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

PRESTON KYLES, individually and on behalf of all others similarly situated, *Plaintiff*, v. PAPA JOHN'S INTERNATIONAL, INC., *Defendant*.	Case No. 1:20-cv-07146 Judge: Hon. John Robert Blakey

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

Thomas R. Kayes
LOEVY + LOEVY
311 N. Aberdeen St.
Chicago, IL 60607
T: 312.243.5900
kayes@loevy.com

J. Dominick Larry
NICK LARRY LAW LLC
1720 W. Division St.
Chicago, IL 60622
773.694.4669
nick@nicklarry.law

Proposed Class Counsel

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND RULES

TREATISES

OTHER AUTHORITIES

1. INTRODUCTION

After five years of litigation, an unsuccessful settlement conference with Magistrate Judge Appenteng, and a mediation with Hon. James R. Epstein (ret.) of JAMS, Plaintiff Preston Kyles and Defendant Papa John's International, Inc. ("Papa John's") agreed to a mediator's proposal to resolve this case in its entirety. To resolve the Settlement Class's[1] claims that Papa John's violated the Biometric Information Privacy Act, 740 ILCS 14/1–99 ("BIPA"), Papa John's will establish a $2.25 million non-reversionary settlement fund, from which payments to Settlement Class Members, notice and administration costs, attorneys' fees and expenses, and any service award to the Plaintiff will be paid. The Settlement compares favorably to other BIPA settlements involving biometric-technology vendors (as Papa John's effectively is here), and offers a meaningful recovery given the risks posed by Papa John's defenses. Accordingly, Plaintiff respectfully requests that the Court certify the proposed Settlement Class for settlement purposes only, appoint him as Class Representative, appoint his attorneys as Class Counsel, preliminarily approve the Settlement and the notice plan, order the issuance of notice, and set a final approval hearing date.

2. BACKGROUND

2.1. The Biometric Information Privacy Act

Recognizing the "very serious need" to protect Illinoisans' biometrics, the Illinois legislature enacted BIPA in 2008. 740 ILCS 14/5. BIPA makes it unlawful for any private entity to "collect, capture, purchase, receive through trade, or otherwise obtain" a person's biometric identifier or information, unless it first informs them of the collection, its purpose, and the duration

[1] Unless otherwise indicated, all capitalized terms have the same meanings as set forth the in Parties' Settlement Agreement, Larry Decl. Ex. 1. All references to the "Larry Decl." refer to the Declaration of J. Dominick Larry, and references to the "Kayes Decl." refer to the Declaration of Thomas R. Kayes, both filed contemporaneously herewith.

of storage, and then obtains written consent to the same. 740 ILCS 14/15(b). BIPA also requires maintenance of and compliance with a written policy for destruction of biometrics. § 15(a).

2.2. Litigation, negotiation, and settlement

Plaintiff worked for Papa John's franchisee Hoosier Papa, LLC in Ottawa, Illinois in 2017 and 2018. ECF No. 145, ¶ 3. As a franchisee, Hoosier Papa used Papa John's proprietary FOCUS point-of-sale system. ECF No. 162 at 4–5. Hoosier Papa required Plaintiff to use the FOCUS system's integrated finger-scan function to clock in and out of shifts, and to clock deliveries in and out. ECF No. 142 at 7. On December 3, 2020, Plaintiff filed suit against Hoosier Papa and Papa John's, alleging that both entities had obtained and possessed his biometric data without the notices and consent required by BIPA Sections 15(a) and (b). ECF No. 1.

Papa John's moved to dismiss, ECF No. 12, and to stay pending resolution of several appeals, ECF No. 14. Plaintiff amended as of right. ECF No. 17. The Court held that the amended complaint mooted the motion to dismiss, but it granted the motion to stay. ECF No. 22. The stay lifted, and on October 15, 2021, Papa John's again moved to dismiss. ECF No. 26. The Court denied the motion to dismiss on March 30, 2023, ECF No. 60, and the parties renewed discovery.

Discovery took approximately fourteen months. Larry Decl. ¶ 16. Combined, the parties served and responded to hundreds of requests, produced thousands of pages of documents, took eight depositions, and briefed several discovery disputes. *Id.* ¶¶ 17–20; ECF Nos. 64–66, 80–96. Shortly after the close of discovery, Plaintiff moved for class certification and Papa John's moved for summary judgment. ECF Nos. 120, 129. Meanwhile, during discovery, the parties had exchanged settlement proposals on the Court's order. *See* ECF No. 107. The parties were referred to Magistrate Judge Appenteng for a settlement conference, which took place on October 30, 2024. ECF No. 140. While the settlement conference was unsuccessful, the parties continued to discuss

settlement as they completed renewed briefing on summary judgment and class certification. Larry Decl. ¶¶ 29–30; ECF Nos. 141–191. With briefing completed on those motions, the parties renewed their settlement negotiations and scheduled a mediation with the Honorable James R. Epstein (ret.) of JAMS Chicago. Larry Decl. ¶ 30. The mediation took place on August 18, 2025, and was attended by Plaintiff, his counsel, and counsel and a representative from Papa John's. Larry Decl. ¶ 31. The session ended with a mediator's proposal, which the parties agreed to four days later. *Id.* ¶ 32. Since then, parties have negotiated the full terms of the Settlement Agreement and developed the notice plan with the Settlement Administrator. Larry Decl. ¶ 33.

3. TERMS OF THE SETTLEMENT

3.1. Class definition

The Settlement proposes a single Settlement Class consisting of all individuals who used the FOCUS system's finger scanner while working at a franchisee-owned Papa John's location in Illinois, at any time from December 3, 2015 to the date of preliminary approval. The Settlement Class excludes individuals who previously released PJI from liability under BIPA for such use, including pursuant to a settlement agreement and release. Agreement, ¶ 1.36.

3.2. Settlement payments

The Settlement would create $2,250,000 settlement fund. Agreement, ¶ 2.1. From the fund, costs of notice and administration (estimated to be $50,168), litigation expenses (no more than $13,890.42), attorneys' fees (no more than one third of the fund, net of administration costs), and Plaintiff's service award (no more than $10,000) will be paid. Agreement, ¶¶ 2.4, 4.1, 4.2. The remaining amount in the Settlement Fund will be distributed *pro rata* to Class Members who submit approved claims. Agreement, ¶¶ 3.1.3, 3.1.4. The Class contains an estimated 10,975 members. Larry Decl. ¶ 23. Class Members can choose to receive payments by check or digital

payment, including ACH, Zelle, Venmo, PayPal, or digital Mastercard). Agreement ¶ 3.1.3. Any unclaimed funds will be re-distributed *pro rata* to those claiming class members who timely cashed their settlement checks or received digital payments, unless the remaining funds are insufficient to cover the cost of distribution. *Id.* ¶¶ 3.1.6. Any funds remaining unclaimed after redistribution will be deposited with the Unclaimed Property Division of the Illinois Treasurer's Office. *Id.* ¶ 3.1.7.

3.3. Release of liability

Upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, shall, either directly, indirectly, representatively, or in any capacity, be permanently barred and enjoined from filing, commencing, prosecuting, continuing, pursuing, intervening in, or participating (as a class member or otherwise) in any lawsuit, action, or other proceeding in any jurisdiction (other than participation in the Settlement as provided herein) against any Released Party based on the Released Claims. Agreement ¶ 11.3.

3.4. Payment of notice and administration costs

The Settlement Fund will be used to pay the costs of sending the Notice and any other notice the Court requires, as well as all costs of administration. Agreement ¶ 2.4.

3.5. Payment of attorneys' fees, costs, and service award

Plaintiff may seek a service award of not more than $10,000 as compensation for his efforts and achievements on behalf of the Settlement Class. *Id.* ¶ 4.2. Further, Class Counsel may seek attorneys' reimbursement of its expenses up to $13,890.42, and attorneys' fees in an amount not to exceed one third of the net settlement fund. Settlement Agreement, ¶ 4.1. Papa John's may oppose those requests. *Id.* ¶¶ 4.1, 4.2.

4. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

To certify the class, the Court must first find that it "will likely be able to certify the class

for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B)(ii). A class must be "defined clearly and based on objective criteria," *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 659 (7th Cir. 2015), and must satisfy Rule 23(a)'s numerosity, commonality, typicality, and adequacy-of-representation requirements. Fed. R. Civ. P. 23(a). Additionally, because the Settlement Class's claims seek damages, Plaintiff must also show that (i) common questions of law or fact predominate over individual issues and (ii) a class action is the superior device to resolve the claims. Fed. R. Civ. P. 23(b)(3). As explained below, the Settlement Class should be certified.

4.1. The Settlement Class is ascertainable.

To start, the proposed Class is "ascertainable," meaning that it is "defined clearly and based on objective criteria." *Mullins*, 795 F.3d at 659. For every person worldwide, they either used the FOCUS system's finger scanner, or they did not; if they did, they either did so while working for a Papa John's franchisee in Illinois from December 3, 2015 to the date of preliminary approval, or they did not. Agreement ¶ 1.36. Accordingly, the proposed Class definition is clear and objective.

4.2. The Settlement Class is sufficiently numerous.

A class action must be "so numerous as to render joinder impractical." Fed. R. Civ. P. 23(a)(1). Here, the Settlement Class is approximately 10,975 members, Larry Decl. ¶ 23, which easily satisfies the numerosity requirement. *Puffer v. Allstate Ins. Co.*, 255 F.R.D. 450, 458 (N.D. Ill. 2009) (1,700-person class "easily meets the numerosity requirement of Rule 23(a)(1).").

4.3. Common issues of law and fact predominate.

Next, Plaintiff must establish that "questions of law or fact common to the class," Fed. R. Civ. P. 23(a)(2), "predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). Common questions are those "capable of class-wide resolution" such "that determining the truth or falsity of the common contention will resolve an issue that is central to the validity of

each claim." *Bell v. PNC Bank, Nat'l Ass'n*, 800 F.3d 360, 374 (7th Cir. 2015). "Where the same conduct or practice gives rise to the same kind of claims from all class members, there is a common question." *Suchanek v. Sturm Foods, Inc.*, 764 F.3d 750, 756 (7th Cir. 2014).

Here, the predominating common issues are whether: (1) Papa John's is a private entity; (2) the finger-scan data utilized by the FOCUS system is a "biometric identifier" or "biometric information," as defined by 740 ILCS 14/10; (3) Papa John's possessed the finger-scan data; (4) Papa John's captured, collected, or otherwise obtained the finger-scan data; (5) Papa John's provided and complied with the notice policy required by BIPA; (6) Papa John's obtained BIPA-compliant informed consent from the Settlement Class members; and (7) if yes to all of the foregoing, whether Papa John's conduct was intentional or reckless, or merely negligent. *See* 740 ILCS 14/10–20. Because each question can be answered at once for the Settlement Class members, common issues predominate. *Suchanek*, 764 F.3d at 756.

4.4. Plaintiff is a typical class representative.

Next, Plaintiff must show that his "the claims … are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). A plaintiff's claims are typical if they "arise 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 was subject to the same conduct by Papa John's as every other Settlement Class member, meaning his claims will "stand or fall on the same facts as the claims of the putative class members." *Ziemack v. Centel Corp.*, 163 F.R.D. 530, 534 (N.D. Ill. Sept. 25, 1995). Plaintiff is therefore typical under Rule 23(a)(3).

4.5. Plaintiff and his counsel are adequate representatives.

Rule 23(a)'s final prerequisite is that the class representative "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "[A]dequacy of representation is composed of

two parts: 'the adequacy of the named plaintiff's counsel, and the adequacy of representation provided in protecting the different, separate, and distinct interest' of the class members." *Retired Chi. Police Ass'n v. City of Chi.*, 7 F.3d 584, 598 (7th Cir. 1993) (quoting *Sec'y of Labor v. Fitzsimmons*, 805 F.2d 682, 697 (7th Cir. 1986) (*en banc*)).

Here, Plaintiff's pursuit of this case further proves his adequacy: he assisted with the pre-suit investigation, responded to multiple sets of discovery requests and supplemented those responses, made two sets of document productions, sat for deposition, attended a settlement conference with Magistrate Judge Appenteng, and attended the mediation with the Honorable James Epstein (ret.). Larry Decl. ¶ 39. Thus, "[P]laintiff has demonstrated that []he is sufficiently interested in the outcome of this case" to zealously advocate for the Class. *See Wilkins v. Just Energy Grp., Inc.*, 308 F.R.D. 170, 184 (N.D. Ill. 2015).

Proposed Class Counsel also satisfy Rule 23(a)(4) and Rule 23(g). To start, Plaintiff's counsel have invested hundreds-of-thousands of dollars in time and expenses litigating this case. *See* Larry Decl. ¶ 37. Plaintiff's counsel also have substantial experience in BIPA and other privacy cases, including having been appointed class counsel on contested certification motions in BIPA cases within this district, and handling the only BIPA trial to date, among other accomplishments. *See* Larry Decl. ¶¶ 3–15; Kayes Decl. ¶¶ 3–8. Thus, both Plaintiff and his counsel have adequately represented the proposed Settlement Class and will continue to do so.

4.6. Class treatment is a superior method for resolving the controversy.

Finally, Plaintiff must establish that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Each of the rule's four factors supports certification.

The first two factors—"the class members' interests in individually controlling the prosecution or defense of separate actions," Fed. R. Civ. P. 23(b)(3)(A), and the extent and nature of other proceedings, Fed. R. Civ. P. 23(b)(3)(B)—weigh in favor of certification. Other than Plaintiff, only two individuals filed individual BIPA claims against Papa John's (in the same proceeding), and both of those claims were voluntarily dismissed. *See Rowe v. Papa John's International, Inc.*, No. 1:23-cv-02082 (N.D. Ill.) "The presence of" only one "other suit[] does not undercut" superiority, "as the filing of but a few cases indicates that a minute percentage of the class has an interest in individual litigation." Newberg, § 4:70; *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 534 (3d Cir. 2024) (affirming certification where the "relatively small number of individual lawsuits pending" against the defendant "indicated to the District Court that there was a lack of interest in individual prosecution of claims.").

The third factor—"the desirability or undesirability of concentrating the litigation of the claims in the particular forum," Fed. R. Civ. P. 23(b)(3)(C)—likewise supports certification. Resolving the claims in a single proceeding will "save[] the resources of both the court and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion under Rule 23." *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 155 (1982).[2]

Likewise, the fourth factor—"the likely difficulties in managing a class action," Fed. R. Civ. P. 23(b)(3)(D)—also favors certification, "because this class is being certified for settlement purposes only." *In re AT&T Mobility Wireless Data Services Sales Litig.*, 270 F.R.D. 330, 345 (N.D. Ill. 2010) (citing *Smith v. Sprint Commc'ns Co., LP*, 387 F.3d 612, 614 (7th Cir. 2004)). Accordingly, Rule 23(b)(3)'s superiority requirement is satisfied.

---

[2] Those class proceedings should take place in this forum, as this case has been pending in this Court since December 2020, the Settlement Class is limited to individuals harmed in Illinois, BIPA is an Illinois statute, and there is no known overlapping litigation in any other forum.

For the reasons set forth above, certification of the proposed Settlement Class for purposes of settlement only is appropriate.

5. THE SETTLEMENT WARRANTS PRELIMINARY APPROVAL

When considering whether a settlement is "within the range of possible approval" such that there is "reason to notify the class members of the proposed settlement and to proceed with a fairness hearing," *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982), Rule 23(e)(2) directs courts to consider whether: (1) the class representative and counsel have adequately represented the class; (2) the settlement was negotiated at arm's length; (3) the settlement treats class members equitably relative to each other; and (4) the relief provided is adequate. Fed. R. Civ. P. 23(e)(2). Here, the settlement satisfies these factors and warrants preliminary approval.

5.1. Plaintiff and Proposed Class Counsel have adequately represented the Class.

Rule 23(e)(2)(A)'s adequacy analysis focuses "on the actual performance of counsel acting on behalf of the class," and considers (1) the discovery completed and (2) the "actual outcomes" of similar cases. Fed. R. Civ. P. 23(e), Advisory Committee's Note to 2018 Amendment.

Here, as noted above, Plaintiff has throughout the case acted to advance the Settlement Class's interest. *See* Section 4.5, *supra*. There would be no settlement without those efforts. *Id.* Likewise, Class Counsel's performance in this case demonstrates their adequacy. First, proposed Class Counsel conducted more than enough discovery to "evaluate the merits of the case" and engage in informed negotiations. *See Am. Int'l Grp., Inc. v. ACE INA Holdings, Inc.*, No. 07-cv-2898, 2011 WL 3290302, at *8 (N.D. Ill. July 26, 2011) (noting that the standard "is not whether it is conceivable that more discovery could possibly be conducted."). Fact and expert discovery, and class-certification and summary-judgment briefing, were all completed before settlement. *See* ECF Nos. 141–191. Class Counsel's work included serving and reviewing responses to hundreds

of discovery requests; reviewing thousands of pages of documents and deposition testimony; and briefing numerous dispositive issues, including Papa John's motions to dismiss, Plaintiff's motion for class certification, and Papa John's summary-judgment motion. Larry Decl. ¶¶ 16–22; ECF Nos. 141–191. That effort has crystallized the issues sufficiently for Plaintiff and his counsel to weigh the risks and rewards of settlement and further litigation. *Id.* ¶ 38.

As a result of that work, Plaintiff and proposed Class Counsel were able to maximize the recovery given the risks of loss. The $205 gross recovery per class member compares favorably to other BIPA settlements with technology vendors, which is essentially Papa John's role here with respect to the FOCUS system. *See, e.g.*, *Heard v. Omnicell, Inc.*, No. 2019-CH-06817 (Cir. Ct. Cook Cnty., Ill.) ($114 per class member); *Neals v. Partech Inc.*, No. 19-cv-5660 (N.D. Ill.) ($222 per class member); *Tapia-Rendon v. WorkEasy Software, LLC*, No. 21-cv-3400 (N.D. Ill.) ($77 per class member); *Figueroa v. Kronos Inc.*, No. 19-cv-1306 (N.D. Ill.) ($89 per class member); *Kusinski v. ADP LLC*, No. 17-CH-12364 (Cir. Ct. Cook Cnty., Ill.) ($78 per class member).

Thus, the Class stands to reap valuable benefits thanks to Plaintiff's and proposed Class Counsel's hard work pursuing representing their interests. This factor is satisfied.

5.2. The Settlement was the result of arm's-length negotiations.

The second Rule 23(e)(2) factor asks whether the parties negotiated the settlement at arm's length. Fed. R. Civ. P. 23(e)(2)(B). Here, the negotiations that led to the settlement started in April 2024, in response to an order from the Court for the exchange of positions. *See* ECF No. 96; Larry Decl. ¶ 25; *see Wright v. Nationstar Mortg. LLC*, No. 14-cv-10457, 2016 WL 4505169, at *11 (N.D. Ill. Aug. 29, 2016) (finding no collusion or unfairness where the parties "engaged in discovery" prior to reaching settlement). The parties then had a settlement conference with Magistrate Judge Appenteng in October 2024, which did not result in resolution. ECF No. 140. Only after completing briefing on class certification and summary judgment, *see* ECF Nos. 141–

191, did the parties schedule the mediation with Judge Epstein. Larry Decl. ¶ 30. Even then, the parties only reached an agreement days after the mediation, when they accepted Judge Epstein's mediator's proposal. *Id.* ¶ 32. Since then, the Parties have executed the term sheet and negotiated the details of the settlement agreement. Larry Decl. ¶ 33.

The settlement process was, therefore, entirely free from collusion, and the Settlement's terms confirm its absence: "[T]here is no provision for reversion of settlement 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." *Snyder v. Ocwen Loan Servicing, LLC*, No. 14-cv-8461, 2019 WL 2103379, at *4 (N.D. Ill. May 14, 2019).

5.3. The Settlement treats all Class members equitably.

Next, the Court considers whether the proposed settlement "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). Here, the Settlement treats the Settlement Class Members identically with *pro rata* payments to each Class Member who submits a valid claim. *See* Agreement ¶ 3.1.4. *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 855 (1999) (equitable treatment is "assured by straightforward pro rata distribution of the limited fund.").

The provision of a service award to Plaintiff is consistent with that equitable treatment. The $10,000 service award would reflect the work performed for the Settlement Class's benefit, is in line with other BIPA cases, and is particularly justified given Plaintiff's hands-on involvement with the case, which involved responding to discovery, sitting for deposition, and attending the settlement conference and the mediation (both of which required clearing his schedule for the day). *See Dixon v. Washington & Jane Smith Cmty.-Beverly*, No. 17-cv-8033, ECF No. 103 (N.D. Ill. May 31, 2018) ($10,000 service award); *Howe v. Speedway LLC et al.*, No. 19-cv-1374, ECF No. 218 (N.D. Ill. Oct. 22, 2025) ($10,000 service award); *Bedford v. Lifespace Communities, Inc.*, No.

20-cv-4574, ECF No. 32 (N.D. Ill. May 12, 2021) ($10,000 service award). Because Plaintiff's efforts were key to securing the recovery, the proposed service award is equitable, and the Settlement's equitability favors approval.

5.4. The relief secured by the Settlement warrants approval.

The final Rule 23(e)(2) factor examines whether the relief provided for the class is adequate considering (i) the cost, risks, and delay of trial and appeal; (ii) the effectiveness of the proposed method of distributing relief to the class; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreements made in connection with the proposed settlement. Fed. R. Civ. P. 23(e)(2). As set forth below, this factor also supports approval.

5.4.1. The costs, risks, and delay of trial and appeal warrant approval.

To start, the cost, risk, and delay of further litigation favor approval. While proposed Class Counsel believe in their arguments in opposition to Papa John's fully briefed summary-judgment motion, there was a very real risk of the Court finding that Papa John's complied with its BIPA policy, or that it never collected or stored the Settlement Class Members' biometric data. *See* ECF No. 155. The former finding would result in a loss for the Settlement Class on their BIPA Section 15(a) claims, while the latter would defeat their Section 15(b) claims. *See* 740 ILCS 14/15. On top of that, Papa John's would likely argue at trial that it never possessed the Settlement Class Members' biometrics (as needed to sustain their Section 15(a) claims), and that the finger-scan data at issue was not "biometric information" or a "biometric identifier" under BIPA, *see* ECF No. 183 at 10–11. Success on the latter argument would mean a total loss for the Settlement Class.

Even if the Settlement Class prevailed on liability at trial, there is no guarantee that it would recover more than Papa John's has agreed to pay in the Settlement. While Class Counsel believes that BIPA's text provides for liquidated damages of either $1,000 or $5,000 per violation

(depending on state of mind), Class Counsel is obviously aware of the Illinois Supreme Court's statements on the matter, and that other Courts in this District have accordingly concluded that BIPA creates a discretionary-damages regime. *See Rogers v. BNSF Ry. Co.*, 680 F. Supp. 3d 1027, 1041 (N.D. Ill. 2023) (citing *Cothron v. White Castle Sys., Inc.*, 2023 IL 128004 ¶ 42). As a result, Plaintiff and Class Counsel were cognizant of the possibility that the jury could award the Settlement Class less in damages than Papa John's was offering in settlement.

Against these risks, Papa John's payment of $2.25 million—now, rather than after a trial and the exhaustion of any appeals—represents a more-than-adequate result and further supports approval. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 582 (N.D. Ill. 2011).

5.4.2. The effectiveness of the distribution method supports approval.

The Settlement's straightforward distribution process also favors approval. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii). An effective distribution method "get[s] as much of the available damages remedy to class members as possible and in as simple and expedient a manner as possible." 4 Newberg and Rubenstein on Class Actions § 13:53 (6th ed.). Here, the Settlement provides for complete distribution to Settlement Class members who submit valid claims. Claiming Settlement Class Members will receive payments in their chosen form, and those Members who timely accept or cash their payments will automatically receive their *pro rata* share of the leftover funds, before the money is distributed to the Unclaimed Property Division of the Illinois Treasurer's Office. Agreement §3.1.

5.4.3. The proposed fee award supports approval.

Third, the relief provided to the Settlement Class considering "the terms of any proposed award of attorneys' fees, including timing of payment," Fed. R. Civ. P. 23(e)(2)(C)(iii), favors approval. The Settlement contemplates that proposed Class Counsel will seek a fee award not to

exceed one-third of the net settlement fund, which Papa John's may oppose. Agreement ¶ 4.1. The Settlement's upper bound of one-third of the net fund is well within the range of reasonable BIPA settlements. *See, e.g.*, *In re Clearview AI, Inc., Consumer Privacy Litig.*, No. 21-cv-135, 2025 WL 1371330 (N.D. Ill. May 12, 2025) (awarding 39.1% of gross settlement fund); *Hirmer v. ESO Sols., Inc.*, No. 22-cv-1018, 2025 WL 2048339, at *3 (N.D. Ill. Jan. 14, 2025) (awarding 36% of net settlement fund); *Roberson v. Maestro Consulting Services, LLC*, No. 20-cv-895, 2024 WL 4785358, at *3 (S.D. Ill. Nov. 14, 2024) (awarding 40% of the gross settlement fund). Accordingly, the Settlement's allowance for Class Counsel to seek, and Papa John's to oppose, an award of one-third of the net fund in attorneys' fees, Agreement ¶ 4.1, is more than appropriate.

5.4.4. There are no agreements requiring disclosure under Rule 23(e)(3).

Rule 23(e)(3) requires disclosure of "any agreement made in connection with the propos[ed]" settlement. Fed. R. Civ. P. 23(e)(3). Here, there are no such agreements; the entirety of the Parties' agreement is reflected in the Settlement presented to the Court. Larry Decl. ¶ 35. As such, this factor favors approval as well.

6. THE NOTICE PLAN SHOULD BE APPROVED

Due process requires that, for any "class proposed to be certified for purposes of settlement under Rule 23(b)(3)[,] the court must direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Notice must be directed "in a reasonable manner to call class members who would be bound by a [proposed settlement, voluntary dismissal, or compromise.]" Fed. R. Civ. P. 23(e)(1).

Here, the proposed Notice satisfies Rule 23 and due process by providing for direct-mail notice to all Settlement Class Members for whom Papa John's is able to obtain address information,

to be supplemented with a robust publication-notice program, establishment of a settlement website, and maintenance of a dedicated toll-free telephone number. Settlement Agreement, § 7. The proposed short-form and long-form notices are attached as Exhibits B and C to the Settlement, and contain plain-language details of the information required by Rule 23(c)(2)(B). The notices will be disseminated in both English and Spanish. Agreement ¶ 7.4.7. Because the Notice comports with Rule 23 and the requirements of due process, it warrants approval.

7. CONCLUSION

Accordingly, Plaintiff respectfully requests that this Court: (1) certify the proposed Settlement Class for settlement purposes only; (2) appoint Plaintiff as Settlement Class Representative for settlement purposes only; (3) appoint J. Dominick Larry of Nick Larry Law LLC and Thomas R. Kayes of Loevy + Loevy as Settlement Class Counsel; (4) preliminarily approve the proposed Settlement; (5) approve the form and methods of the proposed Notice; (6) order the issuance of notice; and (7) grant such other relief as the Court deems reasonable and just.

Dated: December 12, 2025

Respectfully submitted,

PRESTON KYLES, individually and on behalf of all others similarly situated,

s/ J. Dominick Larry
One of Plaintiff's Attorneys

Thomas R. Kayes
LOEVY + LOEVY
311 N. Aberdeen St.
Chicago, IL 60607
T: 312.243.5900
kayes@loevy.com

J. Dominick Larry
NICK LARRY LAW LLC
1720 W. Division St.
Chicago, IL 60622
773.694.4669
nick@nicklarry.law

Proposed Settlement Class Counsel