

**IN THE CIRCUIT COURT OF WINNEBAGO COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

HEATHER HUGHES- RICHMOND, individually and on behalf of all others similarly situated,	:	NO.: 2023-LA-370
	:	
	:	CLASS ACTION
	:	
Plaintiff,	:	
v.	:	
	:	
WALDOM ELECTRONICS CORPORATION,	:	
	:	
Defendant.	:	

**MEMORANDUM IN SUPPORT OF PLAINTIFF’S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

In this putative class action, Plaintiff Heather Hughes-Richmond (“Plaintiff”) alleges that Defendant Waldom Electronics Corporation (“Defendant”) (Plaintiff and Defendant are collectively referred to as the “Parties”) violated Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/15(a) and 14/15(b) by requiring her and its other Illinois workers to “clock” in and out using their fingerprints. Defendant denies Plaintiff’s allegations. After extensive negotiations, the Parties have reached a proposed settlement of \$158,500, memorialized in their Settlement Agreement and Release (the “Settlement” or “Agreement”), from which each of the approximately 111 Settlement Class Members will each receive a *pro rata* payment, less attorney’s fees, costs, and administrative costs approved by the Court. If approved, the Settlement will bring certainty, closure, and significant and valuable relief for individuals to what otherwise would likely be contentious and costly litigation regarding Defendant’s alleged unlawful collection, use and storage of individuals’ biometric identifiers and/or biometric information.

Plaintiff now seeks preliminary approval of the Settlement, certification of a settlement class, appointment of class counsel, and approval of the proposed form and method of class notice. This memorandum describes in detail the reasons why preliminary approval is in the best interest of the class and is consistent with 735 ILCS 5/2-801. As discussed in more detail below, the most important consideration in evaluating the fairness of a proposed class action settlement is the strength of Plaintiff's case on the merits balanced against the relief obtained in the settlement. *See Steinberg v. Software Associates, Inc.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999); *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990); *see also Am. Intn'l Grp., Inc., et al. v. ACE INA Holdings, et al.*, 2012 WL 651727 (N.D. Ill. Feb. 28, 2012).¹

While Plaintiff believes she could secure class certification and prevail on the merits at trial, success is not guaranteed, particularly given the uncertainty in the law surrounding BIPA, and Defendant is prepared to vigorously defend this case and oppose certification of a litigated class. The terms of the Settlement, which include a settlement amount of \$158,500, provides Settlement Class Members with meaningful monetary compensation, meet and exceed the applicable standards of fairness. Accordingly, the Court should preliminarily approve the Settlement so that Settlement Class Members can receive notice of their rights and the claims administration process may begin. A copy of the parties' Settlement Agreement and Release is attached as **Exhibit A**.

FACTUAL AND PROCEDURAL BACKGROUND

The material allegations of Plaintiff's Complaint are that Defendant possessed, collected, stored, and used – without first providing notice, obtaining informed written consent, or publishing

¹ Section 2-801 is modeled after Rule 23 of the Federal Rules of Civil Procedure and, therefore, “federal decisions interpreting Rule 23 are persuasive authority with regard to questions of class certification in Illinois.” *Avery v. State Farm Mut. Ins. Co.*, 216 Ill. 2d 100, 125 (2005).

data retention policies – the fingerprint scans and associated personally identifying information of hundreds of its employees (and former employees), who were required to “clock in” with their fingerprint scans, in violation of the BIPA, 740 ILCS 14/1 *et seq.*

From the outset of the case, the Parties engaged in settlement discussions, including informally exchanging relevant information surrounding the alleged claims. Over the next several months, counsel for the Parties negotiated this Settlement, reached agreement on all material terms of a class action settlement, and executed a term sheet. Thereafter, the Parties drafted and executed the Settlement Agreement and related documents which are submitted herewith.

SETTLEMENT TERMS

A. Class Definition

The “Settlement Class” is defined as:

All individuals who worked for or with Defendant in Illinois within the five-year period preceding the date of the filing of the Action up until March 28, 2024, whose biometric identifiers or information (for example, fingerprints, finger scans, or hand scans) were allegedly collected, captured, obtained, used, or disclosed by Defendant and who did not sign a consent form in violation of BIPA as alleged in the Action.

Excluded from the Settlement Class are: (1) Defendant’s officers and directors, (2) Class counsel, (3) any judge presiding over this Action and members of their families, (3) persons who properly execute and file a timely request for exclusion from the class, (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released, and (5) the legal representatives, successors or assigns of any such excluded persons.

According to Defendant’s records, there are approximately 111 individuals in the Settlement Class.

B. Monetary and Prospective Relief

Defendant will agree to pay \$158,500 into a Settlement Fund, from which each Settlement Class Member will be paid on a pro rata basis, not to exceed \$1,427.00 after payment of Court approved fees, costs, and notice/administrative costs (which is estimated to result in a total net amount of \$700-800 for each Settlement Class Member). Each Class Member who does not timely and otherwise validly exclude himself or herself shall be entitled to a payment.² Additionally, Defendant has agreed to continue to employ policies and procedures to ensure compliance with BIPA's consent and notice requirements.

C. Release

In exchange for the relief described above, Defendant and each of its related and affiliated entities as well as all "Released Parties," as defined at Agreement, will receive a full release of any and all claims related to the alleged capture, collection, storage, possession, transmission, conversion, disclosure, redisclosure, dissemination, transmittal, conversion, and/or other use of biometric identifiers and/or biometric information, including, but not limited to, any related statutory claims asserted in this case.

D. Notice And Administrative Expenses

The cost of sending the notice set forth in the Agreement and any other notice as required by the Court, as well as all costs of administration of the Settlement will be paid from the \$158,500 Settlement Fund.

² All Checks must be cashed within ninety (90) days of the issuance date. For any uncashed or undeliverable checks, the Settlement Administrator shall make one additional attempt to identify an address for such individual and send another settlement check.

E. Incentive Award

In recognition of her efforts on behalf of the Settlement Class, Defendant has agreed that Plaintiff may receive, subject to Court approval, an incentive award of \$3,000 from the Settlement Fund, as appropriate compensation for her time and effort serving as Class Representative and as a party to the Action, subject to Plaintiff's execution of a general release of claims. Defendant will not oppose any request limited to this amount.

F. Attorneys' Fees, Costs, And Expenses

Defendant has agreed that an award of reasonable attorneys' fees and payment of costs and expenses to Class Counsel in this Action will be paid from the Settlement Fund, in an amount to be approved by the Court. Class Counsel has agreed to petition the Court for attorneys' fees, costs, and expenses of no more than 38% of the Settlement Fund.

ARGUMENT

I. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE

Courts review proposed class action settlements using a well-established two-step process. CONTE & NEWBERG, NEWBERG ON CLASS ACTIONS § 11.25, at 38-39 (4th ed. 2002) ("NEWBERG"); *see also, e.g., Kaufman v. Am. Express Travel Related Servs. Co.*, 264 F.R.D. 438, 447 (N.D. Ill. 2009); *GMAC Mortgage Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 492 (1st Dist. 1992); *Shawn Fauley, Sabon, Inc. v. Metro Life Ins. Co.*, 2016 IL App (2d) 150236, ¶¶ 4, 7, 15. The first step is a preliminary pre-notification hearing to determine whether the proposed settlement is "within the range of possible approval." NEWBERG § 11.25, at 38-39; *Armstrong v. Board of Sch. Dirs. Of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds*; *Sabon*, 2016 IL App. (2d) 150236, ¶ 4. The preliminary approval hearing is not a fairness hearing, but rather a hearing to ascertain whether there is any reason to notify the class members

of the proposed settlement based on the written submissions and informal presentation from the settling parties. MANUAL FOR COMPLEX LITIGATION § 21.632 (4th ed. 2002). If the Court finds the settlement proposal “within the range of possible approval,” the case proceeds to the second step in the review process: the final approval hearing. NEWBERG § 11.25, at 38-39.

Because the essence of settlement is compromise, courts should not reject a settlement solely because it does not provide complete victory, given that parties to a settlement “benefit by immediately resolving the litigation and receiving some measure of vindication for [their] position[s] while foregoing the opportunity to achieve an unmitigated victory.” *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 347 (N.D. Ill. 2010) (internal quotations and citation omitted); *GMAC*, 236 Ill. App. 3d at 493 (“The court in approving [a class action settlement] should not judge the legal and factual questions by the same criteria applied in a trial on the merits”). There is a strong judicial and public policy favoring the settlement of class action litigation, and such a settlement should be approved by the Court after inquiry into whether the settlement is “fair, reasonable, and adequate.” *Quick v. Shell Oil Co.*, 404 Ill. App. 3d 277, 282 (3d Dist. 2010); *Isby v. Bayh*, 75 F.3d 1191, 1198 (7th Cir. 1996). “Although this standard and the factors used to measure it are ultimately questions for the fairness hearing that comes after a court finds that a proposed settlement is within approval range, a more summary version of the same inquiry takes place at the preliminary phase.” *Kessler v. Am. Resorts Int’l.*, 2007 WL 4105204, at *5 (N.D. Ill. Nov. 14, 2007) (citing *Armstrong*, 616 F.2d at 314).

The Settlement represents a fair and reasonable resolution of this dispute and is worthy of Notice to and consideration by the individuals in the Settlement Class. It will provide significant financial relief to Settlement Class Members as compensation for their Released Claims and will relieve the Parties of the burden, uncertainty, and risk of continued litigation.

The factors ultimately to be considered by a court in determining the fairness, reasonableness, and adequacy of a settlement are: “(1) the strength of the case for the plaintiffs on the merits, balanced against the money or other relief offered in the settlement; (2) the defendant’s ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed.” *City of Chicago*, 206 Ill. App. 3d at 972; *see also Armstrong*, 616 F.2d at 314. Of these considerations, the first is the most important. *Steinberg*, 306 Ill. App. 3d at 170; *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006).

A preliminary application of these factors to this case demonstrates that the proposed settlement is fair, reasonable, and adequate.

A. The Settlement Agreement Provides Substantial Relief To The Settlement Class, Particularly In Light Of The Uncertainty Of Prevailing On The Merits

As to the first factor, the Settlement in this case provides substantial material benefits to the Settlement Class: If this Court approves the requested counsel fees, administrative costs, and incentive award, each Settlement Class Member will receive an estimated cash payment of approximately \$700-\$800.

While Plaintiff believes she would likely prevail on her claims, she is also aware that Defendant denies the material allegations of the Complaint and intends to pursue several legal and factual defenses, including but not limited to whether Defendant actually possessed biometric information or biometric identifiers and or whether Plaintiff and the Class are entitled to damages for their BIPA claims. *See Cothron v. White Castle System, Inc.*, 2023 IL 128004 ¶ 42 (noting damages under BIPA are “discretionary rather than mandatory”). If successful, these defenses

would result in a substantial portion of, or all of, the proposed Settlement Class receiving no payment or relief whatsoever. Thus, the unsettled nature of several potentially dispositive threshold issues in this case poses a significant risk to Plaintiff’s claims and will add to the length and costs of continued litigation. Taking these realities into account and recognizing the risks involved in any litigation, the relief available to each Settlement Class Member in the Settlement represents a truly excellent result for the Settlement Class.

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

In addition, the fairness, reasonableness, and adequacy of the instant Settlement are supported by previously approved settlements, which provide less value than that achieved for the class here. *See, e.g., See, e.g., Marquez v. Bobak Sausage Co.*, No. 20-CH-04259 (Cir. Ct. Cook Cnty., Ill. 2023) (finally-approved BIPA settlement created fund in the gross amount of \$797.98 per class member); *Cruz v. Jame Roll Form Products*, No. 21-CH-04132 (Cir. Ct. Cook Cnty., Ill. 2023) (finally-approved BIPA settlement created fund in the gross amount of \$525 per class member gross). This result is exceptional in comparison to other BIPA or data privacy cases—and is certainly fair, reasonable, and adequate and warrants Court approval.

B. Defendant's Ability To Pay

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

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

In absence of settlement, it is certain that the expense, duration, and complexity of the protracted litigation that would result would be substantial. Not only would the Parties have to undergo significant motion practice before any trial on the merits is even contemplated, but evidence and witnesses from throughout the State of Illinois and beyond would have to be assembled for any trial. Further, given the complexity of the issues and the amount in controversy, the defeated party would likely appeal both any decision on the merits as well as on class certification. As such, the immediate and considerable relief provided to the Settlement Class under the Settlement Agreement weighs heavily in favor of its approval compared to the inherent risk and delay of a long and drawn-out litigation, trial, and appeal. Protracted and expensive litigation is not in the interest of any of the Parties or Settlement Class Members.

D. There Has Been No Opposition To The Settlement

While this factor is best examined after notice has been provided to the class, there is presently no known opposition to the Settlement. Thus, this factor weighs in favor of approval.

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

There is an initial presumption that a proposed settlement is fair and reasonable when it was the result of arm's-length negotiations. NEWBURG § 11.42; *see also Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 21 (finding no collusion where there was "no evidence that the proposed settlement was not the product of 'good faith, arm's-length negotiations'"). Here, the Settlement was reached only after arm's-length negotiations between counsel for the Parties. Hammervold

Decl., attached as **Exhibit B**, ¶ 6. Moreover, negotiations began only after an exchange of information regarding the size and composition of the Settlement Class. *Id.* ¶ 5. Such an involved process underscores the non-collusive nature of the proposed Settlement. Finally, given the fair result for the Settlement Class in terms of the monetary and prospective relief, it is clear that this Settlement was reached as a result of good-faith negotiations rather than any collusion between the Parties. Accordingly, this factor weighs in favor of preliminary approval.

F. The Reaction Of The Settlement Class

Like factor number four, undersigned counsel is aware of no opposition to the Settlement, and due to the strength of this Settlement and the amount of the award that each Settlement Class Member will receive, Plaintiff expects little to no opposition to the Settlement by any Settlement Class Member in the future. Plaintiff approves of the Settlement and believes that it is a fair, reasonable, and adequate settlement in light of the defenses raised by Defendant and the potential risks involved with continued litigation.

G. The Settlement Agreement Has Support Of Experienced Proposed Class Counsel

Proposed Class Counsel believes that the proposed Settlement is in the best interest of the Settlement Class Members because the Settlement Class Members will be provided an immediate payment instead of having to wait for lengthy litigation and any subsequent appeals to run their course. Further, due to the defenses that Defendant has indicated that it would raise should the case proceed through litigation—and the resources that Defendant has committed to defend and litigate this matter—it is possible that the Settlement Class Members would receive no benefit whatsoever in the absence of this Settlement. Given proposed Class Counsel’s extensive experience litigating similar class action cases in federal and state courts across the country, including other BIPA cases, this factor also weighs in favor of granting preliminary approval. *See*

Hammervold Decl. ¶¶ 3, 7-15; Dapeer Decl. ¶¶ 3-12, attached as **Exhibit C**; *see also GMAC*, 236 Ill. App. 3d at 497 (finding that the court should give weight to the fact that class counsel supports the class settlement in light of their relevant experience).

H. The Parties Exchanged Information Sufficient To Assess the Adequacy Of The Settlement

The eighth factor is structured to permit the Court to consider the extent to which the court and counsel were able to evaluate the merits of the case and assess the reasonableness of the settlement. *City of Chicago*, 206 Ill. App. 3d at 972. Here, the Parties exchanged information regarding the facts and size of the class, and did not engage in negotiations until information was exchanged. Hammervold Decl. ¶¶ 5-6.

Accordingly, this factor also weighs in favor of preliminary approval.

II. THE PROPOSED CLASS NOTICE SHOULD BE APPROVED

Under 735 ILCS 5/2-803, the Court may provide class members notice of any proposed settlement so as to protect the interests of the class and the parties. *See Cavoto v. Chicago Nat. League Ball Club, Inc.*, 2006 WL 2291181, at *15 (1st Dist. 2006) (collecting authorities and noting that “section 2-803 makes it clear that the statutory requirement of notice is not mandatory”). Notice must be provided to absent class members to the extent necessary to satisfy requirements of due process. *Id.*, at *15 (citing *Frank v. Teachers Ins. & Annuity Assoc. of America*, 71 Ill. 2d 583, 593 (1978)); *see also* Fed. R. Civ. P. 23(d)(2) (advisory committee note) (“mandatory notice ... is designed to fulfill requirements of due process to which the class action procedure is of course subject”). As explained by the United States Supreme Court, due process requires that the notice be the “best practicable, ‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections’” as well as “‘describe the action and the plaintiffs’ rights

in it.” *Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 36 (citing *Phillips Petroleum Co. v. Shuts*, 472 U.S. 797, 812 (1985)).

The proposed Notice in this case satisfies both the requirements of 735 ILCS 5/2-803 and due process. As set forth in detail above, the Settlement Agreement contemplates a notice plan that provides both email and traditional individual direct mail notice, which is designed to reach as many potential individuals in the Settlement Class as possible. This notice process should be very effective at reaching the Class Members given the relationship between Defendant and the Class Members (current or former workers for whom it possesses contact information), as well as the fact that notice is being provided by both email and mail. The proposed Notice is attached to the Settlement Agreement and should be approved by the Court. The proposed method of notice comports with 735 ILCS 5/2-803 and due process.

III. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES

For settlement purposes only, the Parties have agreed that the Court should make preliminary findings and enter an Order granting provisional certification of the Settlement Class and appointing Plaintiff and his counsel to represent the Settlement Class. “The validity of use of a temporary settlement class is not usually questioned.” NEWBERG §11.22. The MANUAL FOR COMPLEX LITIGATION explains the benefits of settlement classes:

Settlement classes – cases certified as class actions solely for settlement – can provide significant benefits to class members and enable the defendants to achieve final resolution of multiple suits. Settlement classes also permit defendants to settle while preserving the right to contest the propriety and scope of the class allegations if the settlement is not approved. ... An early settlement produces certainty for the plaintiffs and defendants and greatly reduces litigation expenses.

MANUAL FOR COMPLEX LITIGATION § 21.612.

Before granting preliminary approval of a class action settlement, a court should determine that the proposed settlement class is a proper class for settlement purposes. *Id.* § 21.632; *see also Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). A class may be certified under Section 2-801 of the Illinois Code of Civil Procedure if the following “prerequisites” are satisfied: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members; (3) the representative parties will fairly and adequately protect the interest of the class; and (4) the class action is an appropriate method for the fair and efficient adjudication of the controversy. 735 ILCS 5/2-801; *CE Design Ltd. v. C & T Pizza, Inc.*, 2015 IL App (1st) 131465, ¶10. In this case, the Settlement Class, as defined in the Settlement Agreement and at *supra* pg. 3, meets all applicable certification requirements.

A. The Class Is Sufficiently Numerous And Joinder Is Impracticable

Numerosity is met where “the class is so numerous that joinder of all members is impracticable.” 735 ILCS 5/2-801(1). “Although there is no bright-line test for numerosity, a class of forty is generally sufficient.” *Hinman v. M & M Rental Center, Inc.*, 545 F. Supp. 2d 802, 805-06 (N.D. Ill. 2008); *Kulins v. Malco, A Microdot Co., Inc.*, 121 Ill. App. 3d 520, 530 (1st Dist. 1984) (finding that 47 class members was sufficient to satisfy numerosity). Here, the proposed Class encompasses approximately 111 individuals. There is no question numerosity is met.

B. Common Questions Of Law And Fact Predominate

Commonality, the second requirement for class certification, is met where there are “questions of fact or law common to the class” and those questions “predominate over any questions affecting only individual members.” 735 ILCS 5/2-801(2). Such common questions of law or fact exist when the members of the proposed class have been *aggrieved* by the same or

similar misconduct. *See Walczak v. Onyx Acceptance Corp.*, 365 Ill. App. 3d 664, 673-74 (2d Dist. 2006); *Steinberg v. Chicago Med. Sch.*, 69 Ill. 2d 320, 340-42 (1977); *see also Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998). Further, where “the defendant allegedly acted wrongfully in the same basic manner as to an entire class...the common class questions predominate the case.” *Walczak*, 365 Ill. App. 3d at 674 (citing *Clark v. TAP Pharmaceutical Products, Inc.*, 343 Ill. App. 3d 538, 548 (5th Dist. 2003)).

In this case, all members of the proposed Class share a common statutory BIPA claim that raises many common issues regarding the alleged collection, storage, use, and disclosure of their biometric identifiers or information without consent. Proving a BIPA violation would require the resolution of some of the same factual and legal issues, including: (1) whether the information allegedly collected from Settlement Class Members constituted biometric identifiers or biometric information as defined by BIPA; (2) whether such information was collected without the consent required under BIPA; (3) whether Defendant had a BIPA-compliant, publicly available, written policy addressing retention and storage of biometric identifiers and information; and (4) whether such conduct violated BIPA. Predominance is satisfied “when there exists generalized evidence that proves or disproves an element on a simultaneous, classwide basis ... Such proof obviates the need to examine each class member’s individual position.” *Golon v. Ohio Savs. Bank*, 1999 WL 965593, at *4 (N.D. Ill. Oct. 15, 1999). Here, for purposes of settlement and in the context of the Settlement Class, the common questions resulting from Defendant’s alleged conduct predominate over any individual issues that may exist and can be answered on a class-wide basis based on common evidence maintained by Defendant.

Accordingly, this factor is satisfied. *Rogers v. BNSF Railway Co.*, 2022 WL 854348, at *3 (N.D. Ill. Mar. 22, 2022) (“[T]he questions of law and fact underlying the class members’ BIPA claims are essentially identical and will be premised on common proof.”).

C. The Class Representative Will Provide Adequate Representation For Settlement Class Members

The third element of Section 2-801 requires that “[t]he representative parties will fairly and adequately protect the interests of the class.” 735 ILCS 5/2-801(3). The class representative’s interests must be generally aligned with those of the class members, and class counsel must be “qualified, experienced and generally able to conduct the proposed litigation.” *See Miner v. Gillette Co.*, 87 Ill. 2d 7, 14 (1981). “The purpose of the adequate representation requirement is to ensure that all class members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim.” *Walczak*, 365 Ill. App. 3d at 678 (citing *P.J.’s Concrete Pumping Service, Inc. v. Nextel West Corp.*, 345 Ill. App. 3d 992, 1004 (2d Dist. 2004)); *Purcell & Wardrope Chtd. V. Hertz Corp.*, 175 Ill. App. 3d 1069, 1078 (1st Dist. 1988). The adequacy requirement is satisfied where “the interests of those who are parties are the same as those who are not joined” such that the “litigating parties fairly represent [them],” and where the “attorney for the representative party ‘[is] qualified, experienced and generally able to conduct the proposed litigation.’” *CE Design Ltd.*, 2015 IL App (1st) 131465, ¶ 16 (citing *Miner*, 87 Ill. 2d at 56)).

Here, Plaintiff’s interests are entirely representative of and consistent with the interests of the proposed Settlement Class. Plaintiff, like all members of the Settlement Class, allegedly had her biometric information or identifiers collected and used by Defendant in a manner that Plaintiff argues is inconsistent with the legal protections provided by BIPA. Plaintiff’s pursuit of this matter has demonstrated that she has been, and will remain, a zealous advocate for the Settlement Class. Thus, Plaintiff has the same interests as the Settlement Class, and is a suitable representative.

Similarly, proposed Class Counsel has extensive experience in class action lawsuits. *See* Hammervold Decl. ¶¶ 7-14; Dapeer Decl. ¶¶ 5-12. Accordingly, Plaintiff’s counsel will adequately represent the Settlement Class.

D. Certifying The Settlement Class Will Allow For A Fair And Efficient Adjudication Of The Controversy

The final prerequisite to class certification is met where “the class action is an appropriate method for the fair and efficient adjudication of the controversy.” 735 ILCS 5/2-801(4). “In applying this prerequisite, a court considers whether a class action: (1) can best secure the economies of time, effort and expense, and promote uniformity; or (2) accomplish the other ends of equity and justice that class actions seek to obtain.” *Gordon v. Boden*, 224 Ill. App. 3d 195, 203 (1st Dist. 1991). In practice, a “holding that the first three prerequisites of section 2-801 are established makes it evident that the fourth requirement is fulfilled.” *Id.* at 204; *Purcell & Wardrope Chtd.*, 175 Ill. App. 3d at 1079 (the predominance of common issues [may] make a class action ... a fair and efficient method to resolve the dispute”). Thus, the fact that numerosity, commonality and predominance, and adequacy of representation have all been demonstrated in the instant case makes it “evident” the appropriateness requirement is satisfied.

This case is particularly well-suited for class treatment because the claims of Plaintiff and proposed Settlement Class Members involve alleged violations of a state statute for the alleged unauthorized collection, storage, use, and disclosure of Settlement Class Members’ alleged biometric information or identifiers. Moreover, because the action will now settle, the Court need not be concerned with issues of manageability relating to trial. When “confronted with a request for settlement only class certification,” a “court need not inquire whether the case, if tried, would present intractable management problems...for the proposal is that there be no trial.” *Amchem*, 521 U.S. at 620. Nor should the Court “judge the legal and factual questions” regarding

certification of the proposed Settlement Class by the same criteria as a proposed class being adversely certified. *See GMAC*, 236 Ill. App. 3d at 493.

A class action is the superior method of resolving large-scale claims if it will “achieve economies of time, effort, and expense, and promote ... uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.” *Amchem*, 521 U.S. at 615. Accordingly, a class action is the superior method of adjudicating this action and the proposed Settlement Class should be certified.

CONCLUSION

For the reasons described above, Plaintiff respectfully requests that the Court grant this motion and enter the Proposed Order Granting Preliminary Approval of Class Action Settlement Agreement, Certifying Settlement Class, Appointing Class Representative, Appointing Class Counsel, and Approving Notice Plan submitted herewith, which (1) schedules a fairness hearing on the question of whether the proposed class action settlement should be approved as fair, reasonable, and adequate; (2) approves the form and content of the proposed Notice to the Settlement Class; (3) approves the proposed method of requesting exclusion from the Settlement and objecting to the Settlement; (4) directs the emailing and mailing of the Notice Form to the Settlement Class Members; (5) preliminarily approves the Settlement; and (6) preliminarily certifies the Settlement Class for purposes of settlement only.

Dated: May 23, 2024

Respectfully submitted,

s/ Mark Hammervold

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing pleading was served this 23rd day of May, 2024 through the electronic filing platform and by e-mail, and properly addressed to:

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³ Ms. Dapeer filed Rule 707 statement on April 24, 2024.

Exhibit A

**IN THE CIRCUIT COURT OF WINNEBAGO COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

HEATHER HUGHES-RICHMOND,
individually and on behalf of all others similarly
situated,

Plaintiff

v.

WALDOM ELECTRONICS CORPORATION,

Defendant.

Case No. 2023-LA-370

CLASS ACTION SETTLEMENT AGREEMENT

This settlement agreement (the “Agreement, “Settlement Agreement,” or “Settlement”) is entered into by Plaintiff Heather Hughes-Richmond (“Plaintiff” or “Richmond”), on behalf of herself and on behalf of the Settlement Class, and Defendant Waldom Electronics Corporation (referred to as “Defendant”). Plaintiff and Defendant are collectively referred to as the “Parties.” This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims upon and subject to the terms and conditions hereof, and is subject to the approval of the Court.

RECITALS

A. Plaintiff filed a class action complaint against Defendant which is pending in the Circuit Court of Winnebago County, Illinois, Law Division case number 2023-LA-370, alleging violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.* (“BIPA”).

B. Following the filing of the lawsuit, the Parties to this Agreement began discussing the potential for a class-wide settlement and exchanged information on the underlying facts of the case and the size of the class. After considerable arms-length negotiations, the Parties were able to reach agreement on the terms of a class-wide settlement.

C. Plaintiff and Class Counsel conducted an examination of the law and facts relating to the allegations in the complaint and Defendant’s potential defenses. Plaintiff believe each claim asserted in the Action has merit, that they would ultimately succeed in obtaining adversarial certification of the proposed Settlement Class, and that they would have prevailed on the merits at summary judgment or at trial. But Plaintiff and Class Counsel recognize that Defendant has raised factual and legal defenses in the Action that presented a risk that Plaintiff may not prevail and/or that a class might not be certified for trial. Class Counsel has also taken into account the uncertain outcome and risks of any litigation, especially in complex actions, as well as the difficulty and delay inherent in such litigation. This Agreement presents an exceptional result for the Settlement Class, and one that will be provided to the Class without delay. Therefore, Plaintiff believes that it is desirable that the Released Claims be fully and finally compromised, settled, and resolved

with prejudice, and barred pursuant to the terms and conditions set forth in this Settlement Agreement.

D. Defendant denies all allegations of wrongdoing and liability, and has asserted defenses to Plaintiff's claims. Defendant believes its defenses have merit and that it would ultimately prevail. Nevertheless, Defendant has concluded that this Settlement Agreement is desirable to avoid the time, risk, and expense of defending protracted litigation and advancing their defenses. Defendant, without admitting to the lack of merit with respect to any defenses, desire to resolve finally and completely the pending and potential claims of Plaintiff and the Settlement Class. Defendant agrees to certification of the Settlement Class for settlement purposes only and in no way concede that had the Parties litigated class certification that Plaintiff would have ultimately succeeded in certifying a class. If the terms of this Agreement are not ultimately approved, Defendant retains all rights and defenses to Plaintiff's claims, including the right to contest class certification and/or to assert any and all other defenses.

NOW, THEREFORE, IT IS HEREBY AGREED by Plaintiff, the Settlement Class, and Defendant that, subject to the Court's approval after a hearing as provided for in this Settlement, and in consideration of the benefits flowing to the Parties from the Settlement set forth herein, the Released Claims shall be fully and finally compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions set forth in this Settlement Agreement.

AGREEMENT

1. DEFINITIONS

As used herein, in addition to any definitions set forth elsewhere in this Settlement Agreement, the following terms shall have the meanings set forth below:

1.1 “**Action**” or “**Litigation**” means the case captioned *Heather Hughes-Richmond v. Waldom Electronic Corporation.*, case number 2023-LA-370, pending in the Seventeenth Judicial Circuit Court of Illinois, Winnebago County.

1.2 “**Agreement**” or “**Settlement Agreement**” means this settlement agreement.

1.3 “**Direct Check**” means a check sent to the class members as a settlement payment.

1.4 “**Class Counsel**” means attorney Mark Hammervold of Hammervold Law, LLC and Rachel Dapeer of Dapeer Law, P.A..

1.5 “**Class Representative**” means the named plaintiff in the Action, Heather Hughes-Richmond.

1.6 “**Court**” means the Circuit Court of the Seventeenth Judicial Circuit of Illinois, Winnebago County.

1.7 “**Defendant**” means Waldom Electronics Corporation.

1.8 “**Defendant’s Counsel**” means Hinshaw & Culbertson LLP.

1.9 “**Effective Date**” is defined as set forth in Paragraph 9.1.

1.10 “**Fee Award**” means the amount of attorneys’ fees and reimbursement of costs to Class Counsel awarded by the Court to be paid out of the Settlement Fund.

1.11 “**Final Approval Hearing**” means the hearing before the Court where the Parties will request that the Final Judgment be entered by the Court finally approving the Settlement as fair, reasonable, and adequate, and approving the Fee Award and the service award to the Class Representative.

1.12 “**Final Judgment**” means the final judgment to be entered by the Court approving the settlement of the Action in accordance with this Settlement Agreement after the Final Approval Hearing.

1.13 “**Notice**” means the notice of this Settlement and Final Approval Hearing, which is to be disseminated to the Settlement Class in the manner set forth in this Agreement, and in a format substantially similar to that attached hereto as Exhibit A.

1.14 “**Notice Date**” means the last date upon which the Notice may be disseminated to the Settlement Class, which shall be set by the Court in the Preliminary Approval Order as no later than approximately sixty (60) days prior to the Final Approval Hearing

1.15 “**Objection/Exclusion Deadline**” means the date by which a written objection to the Settlement Agreement or a request for exclusion submitted by a person within the Settlement Class must be filed with the Court and/or postmarked, which shall be no later than twenty (20) days before the Final Approval Hearing. The Objection/Exclusion Deadline will be set forth in the Notice.

1.16 “**Plaintiff**” means Heather Hughes-Richmond.

1.17 “**Preliminary Approval**” means the Court’s order, attached hereto as Exhibit B or an order substantially similar to Exhibit B, preliminarily approving the Agreement, certifying the Settlement Class for settlement purposes, and approving the form and manner of the Notice.

1.18 “**Released Parties**” means Waldom Electronics Corporation and all of its affiliates, wholly-owned subsidiaries, present or former heirs, executors, estates, administrators, predecessors, successors, assigns, parents, subsidiaries, holding companies, investors, divisions, associates, employers, employees, agents, representatives, consultants, independent contractors,

directors, managing directors, officers, partners, principals, members, attorneys, vendors, accountants, fiduciaries, financial and other advisors, investment bankers, insurers, reinsurers, employee benefit plans, underwriters, shareholders, lenders, auditors, investment advisors, and any and all present and former companies, firms, trusts, corporations, officers, directors, and/or other individuals or entities in which Defendant has a controlling interest or which are affiliated with any of them, or any other representatives of any of these persons and entities, as well as all persons acting by, through, under or in concert with any of these persons or entities.

1.19 “**Plaintiff Releasing Parties**” means Heather Hughes-Richmond and her present or past heirs, executors, estates, administrators, assigns, agents, consultants, independent contractors, insurers, attorneys, accountants, financial and other advisors, investment bankers, underwriters, lenders, and any other representatives of any of these persons and entities.

1.20 “**Class Member Releasing Parties**” means Settlement Class Members other than Heather Hughes-Richmond and their respective present or past heirs, executors, estates, administrators, assigns, agents, consultants, independent contractors, insurers, attorneys, accountants, financial and other advisors, investment bankers, underwriters, lenders, and any other representatives of any of these persons and entities.

1.21 “**Settlement Administration Expenses**” means the expenses incurred by the Settlement Administrator relating to administering this Settlement, providing Notice, mailing checks for Settlement Payments, and other such related expenses, with all such expenses to be paid from the Settlement Fund.

1.22 “**Settlement Administrator**” means KCC Class Action Services LLC, which, subject to Court approval, will provide the Notice, Process and distribute Settlement Payments, distribute the Court approved Fee Award to Class Counsel, distribute the Court service award, and perform other requested duties to administer the settlement.

1.23 “**Settlement Class**” means individuals who worked for or with Defendant in Illinois within the five-year period preceding the date of the filing of the Action up until March 28, 2024, whose biometric identifiers or information (for example, fingerprints, finger scans, or hand scans) were allegedly collected, captured, obtained, used, or disclosed by Defendant and who did not sign a consent form in violation of BIPA as alleged in the Action. There are 111 people who fall within the class definition.

Excluded from the Settlement Class are: (1) Defendant’s officers and directors, (2) Class counsel, (3) any judge presiding over this Action and members of their families, (3) persons who properly execute and file a timely request for exclusion from the class, (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released, and (5) the legal representatives, successors or assigns of any such excluded persons.

1.24 “**Settlement Class Member**” or “**Class Member**” means a person who falls within the definition of the Settlement Class and who does not submit a valid request for exclusion from the Settlement Class.

1.25 “**Settlement Fund**” means the amount paid by or on behalf of Defendant into the account for this Settlement established by the Settlement Administrator. The Settlement Fund shall be paid to the Settlement Administrator within ten (10) days of the Effective Date. The Settlement Fund is \$158,500.00, which shall be used to pay (1) monetary relief to Settlement Class Members who timely deposit their checks, (2) notice and administration costs, (3) Class Counsel’s attorneys’ fees and costs, and (4) a service award to Hughes-Richmond.

1.26 “**Settlement Payment**” means the payment Class Members shall receive.

2. SETTLEMENT RELIEF

2.1 *Settlement Payments to Settlement Class Members.*

a. Class Members who do not timely opt out or object, will receive a pro rata amount of the Settlement Fund not to exceed \$1,427.00 per claimant (prior to the subtraction of a pro rata portion of any and all approved Notice and Administrative Costs, the Service Awards and any Attorneys’ Fees and Expenses, which is estimated to result in a total net amount of \$700-800 for each Settlement Class Member). The pro rata amount is calculated by dividing the amount remaining in the Settlement Fund after deducting the Fee Award, service award to the Class Representative, and the Settlement Administration Expenses by the number of Class Members. Settlement Class Members must timely cash their checks in order to receive their pro rata amount of the Settlement Fund. Settlement Class Members who do not timely cash their check will not receive their pro rata amount or any other monetary payment.

b. All Direct Checks must be cashed within ninety (90) days of the issuance date. For any individual checks that remain uncashed after 90 days, or that bounce back as undeliverable, the Settlement Administrator shall make one additional attempt to identify an address for such individual and shall send a new check to such individual. Any Class Member who fails to cash the check by the deadline shall be forever barred from receiving any distribution from the Settlement Fund or any other payment pursuant to this Agreement but shall in all other respects be bound by all of the terms of this Agreement, including any order entered by the Court, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any person concerning any of the Released Claims.

c. The Settlement Administrator shall send each Settlement Class Member their pro rata amount of the Settlement Fund within thirty (30) days of the Effective Date via First Class U.S. Mail to the mailing addresses included on the Class Members list.

d. All Settlement Payments will state on the face of the check that the check will expire and become null and void unless cashed within ninety (90) days after the date of issuance.

e. All residual funds, unclaimed funds, funds from uncashed checks, and/or funds remaining in the Settlement Fund after the Settlement Administrator makes all required payments under this Agreement shall be sent to Prairie State Legal Services.

3. RELEASES

3.1 *Class Representative's Release.* Upon the Effective Date, and in consideration of the settlement relief described herein, the Plaintiff Releasing Parties, and each of them, shall be deemed to have released, and by operation of the Final Judgment shall have, fully, finally, and forever, released, relinquished and discharged the Released Parties of any and all claims of any kind, actual, potential, filed, unfiled, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, statutory claims, common law claims, demands, liabilities, rights, causes of action, contracts or agreements, extra-contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys' fees and/or obligations, whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever from the beginning of time through the date of final judgment, including, but not limited to, all claims which were made or which could have been made by Plaintiff in the Action.

3.2 *Release by the Class Members.* Upon the Effective Date, and in consideration of the settlement relief described herein, the Class Member Releasing Parties, and each of them shall be deemed to have released and by operation of the Final Judgment shall have fully finally and forever, released, relinquished and discharged the Released Parties from all actual, potential, filed, unfiled, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra-contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys' fees and/or obligations, whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever arising out of, regarding, or relating to biometrics, including, but not limited to, biometric information, biometric identifiers, fingerprints, finger scan data, and/or hand scan data.

3.3 The claims released in the *Class Representative's Release* and the claims released in the *Release by the Class Members* are collectively referred to as the "Released Claims."

4. NOTICE TO THE CLASS

4.1 The Notice shall include:

a. *Class List.* Defendant shall provide the Settlement Administrator with a class list within fourteen (14) days of Preliminary Approval. Such list shall include each Settlement Class Member's name and last known physical address, email address, and Social Security Number. The Settlement Administrator shall keep the Class List and all personal information obtained therefrom, including the identity and mailing addresses, email addresses and Social Security Numbers of all persons strictly confidential. The Settlement Administrator shall not share the Class List or any personal information

obtained therefrom with any other party or attorney. The Class List may not be used for any purpose other than effectuating this Settlement.

b. *Notice.* Notice and administration costs will be paid from the Settlement Fund. The Settlement Administrator shall send Notice via U.S. mail and email substantially in the form attached as Exhibit A to all persons in the Settlement Class to the last known address for the Class Member within thirty (30) days of Preliminary Approval. To the extent that a mailing is returned the Settlement Administrator shall follow up through reasonable and practicable means that the Settlement Administrator deems appropriate, including, but not limited to, the National Change of Address Database (“NCOA”) to identify the current location of such individual so long as the cost of such follow up does not exceed the cost of the Settlement Administrator’s budget for administering this matter.

4.2 *Right to Intervene and Object or Comment.* Any member of the Settlement Class who intends to intervene and object to this Settlement Agreement must present the objection in writing, which must be personally signed by the objector and must include: (a) the Settlement Class Member’s full name and current address, (b) a statement that he or she believes himself or herself to be a member of the Settlement Class, (c) the specific grounds for the objection, (d) all documents or writings that the Settlement Class Member desires the Court to consider, (e) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection; and (f) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel, who must file an appearance or seek *pro hac vice* admission). All written objections must be filed with the Court and postmarked, e-mailed or delivered to Class Counsel and Defendant’s Counsel no later than the Objection/Exclusion Deadline. Any Settlement Class Member who fails to timely file a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Section and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Settlement Agreement by appeal or other means and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other action or proceeding.

4.3 *Right to Request Exclusion.* Any Person in the Settlement Class may submit a request for exclusion from the Settlement on or before the Objection/Exclusion Deadline. To be valid, any request for exclusion must (a) be in writing; (b) identify the name of the case and case number, *Heather Hughes-Richmond v. Waldom Electronic Corporation.*, case number 2023-LA-370, pending in the Seventeenth Judicial Circuit Court of Illinois, Winnebago County; (c) state the full name and current address of the Person in the Settlement Class seeking exclusion; (d) be physically signed by the Person(s) seeking exclusion; and (e) be postmarked or received by the Settlement Administrator on or before the Objection/Exclusion Deadline. Each request for exclusion must also contain a statement to the effect that “I/We hereby request to be excluded from the proposed Settlement Class in *Heather Hughes-Richmond v. Waldom Electronic Corporation.*, case number 2023-LA-370, pending in the Seventeenth Judicial Circuit Court of Illinois,

Winnebago County.” A request for exclusion that does not include all of the foregoing information, that is sent to an address other than that designated in the Notice, or that is not postmarked or delivered to the Settlement Administrator within the time specified, shall be invalid and the persons serving such a request shall be deemed to remain Settlement Class Members and shall be bound as Settlement Class Members by this Settlement Agreement, if approved. Any Person who elects to request exclusion from the Settlement Class shall not (a) be bound by any orders or Final Judgment entered in the Action, (b) receive a Settlement Payment under this Settlement Agreement, (c) gain any rights by virtue of this Settlement Agreement, or (d) be entitled to object to any aspect of this Settlement Agreement. No Person may request to be excluded from the Settlement Class through “mass” or “class” opt-outs.

5. SETTLEMENT ADMINISTRATION

5.1 Settlement Administrator’s Duties.

a. *Dissemination of Notices.* The Settlement Administrator shall disseminate the Settlement Class Notice as provided in Section 4 of this Settlement Agreement.

b. *Maintenance of Records.* The Settlement Administrator shall maintain reasonably detailed records of its activities under this Settlement Agreement. The Settlement Administrator shall maintain all such records as required by applicable law in accordance with its business practices. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. Upon request, the Settlement Administrator shall provide Class Counsel and Defendant’s Counsel with reports concerning Notice, administration, and implementation of the Settlement.

c. *Receipt of Requests for Exclusion.* The Settlement Administrator shall receive requests for exclusion from persons in the Settlement Class and provide to Class Counsel and Defendant’s Counsel a copy thereof within five (5) days of the Objection/Exclusion Deadline. If the Settlement Administrator receives any requests for exclusion or other requests from Settlement Class Members after the deadline for the submission of requests for exclusion, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant’s Counsel.

d. *Timing of Settlement Payments.* The Settlement Administrator shall make all Settlement Payments contemplated in Section 2 of this Settlement Agreement by check and mail them to Settlement Class Members within thirty (30) days after the Effective Date.

6. PRELIMINARY APPROVAL AND FINAL APPROVAL

6.1 *Preliminary Approval.* Promptly after execution of this Settlement Agreement, Class Counsel shall submit this Settlement Agreement to the Court and shall move the Court to enter an order granting Preliminary Approval, which shall include, among other provisions, a request that the Court:

- a. Appoint Plaintiff as the Class Representative of the Settlement Class;
- b. Appoint Class Counsel to represent the Settlement Class;
- c. Certify the Settlement Class under 735 ILCS 5/2-801 *et seq.* for settlement purposes only;
- d. Preliminarily approve this Settlement Agreement for purposes of disseminating Notice to the Settlement Class;
- e. Approve the form and contents of the Notice and the method of its dissemination to members of the Settlement Class; and
- f. Schedule a Final Approval Hearing to review comments and/or objections regarding this Settlement Agreement, to consider its fairness, reasonableness, and adequacy, to consider the application for a Fee Award and service award to the Class Representative, and to consider whether the Court shall issue a Final Judgment approving this Settlement Agreement, and dismissing the Action with prejudice.

6.2 *Final Approval.* After Notice to the Settlement Class is given, Class Counsel shall move the Court for entry of a Final Judgment, which shall include, among other provisions, a request that the Court:

- a. find that it has personal jurisdiction over all Settlement Class Members and subject matter jurisdiction to approve this Settlement Agreement;
- b. approve the Settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Settlement according to its terms and conditions; and declare the Settlement to be binding on, and have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all Settlement Class Members and Releasing Parties;
- c. find that the Notice implemented pursuant to the Settlement Agreement (1) constitutes the best practicable notice under the circumstances, (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and their rights to object to or exclude themselves from this Settlement Agreement and to appear at the Final Approval Hearing, (3) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, and (4) fulfills the requirements of Due Process and 735 ILCS 5/2-801;
- d. find that the Class Representative and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing this Settlement;

e. dismiss the Action on the merits and with prejudice, without fees or costs to any Party except as provided in this Settlement Agreement;

f. incorporate the Releases set forth above, make the Releases effective as of the Effective Date, and forever discharge the Released Parties as set forth herein;

g. permanently bar and enjoin all Settlement Class Members who have not been properly excluded from the Settlement Class from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or other action in any jurisdiction based on the Released Claims;

h. authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of this Settlement and its implementing documents (including all exhibits to this Agreement) so long as they are consistent in all material respects with the Final Judgment and do not limit the rights of Settlement Class Members;

i. without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of this Agreement and the Final Judgment, and for any other necessary purpose; and

j. incorporate any other provisions, consistent with the material terms of this Agreement, as the Court deems necessary and just.

6.3 *Cooperation.* The Parties shall, in good faith, cooperate, assist, and undertake all reasonable actions and steps in order to accomplish these required events on the schedule set by the Court, subject to the terms of this Settlement Agreement.

7. TERMINATION OF THE SETTLEMENT AGREEMENT

7.1 *Termination.* Subject to Paragraph 9 below, the Class Representative and Defendant shall have the right to terminate this Agreement by providing written notice of the election to do so to all other Parties hereto within ten (10) days of any of the following events: (i) the Court's refusal to grant Preliminary Approval of this Agreement in any material respect; (ii) the Court's refusal to grant Final Approval of this Agreement in any material respect; (iii) the Court's refusal to enter the Final Judgment in this Action in any material respect; (iv) the date upon which the Final Judgment is modified or reversed in any material respect by the appellate court or the Supreme Court; (v) the date upon which an Alternative Judgment, as defined in Paragraph 9.1 of this Agreement, is modified or reversed in any material respect by the appellate court or the Supreme Court; or (vi) ten or more persons opt out of or exclude themselves from the Settlement.

8. SERVICE AWARD AND CLASS COUNSEL’S ATTORNEYS’ FEES AND REIMBURSEMENT OF EXPENSES

8.1 Defendant will not oppose requests to pay from the Settlement Fund (1) reasonable attorneys’ fees and costs up to \$60,230 plus reimbursement for actual costs incurred to Class Counsel and (2) an service award of \$3,000.00 to Plaintiff. These amounts, or those ordered by the Court if different, shall be deducted from the Settlement Fund and not paid on top of the Settlement Fund. Plaintiff and Class Counsel agree not to appeal the Court’s decision regarding the amount of the Fee Award or service award. All attorneys’ fees and costs and the service award shall be paid to Class Counsel by the Administrator within fifteen (15) days of the Effective Date.

9. CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION.

9.1 The “Effective Date” means three (3) business days following the day on which this Settlement shall become effective when all of the following have occurred:

- a. The Court enters the Final Approval Order which meets the requirements of 735 ILCS 5/2-801 through 2-807, and including the following:
 - i. approves the Settlement as fair, reasonable and adequate to the Class;
 - ii. finds that this Settlement is made in good faith; and
 - iii. dismisses with prejudice Plaintiff’s claims and the claims of the Class.
-and-
- b. One of the following occurs:
 - i. if there are no opt outs or exclusions and therefore the Final Approval Order is not appealed, the expiration of five (5) business days after the date that the Final Approval Order becomes a final and non-appealable order; or
 - ii. if the Final Approval Order is appealed, and the appeal results in a disposition that affirms the Final Approval Order, the expiration of five (5) business days after the date that the disposition becomes a final and non-appealable order.

9.2 If some or all of the conditions specified in Section 9.1 are not met, or in the event that this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Agreement shall be

canceled and terminated subject to Section 9.3, unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Settlement. If any party is in material breach of the terms hereof, a non-breaching party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Settlement Agreement on notice to all other Parties.

9.3 Notwithstanding anything herein, the Parties agree that the Court's decision as to the amount of the Fee Award to Class Counsel set forth above or the service award to the Class Representative, regardless of the amounts awarded, shall not prevent this Settlement from becoming effective, nor shall it be grounds for termination of this Agreement.

9.4 If this Settlement Agreement is terminated or fails to become effective for the reasons set forth above, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Settlement Agreement had never been entered into.

9.5 The resolution of this dispute and the terms of this Agreement are based on unique facts and circumstances relating to the underlying issues and the procedural posture of the case at the time of settlement. Therefore, nothing in this Agreement is intended to reflect a general litigation approach or an admission by either Party as to the validity of any claims and defenses or with respect to the rights of Defendant to assert defenses in any later, unrelated action.

10. MISCELLANEOUS PROVISIONS.

10.1 The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Settlement Agreement. Class Counsel and Defendant's Counsel agree to cooperate with one another in seeking entry of an order granting Preliminary Approval of this Agreement and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement Agreement.

10.2 Each signatory to this Agreement represents and warrants (a) that he, she, or it has all requisite power and authority to execute, deliver and perform this Settlement Agreement and to consummate the transactions contemplated herein, (b) that the execution, delivery and performance of this Settlement Agreement and the consummation by it of the actions contemplated herein have been duly authorized by all necessary corporate action on the part of each signatory, and (c) that this Settlement Agreement has been duly and validly executed and delivered by each signatory and constitutes its legal, valid and binding obligation.

10.3 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims.

10.4 The Parties have relied upon the advice and representation of counsel, selected by them, concerning the claims hereby released. The Parties have read and understand fully this Settlement Agreement and have been fully advised as to the legal effect hereof by counsel of their own selection and intend to be legally bound by the same.

10.5 Whether the Effective Date occurs or this Settlement is terminated, neither this Settlement Agreement nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of this Settlement Agreement or the settlement:

a. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by Plaintiff, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the settlement amount or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

b. is, may be deemed, or shall be used, offered, or received against Defendant as, an admission, concession, or evidence of any fault;

c. is, may be deemed, or shall be used, offered, or received against Plaintiff or the Settlement Class, or each or any of them as an admission, concession, or evidence of, the infirmity or strength of any claims asserted in the Action;

d. is, may be deemed, or shall be used, offered, or received against the Released Parties, or each or any of them as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, this Settlement Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Settlement Agreement and/or settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Settlement Agreement. Moreover, if this Settlement Agreement is approved by the Court, any party or any of the Released Parties may file this Settlement Agreement and/or the Final Judgment in any action that may be brought against such party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion, or similar defense or counterclaim;

10.6 The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

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

10.8 All of the exhibits to this Settlement Agreement are material and integral parts hereof and are fully incorporated herein by reference.

10.9 This Settlement Agreement and its exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

10.10 Except as otherwise provided herein, each Party shall bear its own attorneys' fees and costs incurred in any way related to the Action.

10.11 Plaintiff represents and warrants that she has not assigned any claim or right or interest relating to any of the Released Claims against the Released Parties to any other person or party and that they are fully entitled to release the same.

10.12 Each counsel or other person executing this Settlement Agreement, any of its exhibits, or any related settlement documents on behalf of any party hereto, hereby warrants and represents that such person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

10.13 This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

10.14 Signature by digital, facsimile, or in PDF format will constitute sufficient execution of this Settlement Agreement.

10.15 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement.

10.16 This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without reference to the conflicts of laws provisions thereof.

10.17 This Settlement Agreement is deemed to have been prepared by counsel for all Parties, as a result of arm's-length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Settlement Agreement, it shall not be construed more strictly against one Party than another. Where this Settlement Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel.

Dated: 05/16/2024, 2024



Plaintiff Heather Hughes-Richmond

Dated: 05/16/2024, 2024



Mark Hammervold
Class Counsel

Dated: _____, 2024

Authorized Representative of Waldom
Electronics Corporation

Name: _____

Title: _____

Dated: _____, 2024

Plaintiff Heather Hughes-Richmond

Dated: _____, 2024

Mark Hammervold
Class Counsel

Dated: May 15, 2024

Donald R. Akery
Authorized Representative of Waldom
Electronics Corporation
Name: Donald R. Akery
Title: C.E.O.

Exhibit A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Heather Hughes-Richmond v. Waldom Electronic Corporation., case number 2023-LA-370, pending in the Seventeenth Judicial Circuit Court of Illinois, Winnebago County.

PLEASE READ THIS NOTICE CAREFULLY AS YOUR LEGAL RIGHTS MAY BE AFFECTED. A CLASS ACTION SETTLEMENT HAS BEEN REACHED UNDER WHICH YOU MAY BE ENTITLED TO A PAYMENT.

*This is a court-authorized notice of a proposed class action settlement. This is not a solicitation from a lawyer and is **not** notice of a lawsuit against you.*

WHY DID I GET THIS NOTICE?

This is a court-authorized notice of a proposed settlement in a class action lawsuit entitled *Heather Hughes-Richmond v. Waldom Electronic Corporation.*, case number 2023-LA-370, pending in the Seventeenth Judicial Circuit Court of Illinois, Winnebago County (the “Litigation”). The Settlement will resolve a lawsuit brought on behalf of persons who allege Waldom Electronics Corporation (“Defendant”) required employees to provide their biometric identifiers and/or biometric information without first having a written policy and obtaining a written release. Defendant denies these allegations, denies violations of any law, and denies all liability. If you received this Notice, you have been identified by Defendant as someone who may have enrolled in and/or used a body-part scanning device while working for Defendant without having signed a written release. The Court has granted preliminary approval of the Settlement Agreement and has conditionally certified the Settlement Class for purposes of settlement. This Notice explains the nature of the lawsuit, the terms of the Settlement Agreement, and the legal rights and obligations of the Settlement Class Members. Please read the instructions and explanations below so you can understand your rights.

WHAT IS THIS LAWSUIT ABOUT?

The Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*, prohibits private companies from capturing, obtaining, storing, transferring, and/or using the biometric identifiers and/or biometric information, defined to include fingerprints, scans of hand or face geometry, without first providing such individual with certain written disclosures and obtaining a written release. This lawsuit alleges the Defendant violated BIPA. Defendant denies these allegations, denies violations of any law, and denies all liability.

WHAT DOES THE SETTLEMENT PROVIDE?

Cash Payments. Defendant has agreed to create a Settlement Fund of \$158,500.00 for the Settlement Class Members. All Settlement Class Members who do not opt out of the settlement are entitled to receive a payment out of the Settlement Fund not to exceed \$1,427.00 per claimant

(prior to the subtraction of a pro rata portion of any and all approved Notice and Administrative Costs, the Service Awards and any Attorneys' Fees and Expenses, which is estimated to result in a total net amount of \$700-800 for each Settlement Class Member).. If the Settlement is approved, each Settlement Class Member that does not opt out of the Settlement will receive a Direct Check for their portion of the Settlement Fund less the Fee Award, service award to the Class Representative, and the Settlement Administration Expenses. The amount that each individual receives will depend on the Fee Award and service award to the Class Representative that the Court approves. It will also depend on the Settlement Administration Expenses.

All checks issued to Settlement Class Members will expire and become void ninety (90) days after they are issued. Additionally, the attorneys who brought this lawsuit (listed below) will ask the Court to award them attorneys' fees and costs of up to 38% of the Settlement Fund and costs, for the time, expense, and effort expended in investigating the facts, litigating the case, and negotiating the Settlement. The Class Representative also will apply to the Court for a payment of up to \$3,000.00 each for her time, effort, and service in this matter.

WHY IS THERE A SETTLEMENT?

To resolve this matter without the expense, delay, and uncertainties of litigation, the Parties have reached a settlement which resolves all claims against Defendant relating to the allegations in the Litigation. The Settlement Agreement requires Defendant to pay money to the Settlement Class, as well as pay settlement administration expenses, attorneys' fees and costs to Class Counsel, and an service award to the Class Representative. The Settlement is not an admission of wrongdoing by Defendant and does not imply that there has been, or would be, any finding that Defendant violated the law. Defendant agreed to the Settlement to avoid the distraction and expense of continued litigation.

WHO IS IN THE SETTLEMENT CLASS?

All individuals who worked for or with Defendant in Illinois within the five-year period preceding the date of the filing of the Action up until March 28, 2024 whose biometric identifiers or information (for example, fingerprints, finger scans, or hand scans) were allegedly collected, captured, obtained, used, or disclosed by Defendant and who did not provide a signed consent in violation of BIPA as alleged in the Action.

WHAT ARE MY OPTIONS?

- (1) Exclude yourself.

If you do not want the money from the Settlement, you may exclude yourself. If you do so, you will not receive any cash payment, but you will not release any claims you may have against Defendant and the Released Parties (as that term is defined in the Settlement Agreement) and are free to pursue whatever legal rights you may have, including pursuing your own lawsuit against Defendant at your own risk and expense. To exclude yourself from the settlement, you must mail a signed letter to the Settlement Administrator at [ADDRESS] postmarked no later than

_____. The exclusion letter must state that you exclude yourself from this Settlement and must include the name and case number of this Litigation, as well as your full name, address, telephone number, and signature, and a statement that you wish to be excluded.

(2) Object to the Settlement.

If you wish to object to the Settlement, you must submit your objection in writing to the Clerk of the Circuit Court of Winnebago County, Illinois. The objection must be received by the Court no later than _____. You must also send a copy of your objection to the attorneys for all Parties to the lawsuit, including Class Counsel (Mark Hammervold of Hammervold Law, LLC 155 S. Lawndale Ave, Elmhurst, IL 60126), as well as the attorneys representing Defendant (John P. Ryan and Liam A. McGing of Hinshaw & Culbertson, LLP, 151 N. Franklin Street, Suite 2500, Chicago, IL 60606), postmarked no later than _____. Any objection to the proposed settlement must include your (a) full name and current address, (b) a statement that you believe yourself to be a member of the Settlement Class, (c) the specific grounds for the objection, (d) all documents or writings that you desire the Court to consider, (e) the name and contact information of any and all attorneys representing you in connection with the objection, (f) a statement indicating whether you intend to appear at the Final Approval Hearing; and (g) your signature. If you hire an attorney in connection with making an objection, that attorney must also file with the Court a notice of appearance by the objection deadline of _____. If you do hire your own attorney, you will be solely responsible for payment of any fees and expenses the attorney incurs on your behalf. If you exclude yourself from the Settlement, you cannot file an objection.

You may appear at the Final Approval Hearing, which is to be at _____, in person or through counsel to show cause of why the proposed Agreement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement, the request for attorneys' fees and expenses, and/or the request for service award to the Class Representative are required to indicate in their written objection their intention to appear at the hearing on their own behalf or through counsel and to identify the names of any witnesses they intend to call to testify at the Final Approval Hearing, as well as any exhibits they intend to introduce at the Final Approval Hearing.

(3) Do Nothing.

If you are a Class Member and do nothing, you will receive a Direct Check from the Settlement after Final Approval and you will give up your rights as set forth in this Notice and the Settlement Agreement. This check must be deposited within ninety (90) days or you will not receive any monetary relief and will give up your rights as set forth in this Notice and the Settlement Agreement.

WHAT RIGHTS AM I GIVING UP IN THIS SETTLEMENT?

Unless you exclude yourself, you will be considered a member of the Settlement Class, which means you give up your right to file or continue a lawsuit against Defendant and Released Parties (as defined in the Settlement Agreement). Giving up your legal claims is called a release. The precise terms of the release are in the Settlement Agreement, a copy of which you may request from the Settlement Administrator at the number set forth at the bottom of this notice. All pleadings and documents filed in court may be reviewed or copied in the Clerk of the Circuit Court of Winnebago County, Illinois. Unless you formally exclude yourself from this settlement, you will release your claims.

WHEN WILL I BE PAID?

The Parties cannot predict exactly when (or whether) the Court will give final approval to the Settlement Agreement, so please be patient. However, if the Court finally approves the Settlement, checks will go out approximately thirty-five (35) days after the Court's final approval order becomes final and non-appealable. If there is an appeal of the court's order, payment will be delayed.

WHEN WILL THE COURT RULE ON THE SETTLEMENT?

The Court has already given preliminary approval to the Settlement. A final hearing on the Settlement, called a Final Approval Hearing, will be held on _____ at _____.

If the Settlement is given final approval, the Settlement Agreement's terms will take effect and the Litigation will be dismissed on the merits with prejudice. Both sides have agreed to the Settlement in order to achieve an early and certain resolution to the lawsuit, in a manner that provides specific and valuable benefits to the members of the Settlement Class.

If the Court does not approve the Settlement, or if it approves the Settlement and the approval is reversed on appeal, or if the Settlement does not become final for some other reason, you will not be paid and Class Members will receive no benefits from the Settlement. Plaintiff, Defendant, and all of the Class Members will be in the same position as they were prior to the execution of the Settlement Agreement, and the Settlement Agreement will have no legal effect, no class will remain certified (conditionally or otherwise), and Plaintiff and Defendant will continue to litigate the lawsuit. If the Settlement is not approved, there can be no assurance that the Settlement Class will recover more than is provided in the Settlement, or indeed, anything at all.

WHO REPRESENTS THE CLASS?

The Court has approved Hammervold Law, LLC and Dapeer Law, P.A. to represent the Settlement Class. They are called "Class Counsel." You will not be charged for these lawyers because they are being paid out of the Settlement Fund. If you want to be represented by your own lawyer instead, you may hire one at your own expense.

WHERE CAN I GET ADDITIONAL INFORMATION?

This Notice is only a summary of the proposed settlement of this lawsuit. More details are in the Settlement Agreement which, along with other documents, can be obtained from the Settlement Administrator. All pleadings and documents filed in court may be reviewed or copied in the office of the Clerk of the Circuit Court of Winnebago County, Illinois. Please do not call the judge or the clerk about this case. They will not be able to give you advice on your options.

Exhibit B

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT COURT
WINNEBAGO COUNTY, ILLINOIS**

HEATHER HUGHES-RICHMOND,)	
individually and on behalf of all others similarly)	
situated,)	
)	Case No. 2023-LA-0000370
Plaintiff,)	
)	
v.)	
)	
WALDOM ELECTRONICS CORPORATION,)	
)	
Defendant.)	

PRELIMINARY APPROVAL ORDER

This matter having come before the Court on Plaintiff’s Unopposed Motion in Support of Preliminary Approval of Class Action Settlement (“Motion”), the Court having reviewed and considered the Motion, the Class Action Settlement Agreement (“Settlement Agreement”) between Plaintiff Heather Hughes-Richmond (“Plaintiff” or “Class Representative”) and Defendant Waldom Electronics Corporation (“Defendant”) (together “the Parties”), and all other papers that have been filed with the Court related to the Settlement Agreement, including all exhibits and attachments to the Motion and Settlement Agreement, and the Court being fully advised in the premises, IT IS HEREBY ORDERED, as follows:

1. Capitalized terms used in this Order that are not otherwise defined herein have the same meaning assigned to them as in the Settlement Agreement. The Court adopts and incorporates terms of the Settlement Agreement herein.

2. The terms of the Settlement Agreement are preliminarily approved as fair, reasonable, and adequate and are fully incorporated and adopted herein. There is good cause to

find that the Settlement Agreement was negotiated at arms-length between the Parties, who were represented by experienced counsel.

3. For settlement purposes only, the Court finds that the prerequisites to class action treatment under Section 2-801 of the Illinois Code of Civil Procedure — including numerosity, commonality and predominance, adequacy, and appropriateness of class treatment of these claims — have been preliminarily satisfied.

4. The Court hereby conditionally certifies, pursuant to Section 2-801 of the Illinois Code of Civil Procedure, and for the purposes of settlement only, the following Settlement Class consisting of: “all individuals who worked for Defendant in Illinois within the five-year period preceding the date of the filing of the Action up until March 28, 2024 whose biometric identifiers or information (for example, fingerprints, finger scans, or hand scans) were allegedly collected, captured, obtained, used, or disclosed by Defendant and who did not sign a consent violation of BIPA as alleged in the Action.” Excluded from the Settlement Class are: (1) Defendant’s officers and directors, (2) Class counsel, (3) any judge presiding over this Action and members of their families, (3) persons who properly execute and file a timely request for exclusion from the class, (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released, and (5) the legal representatives, successors or assigns of any such excluded persons.

5. For settlement purposes only, Plaintiff Heather Hughes-Richmond is hereby appointed as the Class Representative.

6. For settlement purposes only, Mark Hammervold of Hammervold Law, LLC and Rachel Dapeer of Dapeer Law P.A. are hereby appointed as Class Counsel.

7. The Court recognizes that, pursuant to the Settlement Agreement, Defendant and Released Parties retain all rights to object to the propriety of class certification in the Litigation

in all other contexts and for all other purposes should the Settlement not be finally approved. Therefore, as more fully set forth below, if the Settlement is not finally approved, and Litigation resumes, this Court's preliminary findings regarding the propriety of class certification shall be of no further force or effect whatsoever, and this Order will be vacated in its entirety.

8. The Court approves, in form and content, the Notice, attached to the Settlement Agreement as Exhibit A, and finds that it meets the requirements of Section 2-803 of the Illinois Code of Civil Procedure and satisfies Due Process requirements under the U.S. and Illinois Constitutions.

9. The Court finds that the planned Notice set forth in the Settlement Agreement meets the requirements of Section 2-803 of the Illinois Code of Civil Procedure and constitutes the best notice practicable under the circumstances, where Class Members are current or former employees of Defendant or worked with or for Defendant and may be readily ascertained by Defendant's records, and satisfies fully the requirements of Due Process, and any other applicable law, such that the Settlement Agreement and Final Approval Order will be binding on all Settlement Class Members. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this action. The Parties, by agreement, may revise the Class Notice in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

10. KCC Class Action Services LLC, is hereby appointed Settlement Administrator to supervise and administer the notice process, as well as to oversee the administration of the Settlement, as more fully set forth in the Settlement Agreement.

11. The Settlement Administrator may proceed with the distribution of Class Notice as set forth in the Settlement Agreement.

12. Settlement Class Members who wish to receive benefits under the Settlement Agreement are required to deposit their Direct Checks within ninety (90) days in order to receive a monetary benefit.

13. Settlement Class Members shall be bound by all determinations and orders pertaining to the Settlement, including the release of all claims to the extent set forth in the Settlement Agreement, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. Settlement Class Members who do not timely and validly request exclusion shall be so bound even if they have previously initiated or subsequently initiate litigation or other proceedings against Defendant or the Released Parties relating to the Released Claims under the terms of the Settlement Agreement.

14. Any person within the Settlement Class may request exclusion from the Settlement Class by expressly stating their request for exclusion in writing. To be considered timely, such written exclusion requests must be mailed to the Settlement Administrator by first class mail, postage prepaid, and postmarked no later than thirty (30) days from the Notice Date.

15. In order to exercise the right to be excluded, a person within the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing their name, address, telephone number, the case name and number of this Litigation, and a statement that they wish to be excluded from the Settlement Class, and must be personally signed by the person requesting exclusion. No person within the Settlement Class, or any person acting on behalf of, in concert with, or in participation with that person within the Settlement Class, may request exclusion from the Settlement Class on behalf of any other person within the Settlement Class.

16. Any person in the Settlement Class who elects to be excluded shall not: (i) be bound by any orders or the Final Approval Order; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement.

18. Class Counsel may file any motion seeking an award of attorneys' fees plus their reasonable costs and expenses, as well as a service award for the Class Representative, no later than 15 days prior to Final Approval Hearing.

19. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who wishes to object to any aspect of the Settlement Agreement, including the amount of the attorneys' fees, costs, and expenses that Class Counsel intends to seek and the payment of the service award to the Class Representative, may do so, either personally or through an attorney, by filing a written objection, together with the supporting documentation set forth in this Order, with the Clerk of the Court, and served upon Class Counsel, Defendant's Counsel, and the Settlement Administrator no later than twenty (20) days before the Final Approval Hearing.

20. Any Settlement Class Member who has not requested exclusion and who intends to object to the Settlement must state, in writing, all objections and the basis for any such objection(s), and must also state in writing: (i) their full name, address, and telephone number; (ii) the case name and number of this Litigation; (iii) the date range during which they were employed by Defendant; (iv) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (v) the identification of any other objections they have filed, or have had filed on their behalf, in any other class action cases in the last five years; and (vi) the objector's signature. Objections not filed and served in accordance with this Order shall not be received or considered by the Court. Any Settlement Class Member who fails

to timely file and serve a written objection in accordance with this Order shall be deemed to have waived, and shall be forever foreclosed from raising, any objection to the Settlement, to the fairness, reasonableness, or adequacy of the Settlement, to the payment of attorneys' fees, costs, and expenses, to the payment of the Service Award, and to the Final Approval Order and the right to appeal same.

21. A Settlement Class Member who has not timely requested exclusion from the Settlement Class and who has properly submitted a written objection in compliance with the Settlement Agreement may appear at the Final Approval Hearing in person or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement and/or Plaintiff's Counsel's Fee and Expense Application and/or the request for the service award to the Class Representative are required to indicate in their written objection their intention to appear at the Final Approval Hearing on their own behalf or through counsel. For any Settlement Class Member who files a timely written objection and who indicates their intention to appear at the Final Approval Hearing on their own behalf or through counsel, such Settlement Class Member must also include in their written objection the identity of any witnesses they may call to testify, and all exhibits they intend to introduce into evidence at the Final Approval Hearing, which shall be attached.

22. No Settlement Class Member shall be entitled to be heard, and no objection shall be considered, unless the requirements set forth in this Order and in the Settlement Agreement are fully satisfied. Any Settlement Class Member who does not make their objection to the Settlement in the manner provided herein, or who does not also timely provide copies to the designated counsel of record for the Parties at the addresses set forth in the Settlement Agreement, shall be

deemed to have waived any such objection by appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Final Approval Order.

23. All papers in support of the Final Approval of the proposed settlement shall be filed no later than fifteen days before the Final Approval Hearing.

24. A Final Approval Hearing shall be held before the Court on **DATE** at **TIME a.m.** for the following purposes:

(a) to finally determine whether the applicable prerequisites for settlement class action treatment under 735 ILCS 5/2-801 have been met;

(b) to determine whether the Settlement is fair, reasonable and adequate, and should be approved by the Court;

(c) to determine whether the judgment as provided under the Settlement Agreement should be entered, including an order prohibiting Settlement Class Members from further pursuing Released Claims that have been released in the Settlement Agreement;

(d) to consider the application for an award of attorneys' fees, costs and expenses of Class Counsel;

(e) to consider the application for the Service Award to the Class Representative;

(f) to consider the distribution of the Settlement Fund pursuant to the Settlement Agreement; and

(g) to rule upon such other matters as the Court may deem appropriate.

25. The Final Approval Hearing may be postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class. At or following the Final Approval Hearing, the Court may enter a judgment approving the Settlement Agreement

and a Final Approval Order in accordance with the Settlement Agreement that adjudicates the rights of all Settlement Class Members.

26. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

27. For clarity, the deadlines set forth above and in the Agreement are as follows:

- Class List Sent to Administrator by: _____ (14 days of Preliminary Approval)
- Notice to be completed by: _____ (30 days of Preliminary Approval)
- Fee and Expense Motion/Application: _____ (15 days before Final Approval Hearing)
- Service Award Motion/Application: _____ (15 days before Final Approval Hearing)
- Objection Deadline: _____ (20 days before Final Approval Hearing)
- Exclusion Request Deadline: _____ (20 days before Final Approval Hearing)
- Final Approval Submissions: _____ (15 days before Final Approval Hearing)

28. All discovery and other proceedings in the Litigation as between Plaintiff and Defendant are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Settlement Agreement and this Order.

IT IS SO ORDERED.

ENTERED:

Honorable

Date

Exhibit B

**IN THE CIRCUIT COURT OF WINNEBAGO COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

HEATHER HUGHES-	:	NO.: 2023-LA-370
RICHMOND, individually and on	:	
behalf of all others similarly	:	CLASS ACTION
situated,	:	
	:	
Plaintiff,	:	
v.	:	
	:	
WALDOM ELECTRONICS	:	
CORPORATION,	:	
	:	
Defendant.	:	

**DECLARATION OF MARK HAMMERVOLD IN SUPPORT OF
PLAINTIFF’S UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

I, Mark Hammervold, declare as follows:

1. I am co-lead counsel for Plaintiff in this matter. I have continuously been licensed to practice law in Tennessee since 2012, in Florida since 2013 and in Illinois since 2015. I remain in good standing in all three states. I have litigated cases in both state and federal courts throughout the country. I respectfully submit this declaration in support of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

CASE BACKGROUND

2. In this putative class action, Plaintiff Heather Hughes-Richmond alleges that Defendant Waldom Electronics Corporation, violated Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/15(a) and 14/15(b) by requiring her and its other Illinois workers to “clock” in and out using their fingerprints.

3. I have been involved in all stages of litigation, taking lead on many tasks and providing a review and input into all other tasks in this litigation.

4. My law firm is fully prepared to commit all necessary resources, financial, professional, and otherwise, to oversee the adequate administration of the instant case, as well as to protect the best interests of the class.

5. Negotiations in this case began only after an exchange of information regarding the size and composition of the Settlement Class.

6. The Settlement was reached only after arm's-length negotiations between counsel for the Parties.

EDUCATION AND EXPERIENCE

7. I have continuously been licensed to practice law in Tennessee since 2012, in Florida since 2013 and in Illinois since 2015. I remain in good standing in all three states.

8. I am also admitted in the federal district courts for the Middle District of Florida, Southern District of Florida, Northern District of Illinois, Middle District of Tennessee, Eastern District of Texas, Northern District of Texas, and Western District of Wisconsin. I am also admitted in the U.S. Courts of Appeals for the Third, Fifth, and Sixth Circuits.

9. I attended Vanderbilt University Law School on academic scholarship and graduated in 2012. I previously attended Northwestern University on a merit scholarship for policy debate and graduated with honors in 2008.

10. After graduating, I first practiced with the law firm of Gideon Cooper & Essary, PLC from 2012 to 2015.

11. I thereafter established my own law firm – Hammervold Law – in 2015.

12. In 2020, I began associating with Kotchen & Low, L.L.P. as Of Counsel.

13. At Gideon Cooper, I primarily defended health care providers and companies in complex litigation across the country. For example, I was part of the small team of lawyers that represented the Tennessee healthcare provider defendants in *In Re: New England Compounding*

Pharmacy, Inc., Products Liability Litigation, MDL No. 2419 (D. Mass), who ultimately settled for approximately \$200 million.

11. Since shifting to primarily representing plaintiffs in 2015, I have litigated hundreds of cases in both state and federal court and have recovered tens of millions of dollars for my clients.

12. Since early 2020, I have primarily focused my practice on representing plaintiffs in employment and consumer class actions. Since that time, I have spent thousands of hours representing plaintiffs in putative and certified class action cases. Here are a few examples of such cases:

- a. In *Palmer, et al. v. Cognizant*, No. 17-6848-DMG (PLAx), the district court appointed me and several of my colleagues at Kotchen & Low to represent a class of over 2,000 former employees, whose collective damages likely exceed \$1 billion. Dkt. 384 (C.D. Cal. Oct. 27, 2022) (granting plaintiffs' motion for class certification and appointing undersigned counsel). I have taken a lead role in representing that class, including during a three-week phase one trial in June 2023.¹
- b. In *Ladd, et al. v. Nashville Booting*, No. 3:20-cv-00626, the district court appointed me and several of my colleagues at Kotchen & Low to represent a class that is estimated to be between 2,000 and 5,000 consumers. Dkt. 80 (M.D. Tenn. May 11, 2023) (granting plaintiffs' motion for class certification and appointing undersigned counsel). I have also taken a lead role in representing the Plaintiffs and Class, and recently moved the Court to approve a \$1,000,000 class settlement and consent judgment. *See* Dkt. 104-105 (May 21, 2024).

¹ The jury was deadlocked 6-2 in favor of the class, so the court declared a hung jury and mistrial and has reset the case to be tried again in September 2024.

c. In *Newhalfen v. Upstaging*, No. 2023LA00077, Rachel Dapeer and I recently represented a class of 294 individuals in a similar BIPA class action that we had filed in Dekalb County. We were appointed as Class Counsel on December 7, 2023. On March 20, 2024, the court granted final approval of a \$500,000 settlement we obtained for the Class.

13. In February 2023, I began focusing a significant portion of my practice on representing plaintiffs in Illinois BIPA class actions similar to this case. I have filed a several dozen putative class action BIPA cases and have previously served as Class Counsel in other BIPA cases. In connection with my substantial personal and professional investment in this area, I have carefully studied and continue to closely monitor the settlement landscape of similar BIPA class actions.

14. In this case, I am working with Rachel Dapeer to represent the Plaintiff and putative class. I have known her for many years and have worked with her on many other cases. She is an incredible lawyer and also has extensive experience successfully representing plaintiffs in class action cases.

15. Based on my experience and familiarity with settlement of similar BIPA class action cases, I firmly believe that the settlement now before this Court is fair, reasonable, adequate, and in the best interests of members of the proposed settlement class.

I declare under penalty of perjury under the laws of the state of Illinois and the United States of America that the foregoing is true and correct.

EXECUTED at Elmhurst, Illinois, this 23rd day of May, 2024.

s/ Mark Hammervold

Exhibit C

**IN THE CIRCUIT COURT OF WINNEBAGO COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

HEATHER HUGHES- RICHMOND, individually and on behalf of all others similarly situated,	:	NO.: 2023-LA-370
	:	
Plaintiff,	:	CLASS ACTION
	:	
v.	:	
	:	
WALDOM ELECTRONICS CORPORATION,	:	
	:	
Defendant.	:	

**DECLARATION OF RACHEL DAPEER IN SUPPORT OF
PLAINTIFF’S UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

I, Rachel Dapeer, declare as follows:

1. I am co-lead counsel for Plaintiff in this matter. I have continuously been licensed to practice law in the State of New York and New Jersey since 2012 and the State of Florida since 2013, and in good standing with the New York, New Jersey and Florida State Bars. I have litigated cases in both state and federal courts throughout the country. I have an Illinois ARDC number and I submitted my Rule 707 statement on April 24, 2024.. I respectfully submit this declaration in support of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

2. In this putative class action, Plaintiff Heather Hughes-Richmond alleges that Defendant Waldom Electronics Corporation violated Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/15(a) and 14/15(b) by requiring her and its other Illinois workers to “clock” in and out using their fingerprints.

3. I have been involved in all stages of litigation, taking lead on certain tasks and providing a review and input into all other tasks in this litigation.

4. I firmly believe that the settlement now before this Court is fair, reasonable, adequate, and in the best interests of members of the proposed settlement class.

EDUCATION AND EXPERIENCE

5. I have been licensed to practice law in the in the State of New York and New Jersey since 2012 and the State of Florida since 2013 and have been a member in good standing of the New York, New Jersey and Florida Bars since my admission.

6. I am also admitted to practice law in the United States District Courts for the Northern District of Illinois, Southern District of Florida, Middle District of Florida, Southern District of New York, Eastern District of New York, District Court of New Jersey, and the United States Court of Appeals for the Third Circuit.

7. I graduated from Benjamin N. Cardozo School of Law in 2011.

8. After graduating, I practiced with the law firm of Windels, Marx, Lane & Mittendorf, LLP in New York City, New York from 2012 to 2013 representing lenders, financial institutions, and servicers with complex litigation proceedings. From 2013 to 2019, I practiced with the law firm of Greenspoon Marder, LLP in Ft. Lauderdale, Florida representing businesses and individuals in a variety of disputes involving commercial transactions, fraud, business torts, deceptive and unfair trade practices, tax lien and real estate litigation.

9. In 2018, I established the law firm of Dapeer Law.

10. Since opening my practice, I have established a successful record of litigating complex class actions. With offices in Florida and New Jersey, the firm routinely handles complicated matters throughout the country, and has successfully recovered millions of dollars on behalf of consumers nationwide.

11. Dapeer Law has held numerous leadership roles in high stakes class litigation, including leadership roles in certified class actions against insurance companies for their deceptive and fraudulent payment practices, class actions involving product labeling, class actions for TCPA violations, and consumer privacy class actions.

12. Dapeer Law has successfully litigated the following consumer class actions, which represents a small fraction of the cases the firm has worked on:

- *Gaudreau v. MyPillow, et. al.*, No. 6:21-cv-01899 (9th Judicial Circuit, Orange County 2023) (\$10,008,775.00 Class Settlement)
- *Ostendorf v. Grange Indemnity Insurance Company*, No. 2:19-CV-01147 (S.D. Ohio 2020) (\$12,000,000.00 Class Settlement)

- *Hinds-Thomas et al. v. LM General Insurance Company, et. al.*, Case No. 22SL-CC04131 (St Louis County, MO 2023) (\$8,669,083.00 Class Settlement)
- *Jacques, et. al. v. Security National Insurance Company*, No. CACE-19-002236 (17th Judicial Circuit, Broward County) (\$6,000,000.00 Class Settlement)
- *Rawlins v. Esurance Property and Casualty Insurance Company*, Case No. 22SL-CC03468 (St. Louis County, MO 2023) (\$3,215,859.27 Class Settlement)
- *Beau v. Ocean Harbor Casualty Insurance Co.*, No. CACE18029268 (Fla. 17th Cir. Ct.) (\$4,500,000.00 Class Settlement)
- *Levy v. Dollar General Corp.*, No. 3:20-cv-1037 (M.D. Florida 2021) (\$1,800,000.00 Class Settlement)
- *McGowan v. First Acceptance Insurance Company, Inc.*, No. 21-CA-004864 (Fla. 9th Cir. Ct.) (\$2,200,000.00 Class Settlement)
- *Hindes v. Ohio Mutual Insurance Company*, No. 20CV007627(Franklin County, OH) (\$1,875,000.00 Class Settlement)
- *Deleon III, et. al. v. Direct General Insurance Company, et. al.*, No. 19-CA-1636 (9th Judicial Circuit, Osceola County) (\$2,450,000.00 Class Settlement)

I declare under penalty of perjury under the laws of the state of Florida and the United States of America that the foregoing is true and correct.

EXECUTED at Aventura, Florida, this 22nd day of May, 2024.

/s/ Rachel Dapeer
Rachel Dapeer, Esq.