Notices were again returned as undeliverable. *Id.*

On September 12, 2024, Analytics mailed a Reminder Notice to 980 Settlement Class members who had not filed a claim form. *Id.* at ¶ 16. A total of 814 Reminder Postcards (83.06%)

were delivered. *Id.* On the same day, the Reminder Notice was sent to 566 email addresses associated with 522 Settlement Class Members who had not filed a claim form. *Id.* at ¶ 17. Of those 566 emails, 483 emails (85.33%) were delivered. *Id.* A total of 865 Settlement Class Members (88.26%) received a Reminder Notice by mail and/or email. *Id.*

1,120 Settlement Class Members (79.88%) received notice by mail, and 1,156 Settlement Class Members (82.45%) received notice by mail and/or email. *Id.*, ¶ 18.

E. No Settlement Class Members Requested Exclusion and No Settlement Class Member Submitted Objections

Settlement Class Members could exclude themselves from the proposed settlement by mailing a written statement requesting exclusion to Analytics by October 12, 2024. Ex B, Decl. of Due Diligence, ¶ 19. Likewise, Settlement Class Members could object to the proposed settlement by mailing a written statement objecting to the settlement to Analytics by October 12, 2024. *Id.*, ¶ 20. As of the date of this declaration, no Settlement Class Members excluded themselves from the settlement and no Settlement Class Members objected to the settlement. *Id.*, ¶¶ 19-20. The absence of any requests for exclusion or objections to the settlement demonstrates the strength of the settlement.

F. The Claims Rate Warrants Final Approval

Over 26.6% of Settlement Class Members have submitted a valid Claim Form. Ex. B, Decl. of Due Diligence, ¶ 21. This claims rate supports final approval because it far exceeds the 9 percent median rate in class settlements. *See* Federal Trade Commission, Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns, p. 11 (Sept. 2019), available at https://www.ftc.gov/system/files/documents/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns/class_action_fairness_report_0.pdf (median claims rate for settlements studied was 9%). Likewise, the claims rate here exceeds the approximately 12.5

percent claims rate in a recent BIPA settlement against a payroll vendor, ADP, and the approximately 10 percent claims rate in another recent BIPA settlement against a timekeeping software company, NovaTime Tech., Inc. *See Kusinski v. ADP, LLC*, Case No. 17-CH-12364 (Cook Cnty.) (plaintiffs reported a 12.5% claims rate in their final approval motion); *Thome v. NovaTime Tech., Inc.*, Case No. 1:19-cv-06256 (N.D. Ill.) (plaintiff reported a 10% claim rate in the final approval motion); *see also Crumpton v. Octapharma Plasma, Inc.*, Case No. 1:19-cv-08402 (N.D. Ill.) (order granting final approval described 22% claims rate as an “excellent claim rate” in BIPA settlement). The claims rate is also commensurate with the 28.19% claims rate in a BIPA Settlement this Court approved on October 1, 2024. *See Marion v. Ring Container Technologies, LLC*, Case No. 2019L89 (Kankakee Cnty.) (Parkhurst, J.).

V. Final Approval is Warranted

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

To approve a class settlement, the Court must find it “fair, reasonable, and adequate.” *People ex rel. Wilcox v. Equity Funding Life Ins. Co.*, 61 Ill. 303, 316 (1975). In determining whether a settlement is fair, reasonable, and adequate, courts consider the following factors: “(1) the strength of the case for Plaintiff 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.” *GMAC Mrtg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 493 (1st Dist. 1992). As explained below, these factors support final approval.

1. The Strength of the Case Compared to the Value of the Settlement

The most important factor in evaluating final approval is confirming that the settlement value is adequate in light of the strength of the case. *Steinberg v. Sys. Software Assocs., Inc.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999); *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990). The Gross Fund represents a gross recovery of \$1,000 for each Settlement Class Member. The net payment to each Settlement Class Participant will be \$648.07.⁴ This represents a meaningful monetary recovery compared to other BIPA class settlements that have received final approval. Declaration of Douglas M. Werman in Support of Plaintiff's Motion for Attorneys' Fees, Litigation Costs, Settlement Administration Costs, and Service Award, ¶ 18 (attached as Exhibit 1 to Plaintiff's Motion for Attorneys' Fees, Litigation Costs, Settlement Administration Costs, and Service Award) (hereafter "Werman Decl. ISO Fees, ¶ __").

2. Defendant's Ability to Pay

Defendant's ability to pay a judgement did not influence the Settlement amount in this case. Ex. C, Salas Decl., ¶ 17. As a result, this factor is of minimal relevance.

3. Complexity, Length, and Expense of Further Litigation

If the litigation had continued, it would have been complex, expensive, and protracted. Defendant denies that it collected biometric information and denies that it violated BIPA. Ex. C, Salas Decl., ¶ 20. The Parties would have engaged in lengthy discovery, after which Plaintiff would have filed a motion for class certification while Defendant likely would have moved for summary judgment. *Id.* Instead of expensive, complicated, and protracted litigation, this

⁴ The calculation is: \$1,407,000 - \$498,405.07 [\$469,000 (attorneys' fees) + \$1,332.07 (litigation costs) + \$7,500 (service award) + \$20,573.00 (settlement administration costs)] = \$908,594.93. \$908,594.93/1,402 Settlement Class Members = \$648.07 per Settlement Class Participant.

Settlement provides significant monetary relief to Settlement Class Members now. *Id.*

4. Amount of Opposition

There is no opposition to the Settlement. None of the 1,402 Settlement Class Members excluded themselves or objected to the Settlement. Ex. B, Decl. of Due Diligence, ¶¶ 19-20. The lack of opposition supports approval of the Settlement. *See, e.g., In re Mexico Money Transfer Litig., (W. Union & Valuta)*, 164 F. Supp. 2d 1002, 1021 (N.D. Ill. 2000) (finding lack of opposition when 99.9% of the class “neither opted out nor filed objections to the proposed settlements.”), *aff’d sub nom. In re Mexico Money Transfer Litig.*, 267 F.3d 743 (7th Cir. 2001).⁵

5. The Presence of Collusion in Reaching a Settlement

The Parties negotiated the Settlement at arm’s-length over months. Ex. C, Salas Decl., ¶ 16. Counsel for the Parties are experienced in class action litigation. *Id.*, ¶ 3. There is no collusion. *Id.*

6. Reaction of Settlement Class Members

The reaction of Settlement Class Members supports approval of the Settlement. As noted above, there are no objections and no exclusions. This demonstrates that Settlement Class Members overwhelmingly support the Settlement.

7. Opinion of Competent Counsel

Settlement Class Counsel believes the Settlement is fair, reasonable, and adequate. Ex. A, Settlement Agreement, § III.29; Ex. C, Salas Decl., ¶ 19. The opinion of counsel further supports final approval.

⁵ Because of the similarity between federal and Illinois class action law, federal decisions are persuasive. *See Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 125 (2005) (citations omitted).

8. Stage of Proceedings

The Action was resolved at an early stage, which supports final approval of the Settlement. Given the other indicators supporting final approval, this early Settlement is better than a late one because it provides actual relief to Settlement Class Members now. In addition, given that the Parties primarily disagree over legal issues, not factual ones, advancing through the discovery process would have been unlikely to increase the value of Settlement Class Members' claims. *See A T & T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 350 (N.D. Ill. 2010) (“the focus of this litigation appears to be more on legal than factual issues, and there is no indication that formal discovery would have assisted the parties in devising the Proposed Settlement Agreement.”).

VI. Conclusion

Because the Settlement makes significant monetary relief available to Settlement Class Members who might have recovered nothing without the Settlement, the Court should grant final approval and enter the proposed Final Approval Order, attached hereto as Exhibit D.

Dated: November 7, 2024

Respectfully submitted,

/s/ Maureen A. Salas
One of Plaintiff's Attorneys

Douglas M. Werman- IL. Bar # 6204740 dwerman@flsalaw.com Maureen A. Salas- IL. Bar #- 6289000 msalas@flsalaw.com Werman Salas P.C. 77 W. Washington St., Suite 1402 Chicago, IL 60602 Ph: (312) 419-1008	Jordan Richards – IL Bar #6328923 jordan@jordanrichardspllc.com Jordan Richards PLLC 1800 SE 10th Ave. Suite 205 Fort Lauderdale, Florida 33316 Ph: (954) 871-0050
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