

Hearing Date: 12/19/2022 9:30 AM - 9:35 AM
Location: <<CourtRoomNumber>>
Judge: Calendar, 15

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

LINDABETH RIVERA, et al.

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 2019-CH-00990

Calendar 15

Hon. Anna M. Loftus

FILED
12/12/2022 9:19 AM
IRIS Y. MARTINEZ
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COOK COUNTY, IL
2019CH00990
Calendar, 15
20629162

PROPOSED INTERVENOR JODI WHITE JONES' MOTION TO INTERVENE

FILED DATE: 12/12/2022 9:19 AM 2019CH00990

I. Background

On November 24, 2022—Thanksgiving—the Settlement Administrator sent an email to Class Members demanding that they validate their claim by providing a copy of their driver’s license and the username or email address associated with the Google Photos account to which a photograph of the Class Member was uploaded.¹ (*See* November 24, 2022 E-Mail from Settlement Administrator, attached hereto as Exhibit 2.) It appears that most of these emails ended up in Class Members’ spam folders, including, in this Google-product settlement, in the spam folders of Google’s own Gmail account holders. Worse still, Class Members were given only seven days to comply, and failure to provide that information would result in automatic rejection of a Class Member’s Claim (of course, Google would still receive a release of all claims).

Neither the Court nor these Class Members were given any advance warning they would be required to provide this information. The Court-approved Settlement and Claim Form simply asked Class Members to certify that they were an Illinois resident during the relevant time period and that they “appeared in a photograph in Google Photos.” (*See* Claim Form, attached hereto as Exhibit 3.) That’s it. The Court-approved Settlement and Claim Form did not ask for a government photo ID, or the usernames or email addresses of Google Accounts. And neither the Court-approved Settlement nor Claim Form gave any warning that the Settlement Administrator might contact Class Members, two months after the Claims Deadline and Final Approval Hearing, to collect this information.

¹ The capitalized terms used in this motion are those used in the Class Action Settlement Agreement (the “Settlement” or “Agreement”), attached hereto as Exhibit 1.

Neither Class Counsel nor the Settlement Administrator sought Court approval for this unheard-of change or have offered any explanation for abruptly requiring Class Members to supply this information on such a tight deadline. In fact, at the Final Approval Hearing, Class Counsel and the Settlement Administrator represented to the Court that it “ha[d] received 418,676 claim submissions that it ha[d] deemed to be valid” and that the Settlement Fund “*will* be dispersed *pro rata* to the hundreds of thousands of Class Members who submitted valid claims.” (See Sept. 14, 2022, Plf.’s Mot. Final Approval of Class Action Settlement at 1, 8, attached hereto as Exhibit 4 (emphasis added).) Class Counsel and the Settlement Administrator apparently did not need a photo ID or Google account information to validate hundreds of thousands of Claims. And Class Counsel and the Settlement Administrator affirmatively represented to the Court that over 400,000 Class Members would, definitively, be receiving Settlement Payments. Now, inexplicably, the Settlement Administrator is insisting that some Class Members, including those with supposedly “valid” Claims, provide a photo ID and Google account information within seven days or have their Claim automatically denied.

Class Counsel and the Settlement Administrator were aware at the time they reached the settlement that the Class included those whose photos appeared in a friend’s Google Photos album, yet elected to make the claims’ process the same for everyone. If any issues had arisen, they had ample opportunity to approach the Court. The Claims Deadline passed over two months ago. But at no point in those two months did Class Counsel or the Settlement Administrator ever alert the Court about their plans to demand this information from Class Members. Class Counsel and the Settlement Administrator further failed to get Court approval for this radical change in what is required to recover under this Settlement.

If the Settlement Administrator is allowed to carry out this plan, an enormous number of Class Members will have their Claims denied solely because they do not check their spam folder on Thanksgiving. And even Class Members who have seen the email may have their Claims denied because they cannot comply or do not wish to comply with the Settlement Administrator's demands to hand over a photocopy of their driver's license. Initially, the Class is comprised of individuals who appeared in a photo in Google Photos at any time between 2015 and 2022. (See Long-Form Notice of Class Action Settlement, attached hereto as Exhibit 5.) Some Class Members may know they appeared in a Google Photo during the relevant time period but may not recall the exact username or email address which hosted the Google Photo. They may have deleted their Google accounts and forgotten their former usernames or email addresses. And, because the Class includes *anyone* who appeared in a Google Photo, not just Google users or account holders, other Class Members may not be able to immediately access their friends', families', or even acquaintances' Google Photos accounts to confirm the username or email address hosting photos of them. Second, many Class Members may feel uncomfortable providing a photograph of themselves to the Settlement Administrator when they do not know how that photograph may be used.² After all, this case arose out of Google's misuse of Class Members' biometric identifiers, which Google collected via photographs of Class Members. It is not hard to imagine that those same Class Members may be unwilling to provide a photograph as part of this litigation. Finally, many Class Members may be simply unable to comply with these demands within seven business days.

² We sincerely hope that the settling parties aren't foolish enough to attempt to confirm class membership by running a biometric analysis of the photo ID submitted as part of this plan. The Court should require the settling parties to affirmatively represent this is not the case.

The per-class-member recovery in this case is not insignificant; in the Motion for Final Approval, Class Counsel estimated that each Class Member with an Approved Claim would “receive approximately \$142.” (Ex. 4 at 9.) If the Settlement Administrator is permitted to arbitrarily deny Class Members’ Claims, thousands of Class Members stand to lose out on significant monetary relief while also releasing their claims against Google. The Court approved the Settlement precisely because of “the benefits to the Class Members.” (*See* September 28, 2022 Order Granting Final Approval of Class Action Settlement, attached hereto as Exhibit 6, ¶ 9.) Stripping monetary relief from a huge portion of the Class with no explanation cannot be said to benefit the Class.

Ms. Jones is one of the thousands of Class Members who will be harmed by Class Counsel and the Settlement Administrator’s actions. On Thanksgiving, she received a spam email to her Apple email account, directing her to upload a photo ID and identify the username or email address of a Google Photos account that hosted a photo of her by December 4, 2022. If she failed to comply, she was informed that her Claim would be automatically rejected. Given the significant threat to her and thousands of other Class Members’ recoveries, Ms. Jones seeks to intervene to protect the Class.

II. Legal Standard

Intervention is proper under 735 ILCS 5/2-804(a), which permits any class member to intervene “with leave of court” and instructs that “such leave shall be liberally granted except when the court finds that such intervention will disrupt the conduct of the action or otherwise prejudice the rights of the parties or the class.” Courts should be “indulgent” where motions to intervene “concern notice of settlement” and when intervention does not dispute “the terms of the settlement.” *Fox v. Northwest Ins. Brokers, Inc.*, 113 Ill. App. 3d 255, 258-259 (1st Dist.

1983) (finding that trial court should have permitted objectors to intervene when objector only challenged notice of settlement).

III. Argument

Ms. Jones is a Class Member and permitting her to intervene will not disrupt the action. She is not challenging the terms of the Settlement, and instead solely takes issue with the manner of delivery and contents of the November 24 email from the Settlement Administrator. If anything, the November 24 email itself “disrupt[ed] the action” by requiring Class Members to suddenly submit additional documentation and virtually ensuring that thousands of Class Members will be excluded from the Settlement. Permitting intervention and resolving the issues presented by the November 24 email, in contrast, would ensure prompt resolution. And, finally, far from “prejudic[ing] ... the class,” 735 ILCS 5/2-804(a), permitting intervention here would protect a substantial number of Class Members’ right to recovery. Accordingly, the Court should grant leave to intervene.

The Court’s final approval of the Settlement also does not bar intervention. In granting final approval, the Court explicitly reserved “jurisdiction over the implementation of the Settlement Agreement, including enforcement and administration of the Settlement Agreement....” (Ex. 6 at ¶ 17.) Further, Illinois courts permit intervention “even after final judgment, where the intervenors’ rights were not prejudiced until that time.” *Bari v. Ass’n of Physicians of Pakistani - Descent of North America*, 2021 IL App (1st) 200341-U, ¶ 29; *see also Standard Bank & Tr. Co. v. Village of Oak Lawn*, 61 Ill. App. 3d 174, 178 (1st Dist. 1978) (granting intervention after final judgment when it was only party waiving right to appeal in judgment that jeopardized intervenors’ rights). Until Thanksgiving, two months after entry of final judgment, Ms. Jones had every reason to believe that her rights were being protected. Ms.

Jones could have only become aware of the risk to her right to recover once she received the November 24 email. And, once Ms. Jones learned of the risk to her rights, she promptly moved to intervene.

IV. CONCLUSION

The Court should permit Ms. Jones to intervene in order to file the attached Motion to Protect the Class and grant any additional relief the Court deems just and equitable.

Respectfully Submitted,

JODI WHITE JONES

Date: December 12, 2022

By: /s/ J. Eli Wade-Scott
One of Proposed Intervenor's Attorneys

Jay Edelson
jedelson@edelson.com
Ryan D. Andrews
randrews@edelson.com
J. Eli Wade-Scott
ewadescott@edelson.com
Zoe Seaman-Grant
zseaman-grant@edelson.com
EDELSON PC
350 North LaSalle Street, 14th Floor
Chicago, Illinois 60654
Tel: 312.589.6370
Fax: 312.589.6378
Firm ID: 62075

Counsel for Proposed Intervenor Jodi White Jones

CERTIFICATE OF SERVICE

I, J. Eli Wade-Scott, an attorney, hereby certify that on December 12, 2022, I served the above and foregoing *Proposed Intervenor Jodi White Jones' Motion to Intervene* on all counsel of record by causing true and accurate copies of such paper to be filed through the Court's electronic filing system.

/s/ J. Eli Wade-Scott
J. Eli Wade-Scott

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EXHIBIT A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

LINDABETH RIVERA, et al.

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 2019-CH-00990

Calendar 15

Hon. Anna M. Loftus

PROPOSED INTERVENOR JODI WHITE JONES'
MOTION FOR ORDER PRESERVING CLAIMANTS' RIGHTS

I. Background

The Court-approved Settlement and Claim Form permitted Class Members to self-certify their membership in the Class.¹ Now, at the close of this case—two months after the Claims Deadline and grant of final approval and three months after the Objection and Exclusion Deadline—Class Counsel and the Settlement Administrator have abruptly decided to impose new barriers to thousands of Class Members’ recovery of their Settlement Payments. The morning of Thanksgiving, the Settlement Administrator issued an order to thousands of class members to (1) produce a photo ID and (2) identify the username and email address of a Google account hosting their photo within seven days. If the class member fails to comply, their Claim will be automatically denied. Many Class Members will likely never even know that their Claims are at risk—the email, in this settlement with Google, was delivered to Gmail account holders’ spam folders at the start of a holiday weekend. Class Counsel and the Settlement Administrator never sought Court approval for these new requirements, their method of delivery, or the seven-day deadline. If the Settlement Administrator is permitted to automatically deny Claims of Class Members who do not comply, the claims rate will plummet, and thousands of Class Members will be arbitrarily denied recovery.

Jodi White Jones therefore moves the Court to protect the rights of the Class. The Court should void the new requirements that Class Members submit a photo ID and identify the username and email address of a Google account hosting their photo to have their Claim Approved. The Court should further order the Settlement Administrator to distribute the Settlement Payments to Class Members with Approved Claims, as defined by the Settlement

¹ The capitalized terms used in this motion are those used in the Class Action Settlement Agreement (the “Settlement” or “Agreement”), attached as Exhibit 1 to Proposed Intervenor Jodi White Jones’ Motion to Intervene.

Agreement, without further barrier. Finally, the Court should order the Settlement Administrator to provide an accounting of how many emails were sent to Class Members, which of those emails were delivered to spam, how many Class Members complied with the Thanksgiving email.

II. Legal Standard

A circuit court has “inherent power to manage class actions.” *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 231 (2005) (Freeman, J., concurring in part and dissenting in part). “In a class action, the court is the guardian of the interests of the absent class members.” *Steinberg v. Sys. Software Associates, Inc.*, 306 Ill. App. 3d 157, 169 (1st Dist. 1999), quoting *Waters v. City of Chicago*, 95 Ill. App. 3d 919, 924 (1st Dist. 1981). Because “[a]bsent [class members] in a class action suit are bound by ... a judgment despite the fact that they were not personally served and did not appear,” a court must ensure that “the due process requirements of proper notice and adequate representation were satisfied.” *Miner v. Gillette Co.*, 87 Ill. 2d 7, 15 (1981).

III. Argument

A. The Court Should Void the Additional Requirements

First, the Court should void the additional requirements imposed on certain Class Members by the Thanksgiving email.

Initially, because Class Counsel and the Settlement Administrator never sought Court approval before imposing these requirements on Class Members, the Court never had the opportunity to consider whether the Settlement was “fundamentally fair, reasonable, adequate, and in the best interests of Class Members” in light of these requirements. (*See* Sep. 28, 2022 Final Approval Order, attached hereto as Exhibit 1, ¶ 9.) It is quite common, in settlements like

this one, for a class member to self-certify their membership in a class. In this case, a Class Member could easily self-certify that they had a photo uploaded to Google Photos—a ubiquitous product used by a person’s friends, family members, or mere acquaintances—without hunting that person down for an e-mail address or account name. And that’s what this Court approved: a simple and easy claims process. In moving for preliminary approval, Class Counsel and the Settlement Administrator highlighted the simplicity of the claims process, stating “[e]ach Class Member who submits an Approved Claim via an easy-to-understand Claim Form will receive a *pro rata* cash payment from the Net Settlement Fund.” (*See* April 14, 2022, Plf.’s Mot. for Prelim. Approval, attached hereto as Exhibit 2.) Unsurprisingly, given the ease of the claims process, the Court approved the Claim Form and Settlement.

Now, Class Counsel and the Settlement Administrator have unilaterally decided to require some Class Members to produce a photo ID (for what reason is unclear) and identify the username and email address of a Google account hosting their photo. If Class Members failed to comply within seven days, their Claims would be automatically rejected. The Court never approved these requirements, nor their manner of delivery.

Adding these requirements via a spam email is not “fundamentally fair, reasonable, adequate, and in the best interests of Class Members.” (Ex. 1 ¶ 9.) Potentially thousands of Class Members will be arbitrarily denied recovery solely because they do not check their spam folders. Others will be rejected because they could not comply within the short shot clock over a holiday weekend. And many Class Members may object to the requirements or be unable to comply. For example, Class Members might be unwilling to produce photo IDs, particularly when this litigation concerned misuse of photographs of Class Members. (The e-mail provides no explanation for why photos are necessary.) Other Class Members likely do not know or can’t

find out the username or email address of the Google account that hosted a photo of them, perhaps as far back as 2015. These Class Members have valid Claims but will be denied recovery purely because they lack additional documentation that was not required by the Settlement or Claim Form. *See Mullins v. Direct Digital, LLC*, 795 F. 3d 654, 666 (7th Cir. 2015) (noting that requiring class members to provide additional documentation, instead of merely certifying membership, meant that “class members with valid claims would not recover anything at all.”); *see also Eubank v. Pella Corp.*, 753 F.3d 718, 725-26 (7th Cir. 2014) (refusing to approve settlement which required claimants to submit “a slew” of additional information to be approved). These requirements impose unnecessary barriers to Class Members claiming their Settlement Payments and ensure that thousands of Class Members with valid Claims will be denied recovery.

Additionally, imposing these requirements after the Objection and Exclusion Deadline—and Final Approval—is fundamentally unfair. Class Counsel and the Settlement Administrator have effectively changed the terms of the Settlement, while denying Class Members an opportunity to “challenge unfair or inadequate aspects of a settlement.” *Fox v. Northwest Ins. Brokers, Inc.*, 113 Ill. App. 3d 255, 258 (1st Dist. 1983). Had Class Counsel and the Settlement Administrator included these requirements in the Settlement and Claim Form they submitted for Court approval, Class Members could have challenged their inclusion. *See Pearson v. NBTY, Inc.*, 772 F. 3d 778, 787 (7th Cir. 2014) (“[O]bjectors play an essential role in judicial review of proposed settlements of class actions” because objectors can “flag[] fatal weaknesses in the proposed settlement.”). But by slipping them in now, Class Counsel and the Settlement

Administrator have effectively deprived Class Members of their right to object.²

Including the terms after the Exclusion Deadline also violates the due process rights of Class Members. The Class Members that submitted claims sought to avail themselves of the specific trade-off provided by this settlement: money in exchange for a release. Claiming Class Members who are unable to comply with the new hurdles—or never saw them in the first place—have now given up a release in exchange for nothing. This violates those Class Members’ rights to object or exclude themselves based on the requirements actually (and belatedly) imposed. *See Mortimer v. River Oaks Toyota, Inc.*, 278 Ill. App. 3d 597, 603 (1st Dist. 1996) (noting that due process requires opportunity “to appear and object or to opt out of the class.”).

Ultimately, the Settlement Administrator’s actions will produce a shockingly unfair result for an enormous portion of the Class. That result can be prevented by simply voiding these requirements and ordering the Settlement Administrator to disburse Settlement Payments to Class Members with “Approved Claims” as defined by § 1.2 of the Settlement Agreement.

B. The Court Should Order an Accounting of the Emails

The Court should also order an accounting of the emails sent to Class Members: how many emails were sent to Class Members, which emails went to spam, how many Class Members complied with the email’s requirements before December 2, 2022, how many Class Members complied after December 2, 2022,³ and how many Class Members contacted the

² The late inclusion of these terms also calls into question Class Counsel’s representation in moving for final approval that “[t]he Settlement warrants final approval, especially considering its positive reception by the Class.” (Sept. 14, 2022 Motion for Final Approval, attached hereto as Exhibit 3.) It is plausible that there would have been objections to the Settlement had these terms been included in the original Settlement, and the claims rate would have been a fraction of what it was.

³ On December 2, 2022, NBC 5 Chicago reported on the email’s requirements. *See Did You Miss This Google Settlement Email? You May Have Just Days to Meet a Deadline*, NBC 5

Settlement Administrator regarding the email's requirements.

Ms. Jones and the Class have both a fiduciary relationship with Class Counsel and the Settlement Administrator, and a need for this discovery. *See Mann v. Kemper Financial Companies, Inc.*, 247 Ill. App. 3d 966, 980 (1st Dist. 1992) (noting that to obtain an accounting, movant must show one of the following: "(1) a breach of a fiduciary relationship between the parties; (2) a need for discovery; (3) fraud; or (4) the existence of mutual accounts which are of a complex nature.") (quotations omitted); *see also Byer Clinic and Chiropractic, Ltd. v. Kapraun*, 2016 IL App (1st) 143733, ¶ 22 (2016) ("The class representative, along with class counsel, has a fiduciary duty to the putative class members."). Further, Ms. Jones needs this discovery to establish how many Class Members are affected and the scope of the email's impact.

IV. Conclusion

The Court should void the additional requirements and order the Settlement Administrator to disburse Settlement Payments to Class Members with Approved Claims as defined by the Settlement Agreement. The Court should also order an accounting, along with any other relief it deems equitable and just.

Respectfully Submitted,

JODI WHITE JONES

Date: December 12, 2022

By: /s/ J. Eli Wade-Scott
One of Proposed Intervenor's Attorneys

Jay Edelson
jedelson@edelson.com
Ryan D. Andrews
randrews@edelson.com

Chicago, (Dec. 2, 2022), <https://www.nbcchicago.com/news/local/did-you-miss-this-google-settlement-email-you-may-have-just-days-to-meet-a-key-deadline/3011472/>.

J. Eli Wade-Scott
ewadescott@edelson.com
Zoe Seaman-Grant
zseaman-grant@edelson.com
EDELSON PC
350 North LaSalle Street, 14th Floor
Chicago, Illinois 60654
Tel: 312.589.6370
Fax: 312.589.6378
Firm ID: 62075

*Counsel for Proposed Intervenor Jodi White
Jones*

CERTIFICATE OF SERVICE

I, J. Eli Wade-Scott, an attorney, hereby certify that on December 12, 2022, I served the above and foregoing ***Proposed Intervenor Jodi White Jones' Motion for Order Preserving Claimants' Rights*** on all counsel of record by causing true and accurate copies of such paper to be filed through the Court's electronic filing system.

/s/ J. Eli Wade-Scott
J. Eli Wade-Scott

EXHIBIT 1



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

<p>LINDABETH RIVERA, et al. Plaintiffs, v. GOOGLE LLC, Defendant.</p>	<p>Case No. 2019-CH-00990 Calendar 15 Hon. Anna M. Loftus</p>
<p>MICHAEL AZZANO, et al. Plaintiffs, v. GOOGLE LLC, Defendant.</p>	<p>Case No. 2019-CH-11153</p>
<p>NICHOLAS MARQUEZ, et al. Plaintiffs, v. GOOGLE LLC, Defendant.</p>	<p>Case No. 2021-CH-01460</p>

**ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT,
AWARDING ATTORNEYS' FEES AND SERVICE PAYMENTS
AND ENTERING FINAL JUDGMENT**

This matter coming before the Court on September 28, 2022, on the Motion for Entry of Final Judgment and Final Approval of Settlement (the "Motion"), the Court having reviewed and considered the Motion, the Class Action Settlement Agreement ("Settlement Agreement") between Plaintiffs Lindabeth Rivera, Joseph Weiss, Michael Azzano, Brandon Molander, and

Nicholas Marquez (“Plaintiffs”), individually and on behalf of the Settlement Class^[1], by and through Class Counsel, and Defendant Google LLC (“Defendant” or “Google”), including all exhibits and attachments to the Motion, the Settlement Agreement, and the Motion for Attorneys’ Fees and Expenses and for Service Payments, and having conducted the Final Approval Hearing, and being cognizant of all other prior proceedings in this Action,

IT IS HEREBY ORDERED as follows:

1. This Court has jurisdiction over the subject matter of this Action and over all claims raised therein and all parties thereto, including the Class.

2. Pursuant to 735 ILCS 5/2-806, the Court grants final approval of the Settlement Agreement and finds that the Settlement is fair to the Class and was the result of arms’ length negotiations between the Class, through Class Counsel, and Defendant’s Counsel. The Court concludes that the Settlement Agreement is fair, reasonable, and adequate and in the best interest of the Settlement Class.

FINAL CERTIFICATION OF SETTLEMENT CLASS

3. Pursuant to Illinois Code of Civil Procedure 735 ILCS 5/2-801, the Court hereby certifies the following Settlement Class:

All Illinois residents who appeared in a photograph in Google Photos at any time between May 1, 2015 and the date of Preliminary Approval. Excluded from the Class are: (a) any judge, magistrate, or mediator presiding over the Google Photos BIPA Cases and members of their families; (b) Defendant, Defendant’s subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest; (c) Class Counsel; and (d) the legal representatives, successors or assigns of any such excluded persons.

^[1] Capitalized terms used in this Order that are not otherwise defined herein have the meaning assigned to them in the Settlement Agreement.

4. The Court finds that the Settlement Class satisfies the requirements of the Illinois Code of Civil Procedure 735 ILCS 5/2-801: the Settlement Class is sufficiently numerous; there are questions of law or fact common to the Settlement Class; Plaintiffs' claims are typical of those of Settlement Class Members; and Plaintiffs' and their counsel have and will continue to fairly and adequately protect the interests of the Settlement Class.

5. The Court hereby appoints Michael Azzano, Nicholas Marquez, Brandon Molander, Lindabeth Rivera, and Joseph Weiss as the representatives of the Class, and appoints Robert Ahdoot and Tina Wolfson of Ahdoot & Wolfson, PC, John C. Carey and David P. Milian of Carey Rodriguez Milian, LLP, Scott Bursor of Bursor & Fisher, P.A., and Frank S. Hedin of Hedin Hall LLP as Class Counsel.

NOTICE AND ADMINISTRATION

6. Pursuant to this Court's Order granting preliminary approval of the Settlement, Postlethwaite & Netterville, APAC ("P&N") served as Settlement Administrator. This Court finds that the Settlement Administrator performed all duties thus far required as set forth in the Settlement Agreement.

7. The Court finds that the Settlement Administrator has complied with the approved notice process as confirmed by its Declaration filed with the Court. The Court further finds that the Notice plan set forth in the Settlement as executed by the Settlement Administrator satisfied the requirements of Due Process and 735 ILCS 5/2-803. The Notice plan was reasonably calculated and constituted the best notice practicable to apprise Settlement Class Members of the nature of this litigation, the scope of the Settlement Class, the terms of the Settlement, the right of Settlement Class Members to object to the Settlement or exclude themselves from the Settlement Class and

the process for doing so, and of the Final Approval Hearing. Accordingly, the Court finds and concludes that the Settlement Class Members have been provided the best notice practicable under the circumstances, and that the Notice plan was clearly designed to advise the Settlement Class Members of their rights.

EXCLUSIONS AND OBJECTIONS

8. The Settlement Administrator has certified, and the Court hereby finds, that no timely or otherwise valid objections to the Settlement Agreement or to Plaintiffs' Motion for Attorneys' Fees and Expenses and for Service Payments were submitted. Furthermore, the Settlement Administrator has certified, and this Court hereby finds, that 97 valid or timely exclusions were submitted. All persons who have not made their objections to the Settlement in the time-period and manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT

9. The Court finds that the Action satisfies the applicable prerequisites for class action treatment under the Illinois Code of Civil Procedure, 735 ILCS 5/2-801. The Court finds that the settlement of the Action, on the terms and conditions set forth in the Settlement Agreement, is in all respects fundamentally fair, reasonable, adequate, and in the best interests of the Class Members, especially in light of the benefits to the Class Members, the relative strength of Plaintiffs' claims, the defenses raised by the Defendant, the complexity, expense and probable duration of further litigation, the risk and delay inherent in possible appeals, and the risk of collecting any judgment obtained on behalf of the Class. In the Preliminary Approval Order, the

Court found that the Settlement Agreement appeared to be fair, reasonable, and adequate and fell within the appropriate range of possible approval. Essentially, the Settlement provides for each member of the Settlement Class, as that term is defined in the Settlement Agreement, to receive from the Defendant benefits described in the Settlement Agreement. The Settlement Agreement provides these benefits to the Settlement Class even though the Defendant has at all times disputed, and continue to dispute, Plaintiffs' allegations in this lawsuit, including that it captures or collects biometric identifiers or biometric information, and to deny any liability for any of the claims that have been or could have been alleged by Plaintiffs or other members of the Settlement Class.

CLASS COUNSEL'S FEES AND EXPENSES AND SERVICE PAYMENTS

10. The Court hereby awards a Service Payment of \$5,000.00 each to Plaintiffs Michael Azzano, Nicholas Marquez, Brandon Molander, Lindabeth Rivera, and Joseph Weiss in compensation for the time, effort, and risk they undertook as representatives of the Class. These awards shall be paid within the time period and manner as set forth in the Settlement Agreement.

11. The Court hereby grants Plaintiffs' Motion for Attorneys' Fees and Expenses and for Payments. Class Counsel is hereby awarded \$35,000,000.00 in reasonable attorneys' fees and costs incurred in litigating this Action, in the manner specified in the Settlement Agreement. Class Counsel's Fees and Expenses shall be paid within the time period and manner as set forth in the Settlement Agreement.

RELEASE OF CLAIMS

12. This Final Judgment hereby incorporates and gives full effect to the Release set forth in the Settlement Agreement. By virtue of this Final Judgment, all members of the Class who did not validly and timely submit Requests for Exclusion in the manner provided in the Settlement Agreement shall, by operation of this Final Judgment, have fully, finally and forever released, relinquished and discharged the Defendant and the Released Parties as set forth in Section 1.32 of the Settlement Agreement from the Released Claims as set forth in Section 1.31 of the Settlement Agreement. Furthermore, all members of the Class who did not validly and timely submit exclusions in the manner provided in the Settlement Agreement are hereby permanently barred and enjoined from (1) filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting or continuing, either directly or in any other capacity, either individually or as a class, any action or proceeding in any court, agency, arbitration, tribunal or jurisdiction, asserting any claims released pursuant to the Settlement Agreement, or seeking an award of fees and costs of any kind or nature whatsoever and pursuant to any authority or theory whatsoever, relating to or arising from the Action and/or as a result of or in addition to those provided by the Settlement Agreement; and (2) organizing Settlement Class Members who have or have not excluded themselves from the Settlement Class into a separate class for purposes of pursuing as a purported class action any lawsuit or arbitration or other proceeding (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action) based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation and/or the Released Claims, except that Settlement Class Members are not precluded from participating in any investigation or suit initiated by a state or federal agency. Any Person who knowingly violates such injunction shall pay the attorneys' fees and costs

incurred by Defendant and/or any other Released Persons and Class Counsel as a result of the violation.

RESIDUAL PAYMENT TO NON-PROFIT ORGANIZATIONS

13. Pursuant to paragraph 3.5 of the Settlement Agreement, and the Parties' selection, the Residual (as defined therein) shall be paid to the following non-profit organization(s) (if more than one organization is listed the Residual shall be divided equally among the listed recipients):

(1) Greater Chicago Legal Clinic

(2) Chicago Volunteer Legal Services

AMENDMENTS AND MODIFICATIONS

14. Class Counsel and Defendant are hereby authorized, without further approval from the Court, to agree to and adopt such amendments and modifications of the Settlement and its implementing documents (including all Exhibits to the Settlement Agreement) that they deem appropriate, provided that such amendments or modifications (1) shall be consistent in all material respects with this Final Judgment, and (2) do not limit the rights of Settlement Class Members.

PRECLUSIVE EFFECT

15. The Settlement Agreement and this Final Judgment are binding on and shall have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings encompassed by the Release maintained by or on behalf of Plaintiffs and the Settlement Class Members, and their respective present or part heirs, executors, estates, administrators, trustees,

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.

INCORPORATION OF SETTLEMENT AGREEMENT INTO FINAL JUDGMENT

16. The provisions of the Settlement Agreement and the relief provided to the Settlement Class therein are hereby fully incorporated into this Final Judgment.

ENTRY OF FINAL JUDGMENT

17. Finding that there is no just reason for delay, the Court orders that this Order for Final Approval of Class Action Settlement, Awarding Attorneys' Fees and Expenses, Service Payments and Entry of Final Judgment shall constitute a final judgment. The Clerk of the Court is directed to enter this Order on the docket forthwith. The above-captioned action is hereby dismissed in its entirety *with prejudice*. Without affecting the finality of the Judgment hereby entered, the Court reserves jurisdiction over the implementation of the Settlement Agreement, including enforcement and administration of the Settlement Agreement and this Final Judgment.

IT IS SO ORDERED.

Judge Anna M. Loftus
ENTERED
SEP 28 2022

Anna M. Loftus

Judge Anna M. Loftus, No. 2102

EXHIBIT 2

Hearing Date: 4/25/2022 9:30 AM - 9:35 AM
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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION**

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LINDABETH RIVERA, et al.

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 2019-CH-00990

Calendar 15

Hon. Anna M. Loftus

**PLAINTIFFS' UNOPPOSED MOTION & MEMORANDUM IN SUPPORT OF
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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I. INTRODUCTION

Plaintiffs Lindabeth Rivera, Joseph Weiss, Michael Azzano, Brandon Molander, and Nicholas Marquez (“Plaintiffs” or “Class Representatives”) respectfully move on an unopposed basis for preliminary approval of the class-wide Settlement Agreement (“Settlement Agreement” or “SA”) entered into between the Parties to this Action, a true and correct copy of which is attached hereto as Exhibit 1.¹

In this putative class action, Plaintiffs allege that Defendant Google LLC (“Defendant” or “Google”) violated the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”), by collecting, storing, and using putative class members’ biometric identifiers and information (collectively, “Biometric Data”) from photographs in Google Photos, without obtaining informed written consent or publishing a publicly available retention and destruction policy. The Consolidated Class Action Complaint (“Complaint” or “Compl.”), filed in this Action, seeks statutory damages and equitable remedies for Settlement Class Members (“Class Members”), as well as reasonable attorneys’ fees and costs.

After six years of active litigation, involving seven putative class actions (including this Action) in state and federal courts across the country (as well as an appeal and cross-appeal to a federal court of appeal) (the “Google Photos BIPA Cases”),² Plaintiffs have achieved a Settlement that, if approved, will resolve all of these Google Photos BIPA Cases on behalf of the Settlement Class (“Class”). The Settlement avoids numerous risks of non-recovery posed by continued litigation and provides meaningful monetary and non-monetary relief to Class Members.

¹ Unless otherwise defined herein, capitalized words and terms shall have the same meaning as ascribed in the Settlement Agreement Section 1 (Definitions).

² In addition to this case, the Settlement resolves: *Rivera v. Google Inc.*, No. 1:16-cv-02714 (N.D. Ill.) (“*Rivera* Federal Action”); *Weiss v. Google Inc.*, No. 1:16-cv-02870 (N.D. Ill.) (“*Weiss* Federal Action”); *Azzano v. Google LLC*, No. 2019-CH-11153 (Ill. Cir. Ct., Cook Cnty.) (“*Azzano* State Action”); *Molander v. Google LLC*, No. 5:20-cv-00918 (N.D. Cal.) (“*Molander* Federal Action”); *Marquez v. Google LLC*, No. 2021-CH-01460 (Ill. Cir. Ct., Cook Cnty.) (“*Marquez* State Action”); *Marquez v. Google LLC*, No. 1:20-cv-04454 (N.D. Ill.) (“*Marquez* Federal Action”).

Defendant agrees to pay \$100 million to establish a non-revisionary cash Settlement Fund for the benefit of the Class. Each Class Member who submits an Approved Claim via an easy-to-understand Claim Form will receive a *pro rata* cash payment from the Net Settlement Fund.

The Settlement also includes robust prospective relief for the benefit of all Class Members. It will require Defendant to, *inter alia*: (1) provide additional electronic notices to all existing and new Google Photos users that Google can determine are likely to be located in Illinois, which will further disclose and enable consent to Defendant's practice of creating "face templates" or "face models" based on images of faces appearing in photographs in Google Photos accounts when the "face grouping" feature is enabled, and inform users how to disable the "face grouping" feature and permanently delete any face templates or face models that may have been created from the photographs in their accounts; and (2) develop, publish, and abide by a retention policy in which Defendant commits to delete face templates or face models associated with Google Photos users' accounts after users deactivate the "face grouping" feature, delete photographs from which face templates or face models were generated, or delete their accounts.

The Settlement is the product of an in-depth pre-filing investigation that began in 2015, six years of hard-fought litigation, and comprehensive discovery concerning the Parties' claims and defenses. The considerable time and resources that Plaintiffs devoted to this litigation put them in a strong position to meaningfully assess the strengths and weaknesses of the claims and the risks posed by continued litigation. The Parties agreed to the principal terms of the Settlement after engaging in extensive and zealous negotiations that spanned from August of 2018 until March of this year (and included numerous mediation sessions before three well-respected neutrals). Thus, the Settlement represents the culmination of more than six years of litigation and extensive arm's-length negotiations.

By any measure, the Settlement is fair, reasonable, and adequate and warrants preliminary approval. Thus, Plaintiffs respectfully request that the Court (1) preliminarily approve the proposed Settlement; (2) provisionally certify the Settlement Class; (3) approve the Notice Plan; and (4) schedule the Final Approval Hearing.

II. BACKGROUND

A. Nature of the Action

Plaintiffs allege, *inter alia*, that Google created, collected, and stored Biometric Data from photos uploaded to Google Photos,³ without providing sufficient notice and obtaining the required consent in violation of BIPA. Compl. ¶¶ 4, 21, 24, 37, 47, 57, 67, 76. Specifically, Plaintiffs allege Google analyzes such images and creates a “face template” or “face model” for each face depicted in those photos and uses those face templates or face models to group together photos in a user’s account depicting similar faces. *Id.* ¶¶ 5, 17, 28-29.

Plaintiffs allege Google collected and stored Class Members’ Biometric Data without first obtaining the written releases required by 740 ILCS 14/15(b)(3). *Id.* ¶ 89. Plaintiffs further allege Google never informed Plaintiffs or Class Members in writing of the specific purpose and length of time for which their Biometric Data were being “collected, stored and used” as required by 740 ILCS 14/15(b)(1)-(2), nor did Google publish a publicly available retention schedule and guidelines for permanently destroying Plaintiffs’ and Class Members’ Biometric Data as required by 740 ILCS 14/15(a). *Id.* ¶¶ 90-91. Plaintiffs and putative class members are current and former Illinois residents who allegedly “appeared in a photograph in Google Photos at any time between May 1, 2015 and the date of Preliminary Approval.” *Id.* ¶ 79. On behalf of themselves and the Class, Plaintiffs seek statutory damages, injunctive relief, and reasonable attorneys’ fees and expenses to redress Defendant’s alleged violations of BIPA. *Id.* ¶ 93.

B. The Litigation and Plaintiffs’ Counsels’ Efforts on Behalf of the Class

1. Investigations

Plaintiffs’ counsel conducted comprehensive pre- and post-filing investigations concerning the factual and legal issues underlying each of the Google Photos BIPA Cases. These efforts included:

³ Google Photos is Google’s photo sharing, organizing, and storage service that launched in May 2015. Google Photos allows users to group the photos in their account based on the images in them, including images depicting faces.

- Researching the nature of Defendant’s business, technologies, consumer-privacy practices, and public statements, both in general and in the context of the Google Photos service;
- Interviewing dozens of individuals in Illinois who used Google Photos, including about their process of enrolling in Google Photos, any disclosures they received or agreed to during the enrollment process, and their experience using Google Photos;
- Inspecting and analyzing these consumers’ Google Photos accounts, the photos depicting them that had been uploaded to Google Photos, and various records reflecting their enrollment in Google Photos and other interactions with Defendant;
- Researching and analyzing Defendant’s technology used in connection with the Google Photos service, including registered patents, patent applications, various papers, and public statements by the company concerning the service and its technology;
- Performing an in-depth analysis of the various versions of Defendant’s Privacy Policy, Terms of Service, and other publicly accessible documents available to Google Photos users during the statutory period;
- Researching the relevant law and examining the pertinent facts to assess the merits of potential BIPA claims against Defendant and defenses that Defendant might assert thereto; and
- Reviewing pieces of proposed legislation and related legislative materials under consideration by the Illinois legislature during the statutory period, as well as lobbying efforts related thereto, and assessing the likelihood that BIPA would be amended in a manner that would affect Plaintiffs’ and putative class members’ rights on a retroactive basis, including their ability to pursue claims or recover statutory damages.

See concurrently filed Affidavits of Robert R. Ahdoot (“Ahdoot Aff.”) ¶ 6; David P. Milian (“Milian Aff.”) ¶ 12; Frank S. Hedin (“Hedin Aff.”) ¶ 10; and Scott A. Bursor (“Bursor Aff.”) ¶ 9.

As a result of these investigations, Plaintiffs were able to prepare complaints against Defendant aimed at maximizing the likelihood of class certification and recovering meaningful class-wide relief. Ahdoot Aff. ¶ 7; Milian Aff. ¶ 13; Hedin Aff. ¶ 2; Bursor Aff. ¶ 2.

2. Litigating the Google Photos BIPA Cases

On March 1, 2016, Plaintiff Rivera filed the *Rivera* Federal Action in the U.S. District Court for the Northern District of Illinois (“Northern District of Illinois”), alleging claims for damages and other remedies based on alleged violations of BIPA in connection with Google

Photos. *Rivera* Federal Action, ECF No. 1. On March 4, 2016, Plaintiff Weiss filed the *Weiss* Federal Action in the Northern District of Illinois, alleging similar violations of BIPA in connection with Google Photos. *Weiss* Federal Action, ECF No. 1. On or about May 24, 2016, the Northern District of Illinois consolidated the two actions. *Weiss* Federal Action, ECF No. 33; *Rivera* Federal Action, ECF No. 36. On June 17, 2016, Google filed a motion to dismiss the consolidated action. *Rivera* Federal Action, ECF Nos. 48-49. Plaintiffs in the consolidated action opposed the motion to dismiss. *Id.* ECF No. 51. Judge Chang entered a nearly 30-page order denying Google’s motion in its entirety (*id.*, ECF No. 60), which was published as *Rivera v. Google Inc.*, 238 F. Supp. 3d 1088 (N.D. Ill. 2017).

Judge Chang then held a status conference at which he set a schedule for filing a second amended consolidated complaint, an answer, and a schedule for fact discovery. *Rivera* Federal Action, ECF No. 62. At that status conference, Defendant informed the Court that it planned to move for an order certifying for interlocutory review (under 28 U.S.C. § 1292(b)) the order denying the motion to dismiss. *Id.* Plaintiffs filed the second amended consolidated complaint on March 7, 2017. *Id.* ECF No. 63. Google answered the complaint on April 17, 2017. *Id.* ECF No. 70.

On March 9, 2017, Google filed motions to (i) amend the order denying its motion to dismiss to include a certification permitting an interlocutory appeal pursuant to 28 U.S.C. § 1292(b), and (ii) stay the case pending such appeal, which Plaintiffs opposed. *Rivera* Federal Action, ECF Nos. 66-69. In his order denying those motions, Judge Chang observed that Google’s defenses based on the dormant Commerce Clause and BIPA’s lack of extraterritorial effect were “substantial arguments.” ECF No. 76 at 2. Judge Chang also noted that his order should not be interpreted as “an endorsement of the scope of [BIPA], and in particular the damages provisions” of the law, because there was “room to debate” whether those provisions were “appropriate for violations . . . of a statute that deals with rapidly advancing technology.” *Id.* at 2 n.2.

Thereafter the Parties moved forward with significant discovery efforts. The Parties exchanged initial disclosures on March 27, 2017. Plaintiffs served a 30(b)(6) deposition notice and

detailed requests for production of documents and interrogatories. Ahdoot Aff. ¶ 11. The Parties also negotiated the terms of a confidentiality and protective order, negotiated an ESI production protocol, developed a list of Google employees/document custodians, and agreed on most of the relevant search terms, with the court interceding on plaintiffs' motion to expand the search terms beyond those to which Google would agree. *Rivera* Federal Action, ECF No. 117.

Over the ensuing months, and after a number of discovery disputes (*id.*, ECF Nos. 101-12, 116-117, 127), Google produced more than 300,000 documents. Plaintiffs devoted hundreds of hours in a detailed review of these documents to further investigation of the claims and in preparation for depositions and further motion practice, including an anticipated motion for class certification and Google's motion for summary judgment. Ahdoot Aff. ¶ 12. Each party also took extensive depositions. *Id.*

After a nearly a year of discovery, on April 23, 2018, Google filed its motion for summary judgment, which Plaintiffs opposed. *Rivera* Federal Action, ECF Nos. 151-55, 166, 177-80. On December 29, 2018, the Northern District of Illinois granted summary judgment on the grounds that Plaintiffs lacked Article III standing to pursue their claims in federal court. *Rivera v. Google, Inc.*, 366 F. Supp. 3d 998 (N.D. Ill. 2018); *Rivera* Federal Action, ECF Nos. 206-07).

On January 24, 2019, Plaintiffs appealed the order granting summary judgment in Google's favor to the U.S. Court of Appeals for the Seventh Circuit. *Rivera v. Google LLC*, No. 19-1182 (7th Cir.). Google cross-appealed, and the Seventh Circuit later ordered jurisdictional briefing on Google's Cross-Appeal. *See Google LLC v. Rivera*, No. 19-1242 (7th Cir.), ECF Nos. 15, 19.

Also on January 24, 2019, Plaintiffs Rivera and Weiss filed the *Rivera* State Action in the Circuit Court of Cook County, Illinois, County Department, Chancery Division, alleging the same claims alleged in the *Rivera* Federal Action. Soon thereafter, Google moved to stay the *Rivera* State Action in light of the pending appeals. On June 17, 2019, this Court stayed the *Rivera* State Action over Plaintiffs' objections.

On September 26, 2019, Plaintiff Azzano filed the *Azzano* State Action in the Circuit Court of Cook County, Illinois, County Department, Chancery Division, alleging claims substantively

similar to the claims alleged in the *Rivera* and *Weiss* Federal Actions and the *Rivera* State Action. On December 3, 2019, Google moved to stay the *Azzano* State Action in light of the *Rivera* Federal Action, which Plaintiffs opposed. On December 9, 2019, this Court stayed the *Azzano* State Action.

On February 6, 2020, Plaintiff Molander filed the *Molander* Federal Action in the U.S. District Court for the Northern District of California. Molander's claims are substantively similar to the claims alleged in the earlier actions. *Molander* Federal Action, ECF No. 1. On June 18, 2020, Google moved to dismiss, transfer, or stay the *Molander* Federal Action, which Plaintiff Molander opposed. *Molander* Federal Action, ECF Nos. 35, 39, 45. On July 22, 2020, the Northern District of California stayed the *Molander* Federal Action. *Id.* ECF No. 47.

On March 23, 2020, Plaintiff Marquez filed the *Marquez* State Action in the Circuit Court of the Twelfth Judicial District, Will County, Joliet, Illinois. Marquez's claims also were substantively similar to the claims alleged in the earlier actions. On July 29, 2020, Google removed the *Marquez* State Action to the Northern District of Illinois. On August 28, 2020, Plaintiff Marquez filed a motion to remand his claim for violation of Section 15(a) of BIPA back to state court for lack of Article III standing, which Google opposed. *Marquez* Federal Action, ECF Nos., 11, 15-16. On October 27, 2020, the Northern District of Illinois granted Plaintiff Marquez's motion to remand and remanded his claim under Section 15(a) of BIPA. *Marquez* Federal Action, ECF No. 18. On January 20, 2021, Plaintiff Marquez voluntarily dismissed without prejudice his claim under Section 15(b) of BIPA. *Marquez* Federal Action, ECF No. 24. Thereafter, the *Marquez* State Action was transferred to this Court and consolidated with the *Rivera* State Action.

On December 2, 2020, and in light of *Bryant v. Compass Group USA, Inc.*, 958 F.3d 617 (7th Cir. 2020) and *Fox v. Dakota Integrated Sys., LLC*, 980 F.3d 1146 (7th Cir. 2020), Google filed a Motion for Relief from Judgment and Indicative Ruling in the *Rivera* Federal Action. *Rivera* Federal Action, ECF No. 232. Google's motion asked the Northern District of Illinois to issue an indicative ruling stating that, if the Seventh Circuit were to remand the then-pending appeal in the *Rivera* Federal Action, the Northern District of Illinois then would grant Google's motion for Rule 60(b)(6) relief and vacate its order granting summary judgment in Google's favor on Plaintiffs'

claim under Section 15(b) of BIPA. On December 23, 2020, the Northern District of Illinois (Judge Chang) granted Google's motion and ruled:

[I]f the Seventh Circuit were to remand this case, then this Court would vacate the judgment that the Plaintiffs lack Article III standing to pursue the claims under Section 15(b) of the Illinois Biometric Information Privacy Act. The judgment would remain intact that the Plaintiffs lack Article III standing under Section 15(a) of the Act.

Rivera Federal Action, ECF No. 235.

On January 21, 2021, the Seventh Circuit issued its mandate remanding the *Rivera* Federal Action to the Northern District of Illinois. *Rivera* Federal Action, ECF No. 237.

On January 22, 2021, Plaintiffs *Rivera* and Weiss moved to stay the *Rivera* Federal Action in favor of this Action. *Rivera* Federal Action, ECF No. 238. Google opposed this motion, Plaintiffs filed a reply, and Google filed a sur-reply. *Rivera* Federal Action, ECF Nos. 242-43, 249. On March 10, 2021, Plaintiffs moved this Court to lift the stay in the *Rivera* State Action. On June 17, 2021, this Court held a hearing on Plaintiffs' motion to lift the stay of the *Rivera* State Action, which it granted in an order dated June 24, 2021. On August 30, 2021, Judge Chang granted Plaintiffs' motion to stay the *Rivera* Federal Action. *Rivera* Federal Action, ECF No. 258.

Concurrently with this filing, Plaintiffs present for approval a proposed Consolidated Class Action Complaint against Defendant in the *Rivera* State Action, which encompasses all claims in the Google BIPA Cases, and seeks a proposed class comprised of "all Illinois residents who appeared in a photograph in Google Photos at any time between May 1, 2015 and the date of Preliminary Approval."

3. Settlement Negotiations and Mediation

While the litigation described above was underway, the Parties engaged in extensive, arm's-length negotiations over the course of several years, including six separate mediation sessions and numerous additional discussions facilitated by the Honorable Stuart E. Palmer (Ret.), U.S. Court of Appeals for the Seventh Circuit Mediator Jillisa Brittan, and the Honorable Layn R.

Phillips (Ret.). Ahdoot Aff. ¶ 25. These neutrals all have extensive experience in mediating class action, including those alleging violations of BIPA. All mediators were highly involved. *Id.*

Prior to finalizing the Settlement, Plaintiffs' counsel obtained and reviewed discovery concerning every aspect of the case, including business records and ESI pertaining to the merits of Plaintiffs' claims and Defendant's defenses, Google's business practices with respect to Google Photos, issues of class certification, the size and scope of a potential class, and the deposition testimony of Google employees concerning these issues. *Id.* ¶ 26. Thus, before entering into the Settlement, Plaintiffs had a thorough understanding of the composition of the Settlement Class, the nature of Google's anticipated defenses on the merits, the likely nature of arguments that would be advanced at class certification, summary judgment, and trial, the complex technical issues surrounding the claims and defenses, and potential injunctive relief—issues which Plaintiffs' counsel carefully analyzed with their clients and consulting experts. Ahdoot Aff. ¶ 26; Milian Aff. ¶ 15; Hedin Aff. ¶ 12; Bursor Aff. ¶ 11.

Starting in August 2018, the Parties engaged in numerous mediation sessions,⁴ with both sides represented by experienced counsel who fought hard for their clients. Ahdoot Aff. ¶ 27. The parties participated in two all-day mediations with the Honorable Layn R. Phillips (Ret.), multiple months-long extensive discussions and an all-day mediation with Seventh Circuit Court of Appeals Mediator Jillisa Brittan, and three all day mediations with the Honorable Stuart E. Palmer (Ret.) of JAMS. *Id.* Over the course of many months, the Parties also participated in numerous phone conferences during which the myriad detailed terms of the Settlement were negotiated. *Id.* ¶ 28. This process extended for months, included several iterations and revisions of written proposals and counter proposals, discussions with Google's in-house counsel, and consultation with experts. *Id.* Numerous drafts and redlines of the Settlement Agreement and its many exhibits were

⁴ The Parties submitted and exchanged multiple confidential mediation statements detailing their respective views of the case and positions on settlement prior to commencement of mediation before each neutral. Ahdoot Aff. ¶ 27.

exchanged, followed by lengthy discussions between the Parties and negotiations about a multitude of issues. *Id.* The Settlement was not finally consummated until April 2022.

The Parties also negotiated the logistics and substance of the notice and administration plan. *Id.* ¶ 29. Plaintiffs’ counsel obtained bids from well-established, experienced, and highly regarded class action notice and administration firms. *Id.* After reviewing and comparing costs among the three proposals, and obtaining further follow-up information from each potential administrator, the Parties agreed to engage Postlethwaite & Netterville (“P&N”) to serve as Settlement Administrator, subject to the Court’s approval. *Id.* ¶ 29; *see also infra*, Section IV.E. As a result, Plaintiffs maximized the amount that would be available to the Class by minimizing the notice and administration costs, while ensuring that the notice and administration plan complied with all rules, guidelines and due process requirements. *Ahdoot Aff.* ¶ 30. Further, Plaintiffs worked closely with P&N to ensure that the content and form of all notice-related materials and other Settlement documents (as well as the Settlement Website) are consistent with the terms of the Settlement, comply with due process and applicable law, and are easily understood by Class Members. *Id.* ¶ 31; Affidavit of Brandon Schwartz (Director of Notice at P&N) (“Schwartz Aff.”) ¶¶ 8-9, 31.

III. THE PROPOSED SETTLEMENT

The key terms of the Settlement (attached hereto as Exhibit 1) are as follows:

A. The Settlement Class

Plaintiffs request that the Court provisionally certify the following Settlement Class: “All Illinois residents who appeared in a photograph in Google Photos at any time between May 1, 2015 and the date of Preliminary Approval.” SA ¶ 1.8.⁵

⁵ Excluded from the Settlement Class are: (a) any judge, magistrate, or mediator presiding over the Google Photos BIPA Cases and members of their families; (b) Defendant, Defendant’s subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest; (c) Class Counsel; and (d) the legal representatives, successors or assigns of any such excluded persons. SA ¶ 1.8.

B. Monetary Relief

The Settlement provides for a non-reversionary cash Settlement Fund of \$100 million, which will be funded by Google. *Id.* ¶ 3.2(a). All Class Members are eligible to make one claim for payment. *Id.* ¶ 3.3(a). The Settlement Fund will be used to pay Settlement Payments to Class Members, Administration Expenses to the Settlement Administrator, any Taxes (for interest accrued on the Fund), and any Court-approved Fee and Expense Award to Class Counsel and Service Payments to the Class Representatives. *Id.* ¶ 3.2(a). The Settlement contemplates distribution of residual funds to Class Members in a second distribution, if economically feasible.⁶ *Id.* ¶ 3.5. To the extent funds remain in the Settlement Fund after these efforts, subject to the Court's approval, such Residual Funds will be distributed to one or more 26 U.S.C. § 501(c)(3) non-profit organization(s) selected by the Parties. Subject to the Court's approval, at least fifty percent 50% of these Residual Funds will be disbursed to organization(s) appearing on the Chicago Bar Foundation's list of Qualifying CBF-Supported Pro Bono and Legal Aid Organizations. *Id.* & Ex. 7.

Within 90 days after the Effective Date, the Settlement Administrator shall send to each Class Member who submitted an Approved Claim a Settlement Payment constituting an equal *pro rata* share of the Net Settlement Fund (i.e., the amount remaining in the Settlement Fund after deductions are made to pay the Administration Expenses, Fee and Expense Award, and Service Payments). Settlement Payments will be sent via physical check, digital payment, or electronic deposit, as elected by each Claimant. *Id.* ¶ 3.3.

⁶ To the extent that a check issued to a Class Member is not cashed within 180 days after the date of issuance, or a digital payment is unable to be processed within 180 days of the first attempt, such funds shall be apportioned in a second distribution, if practicable, on a *pro rata* basis, to Class Members with Approved Claims who, in the initial distribution, cashed their check or successfully received payment electronically. SA ¶ 3.5.

C. Significant Prospective Relief

The Settlement provides for significant prospective relief. Within 60 days after the Effective Date, Defendant will implement and maintain certain changes to Google Photos to ensure and strengthen its compliance with BIPA. *Id.* ¶ 3.1. Specifically, Defendant shall provide all Grouping-Enabled Illinois Users⁷ and all New or Re-Enabled Illinois Grouping Users⁸ an electronic notice that discloses the following: (i) that the face grouping feature is enabled; (ii) that Defendant creates “face templates” or “face models” that are based on the images of faces in the photographs that are saved in the user’s account; (iii) that by continuing to use Google Photos with the face grouping feature enabled, the user is consenting to Defendant’s creation of data from the photographs in his or her account;⁹ and (iv) how the user can disable the feature and permanently delete any face templates or face models that may have been created from the photographs in his or her account. *Id.* ¶ 3.1(a)(1). The notice presented when Google Photos is activated by the user (in mobile or on computer) will require the user to affirmatively indicate the user’s consent as described in subsection (iii) above. *Id.*

Also within 60 days after the Effective Date, Defendant will develop, publish, and abide by a retention policy in which it will commit to deleting face models or face templates associated with a Google Photos user’s account within a reasonable period of time after the Google Photos user takes any of the following actions: (i) turns off the “face grouping” feature in Google Photos (in which case, all face templates or face models would be deleted); (ii) deletes an individual photograph (in which case, face models derived from that photograph would be deleted); (iii) deletes all photographs that include images of people (in which case, all face templates or face

⁷ Google Photos users who Defendant can reasonably determine are located in Illinois and who have the “face grouping” feature enabled in Google Photos. SA ¶ 3.1(a)(1).

⁸ New Google Photos users who Defendant can reasonably determine are in Illinois or existing Google Photo users who Google can reasonably determine to be in Illinois when presented with an option to re-enable the “face grouping” feature in Google Photos. *Id.*

⁹ This includes but is not limited to the creation of “face templates” or “face models,” which enables Defendant to group photographs of similar faces and which, Plaintiffs contend, involves the collection of “biometric” data under the laws of some jurisdictions. *Id.*

models derived from those photographs would be deleted); and (iv) deletes his or her Google account (in which case, all photographs in the account, and all face templates or face models derived from those photographs, would be deleted). *Id.* ¶ 3.1(a)(2).

Additionally, Defendant will not sell, lease, or trade face templates or face models to any third party, and will store, transmit, and protect from disclosure face templates or face models using reasonable security measures and in a manner that is at least as protective as the way Google stores, transmits, and protects other confidential information. *Id.* ¶ 3.1(a)(3)-(4).

D. The Notice Plan and Claims Process

The proposed Notice forms are attached to the Settlement as Exhibits 1 (Claim Form), 3 (Long Form Notice), 5 (Publication Notice), 6 (Summary Notice - Email), 8 (Reminder Email), 9 (Summary Notice – Postcard), and 11 (Banner Ads). The Summary Notice will be delivered *via* email (with a link to a Spanish language version of the Long Form Notice). If the email Summary Notice is not deliverable, it will be sent by U.S. mail, in Postcard form, where a mailing address can be identified by the Settlement Administrator. Notice will be sent to all individuals whom Google has determined, based a reasonable review of its records, are *potential* Class Members (“Direct Notice List”). *Id.* ¶ 6.1; Schwartz Aff. ¶ 10.

Notice also will be disseminated via a robust print and digital notice program in a manner specifically designed to reach Class Members. SA ¶¶ 6.3(b)(iv)-(v); Schwartz Aff. ¶¶ 15-23. Also, no later than fourteen (14) days before the Claims Deadline, the Settlement Administrator will send a Reminder Email to all valid email addresses on the Direct Notice List that are associated with persons who have not submitted a Claim Form as of that date. SA ¶ 6.3(b)(ii). The Settlement Website (www.GoogleBIPASettlement.com), will communicate all important information, deadlines, and the Long Form Notice. *Id.* ¶ 1.41. The website will also allow for electric submission of Claim Forms and have the Long Form Notice (in both English and Spanish), Claim Form, and relevant Motions, Orders, and pleadings available for download. *Id.* Additionally, a toll-free number, email, and physical mailing address will be made available for Class Members to contact the Settlement Administrator directly. *Id.* ¶ 6.3(b)(vii), and *see also* Exs. 3 (Long Form

Notice), 5 (Publication Notice), and 6 (Summary Notice); Schwartz Aff. ¶ 24. The Notice Plan is robust, constitutes the best practicable notice under the circumstances, and meets all due process requirements. Schwartz Aff. ¶¶ 7-9, 29-31. Prior to the Final Approval Hearing, the Parties will file an affidavit from the Settlement Administrator attesting to its compliance with the Notice program. SA ¶ 6.3(b)(x).

Class Members will be able to submit Claim Forms electronically on the Settlement Website, or in traditional paper form by U.S. Mail, postmarked on or before the Claims Deadline. *Id.* ¶ 7.1. The entire claims process will be handled by the Settlement Administrator. *Id.* ¶ 5.1. Following the commencement of Notice, Class Members will have 120 days after the Notice Date to submit their Claim Forms. *Id.* ¶ 1.7.

E. The Settlement Administrator

The parties propose that P&N (an experienced and reputable national class action administrator and ranked as one of the top 100 U.S. accounting firms) serve as Settlement Administrator to provide notice, administer the claims process, and provide other services necessary to implement the Settlement. SA ¶ 1.38; Schwartz Aff. ¶¶ 3-5 & Exs. A-B. All Settlement Administration Expenses (including the costs of notice and administration of claims) will be paid out of the Settlement Fund. *Id.* ¶¶ 3.2, 6.3(b)(ix).

F. Proposed Service Payments and Fee and Expense Award

Class Counsel must file any Applications for a Fee and Expense Award and for Service Payments to the proposed Class Representatives no later than 14 days before the Objection and Exclusion Deadline. *Id.* ¶¶ 12.1-12.2.

Class Counsel intends to request Service Payments of no more than \$5,000 to each of the Class Representatives, and a Fee and Expense Award to Class Counsel of no more than 40% of the Settlement Fund in addition to reasonable out-of-pocket litigation expenses incurred by Class Counsel. *Id.* The Class Notice will inform Class Members of the maximum Service Payments and Fee and Expense Award that the Class Representatives and Class Counsel intend to request. *Id.*

Ex. 3. These payments will be paid to Class Representatives and Class Counsel from the Settlement Fund. *Id.* ¶ 1.39.

G. Objection and Exclusion Deadline Rights

Any Class Member who wishes to opt out of or object to the Settlement must do so on or before the Objection and Exclusion Deadline, which shall be designated as a date no later than 75 days after the Notice Date. *Id.* ¶¶ 1.27, 8.2. The Class Notice will contain language consistent with the provisions of Sections 8 and 9 of the Settlement Agreement concerning objections and requests for exclusion. *Id.* ¶ 9.1 & Ex. 3.

H. Release

Upon the Court’s entry of the Final Order and Judgment, the Releasing Parties shall be deemed to have fully, finally, and forever released, relinquished, and discharged all Released Claims against all Released Parties. *Id.* ¶¶ 1.30-1.33 (defining release-related terms), 11.1-3 (setting forth scope of the released claims and those being released).

IV. CLASS ACTION SETTLEMENT APPROVAL PROCESS

Strong judicial and public policies favor the settlement of class action litigation, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Quick v. Shell Oil Co.*, 404 Ill. App. 3d 277, 282 (3rd Dist. 2010); *Lebanon Chiropractic Clinic, P.C. v. Liberty Mut. Ins. Co.*, 2016 IL App (5th) 150111-U, ¶ 41; *Isby v. Bayh*, 75 F.3d 1191, 1198-99 (7th Cir. 1996).

Courts review proposed class action settlements using a well-established two-step process. 4 Alba Conte & Herbert B. Newberg, *NEWBERG ON CLASS ACTIONS* § 11.25, at 38-39 (4th ed. 2002) (“NEWBERG”); *see e.g., Kaufman v. Am. Express Travel Related Servs. Co.*, 264 F.R.D. 438, 447 (N.D. Ill. 2009); *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 492 (1st Dist. 1992). 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. Bd. of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (2d Cir. 1998); *see e.g., Lebanon*, 2016 IL App (5th)

150111-U, ¶ 11. The preliminary approval stage is an “initial evaluation” of the fairness of the proposed settlement based on the written submissions and informal presentation from the settling parties. MANUAL FOR COMPLEX LITIGATION, § 21.632 (4th ed. 2004) (“MANUAL FOR COMPLEX LITIGATION”). If the Court finds the settlement proposal is “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. This procedure safeguards the due process rights of unnamed Class Members and allows the Court to fulfill its role as the guardian of their interests. NEWBERG § 11.25. Class Representatives are presently at the first step of this two-step process.

V. ARGUMENT

The Settlement is a fair, reasonable, and adequate resolution to this litigation, the Class satisfies each of the class certification requirements of Section 2-801, and the Notice Plan is the best practicable under the circumstances. Accordingly, the Court should (A) preliminarily approve the Settlement, (B) provisionally certify the Settlement Class, (C) approve the proposed Notice Plan, and (D) schedule the Final Approval Hearing.

A. The Settlement Should Be Preliminarily Approved

A court may approve a proposed class settlement on a finding that it is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2). In assessing the fairness, reasonableness, and adequacy of a proposed class settlement, Illinois courts consider the following factors: “(1) the strength of the case for plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant’s ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed.” *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990); *see also Armstrong*, 616 F.2d at 314. “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, Nos. 05-cv-5944, 07-cv-2439, 2007 U.S. Dist. LEXIS 84450, at *17 (N.D. Ill. Nov. 14, 2007) (citing *Armstrong*, 616 F.2d at 314).¹⁰

Each of these factors confirms the fairness, reasonableness, and adequacy of the Settlement presently before the Court, warranting its preliminary approval.

B. The Settlement Provides Substantial Relief to the Settlement Class, While Avoiding Significant Risks of Non-Recovery Posed by Continued Litigation

The first factor in evaluating the fairness of a proposed settlement is the strength of the plaintiff's case on the merits balanced against the relief obtained in the settlement. *City of Chicago*, 206 Ill. App. 3d at 972; *Steinberg v. Sys. Software Associates, Inc.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999); *Am. Int'l Grp., Inc. v. ACE INA Holdings*, Nos. 07-cv-2898, 09-cv-2026, 2012 U.S. Dist. LEXIS 25265, at *17 (N.D. Ill. Feb. 28, 2012); *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006).

In this case, the amount offered by the Settlement—\$100 million on a non-reversionary basis—is substantial. For example, if 280,000 Approved Claims are ultimately submitted by the Claims Deadline,¹¹ each claiming Class Member will receive a Settlement Payment of

¹⁰ Because Section 2-801 is modeled after Federal Rule of Civil Procedure 23, “federal decisions interpreting Rule 23 are persuasive authority with regard to questions of class certification in Illinois.” *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 125 (2005).

¹¹ A total of 280,000 Approved Claims would equate to 20% of the estimated number of Google Photos users that are known to be in the Settlement Class. At least 1.4 million Illinois users are estimated to have uploaded a photo of themselves to Google Photos, although the Class size will be greater than this, including because the Class includes Illinois residents who appeared in photos in Google Photos but who are not Google Photos users. Ahdoot Aff. ¶ 34. Google provided Plaintiffs' counsel with evidence showing that it cannot quantify the number of Class Members with any greater precision for a number of reasons, including that Google does not associate face models with identifying information, and Google cannot determine whether a Google Photos user resides in Illinois, let alone whether an unidentified person whose face appears in a photograph on Google Photos resides in Illinois. *Id.* Plaintiffs' counsel estimate that the amount of each valid claim will be between approximately \$200 and \$400; however, the amount could be less or more depending on the number of valid claims submitted. *Id.* ¶ 35.

approximately \$200.¹² The Settlement also includes robust prospective relief that will benefit all Class Members, even those who do not submit claims, by requiring Defendant to provide additional disclosures regarding the Google Photos face grouping feature, obtain additional consent, and adopt additional publicly available retention and destruction policies. (*See supra* “The Proposed Settlement,” Section III.)

The reasonableness of the Settlement’s benefits is underscored by the many substantial risks of non-recovery that continued litigation would have posed absent the Settlement. *Smith v. CRST Van Expedited, Inc.*, No. 10-CV-1116-IEG (WMC), 2013 U.S. Dist. LEXIS 6049, at *9-10 (S.D. Cal. Jan. 14, 2013) (where “the settlement avoids the risks of extreme results on either end, *i.e.*, complete or no recovery it is plainly reasonable for the parties at this stage to find that the actual recovery realized and risks avoided here outweigh the opportunity to pursue potentially more favorable results through full adjudication,” such that “[t]hese factors support approval”).

Plaintiffs are confident in their case. However, there are significant risks and possible impediments to achieving a successful outcome should the case continue. Google denies Plaintiffs’ allegations that it collected “biometric identifiers” or “biometric information,” as those terms are defined in BIPA, and asserts at least 13 affirmative defenses to Plaintiffs’ claims, including the defenses of consent, good faith, extraterritoriality (and, relatedly, the dormant Commerce Clause), statute of limitations, and due process, among others (*Rivera Federal Action*, ECF 70 at 21-26). Each of these defenses exposed the Class to significant risk. For example:

First, Plaintiffs would bear the burden at trial of proving that the data Defendant collected from photographs stored or uploaded to Google Photos constituted “biometric identifiers” or “biometric information” within the meaning of BIPA. While Plaintiffs are confident that the data Defendant collected did in fact constitute “biometric identifiers” or “biometric information,”

¹² This estimate assumes a Net Settlement Fund of approximately \$59 million (*i.e.* that the Court approves the Settlement Administrator’s request for reimbursement of the maximum estimated Administration Expenses, each Class Representatives’ request for a Service Payment of \$5,000, and Class Counsel’s request for a Fee and Expense Award of 40% of the Settlement Fund in addition to out-of-pocket litigation expenses).

Defendant argues that the “face templates” or “face models” and other data it allegedly collected does not constitute a “scan of . . . face geometry.” Google also argued that because it does not associate identifying information with face templates or models, the collection of this data does not violate BIPA. Absent the Settlement, at least some of these questions would have to be resolved through competing expert testimony and other complex evidence presented by the Parties. *See, e.g., In re Facebook Biometric Info. Priv. Litig.*, No. 3:15-cv-03747-JD, 2018 U.S. Dist. LEXIS 81044, at *11 (N.D. Cal. May 14, 2018) (“The parties unleash volleys of other competing evidence, but this summary is enough to show that a jury will need to resolve the genuine factual disputes surrounding facial scanning and the recognition technology.”). While Plaintiffs are confident of their case, a court or jury could side with the Defendant on these case-dispositive and highly technical questions.

Second, there is risk that Defendant could succeed in establishing consent to the alleged collection and storage of Plaintiffs’ Biometric Data during their initial enrollment in the Google Photos service, and through agreement to Defendant’s Terms of Service and Privacy Policy. Moreover, Google argued at summary judgment that Plaintiffs’ continued use of and/or knowing appearance in photographs in Google Photos after filing suit evidenced their consent and precluded recovery now. *Rivera* Federal Action, ECF 152 at 2-3. Thus, there is a risk a jury could conclude that Plaintiffs consented to Google’s conduct, or that Google adequately complied with BIPA’s disclosure requirements.

Third, even if Plaintiffs were found not to have consented to Defendant’s alleged collection of Biometric Data, Defendant would argue at summary judgment and at trial that Plaintiffs’ claims are barred by the Illinois extraterritoriality doctrine, because they seek to hold the company liable for violations of BIPA that occurred outside of Illinois. *Rivera* Federal Action, ECF 49 at 13-14 (making extraterritoriality argument at motion to dismiss stage). And even if the violations alleged in the complaint are found to have occurred in Illinois, Defendant would argue that, in order to comply with BIPA in Illinois, it would be forced to change its practices nationwide (not just in Illinois), unduly burdening interstate commerce in violation of the dormant Commerce Clause. *Id.*

at 15-18 (making dormant Commerce Clause argument at motion to dismiss stage); *id.* ECF 62 (allowing discovery on Google’s defenses “premised on extraterritorial application and the Dormant Commerce Clause”). Defendant’s extraterritoriality and dormant Commerce Clause defenses presented significant risks to Plaintiffs, both on the merits and at class certification. *See, e.g., Patel v. Facebook, Inc.*, 932 F.3d 1264, 1276 (9th Cir. 2019) (“If the violation of BIPA occurred when Facebook’s servers created a face template, the district court can determine whether Illinois extraterritoriality doctrine precludes the application of BIPA”); *id.* (“[I]f future decisions or circumstances lead to the conclusion that extraterritoriality must be evaluated on an individual basis, the district court can decertify the class”); *Nat’l Solid Waste Mgmt. Ass’n v. Meyer*, 63 F.3d 652, 657 (7th Cir. 1995) (explaining how states cannot regulate conduct in neighboring states under the dormant Commerce Clause).

Fourth, Defendant’s statute of limitations defense threatened to significantly narrow the scope of this case, including the size of the Class and the amount of any recoverable statutory damages. Two appeals concerning the statutory period governing BIPA claims are working their way through Illinois’s appellate courts. *Tims v. Black Horse Carriers, Inc.*, No. 1-20-0563 (1st Dist.); *Marion v. Ring Containers Techs., LLC*, Case No. 3-20-0184 (3d Dist.). Although Illinois’s First District Court of Appeals recently decided the *Tims* appeal, holding that section 15(a) and 15(b) claims are subject to a five-year limitation period (*Tims v. Black Horse Carriers, Inc.*, 2021 IL App (1st) 200563), the Third District Court of Appeals has not yet decided the *Marion* appeal, and the Illinois Supreme Court recently agreed to hear the *Tims* appeal. *Tims v. Black Horse Carriers, Inc.*, No. 127801, 2022 Ill. LEXIS 89, at *1 (Jan. 26, 2022). If a one-year limitation period were held to govern Section 15(a) and 15(b) claims, only those Illinoisans who appeared in a photograph in Google Photos on or after January 24, 2018 (one year prior to the commencement of the *Rivera* State Action) would likely have an actionable BIPA claim—far fewer people than the number of Class Members entitled to relief under the Settlement, which encompasses claims going back to May 2015.

Fifth, in support of its “good faith” defense, Defendant would have contended that “[it] is not liable because it relied in good faith upon a reasonable interpretation of BIPA’s statutory language and any alleged violation was not negligent, intentional, or reckless.” *Rivera* Federal Action, ECF 70 at 23. If Google were to successfully employ this defense, Class Members would be unable to recover even the minimum statutory damages of \$1,000, which are only recoverable for violations committed “negligently”—much less the enhanced statutory damages of \$5,000, which are only recoverable for violations committed “recklessly” or “intentionally.” 740 ILCS 14/20(1)-(2).

Sixth, Google also could have raised a First Amendment defense at summary judgment. Specifically, Google could argue that the face-grouping feature at the heart of this case automatically groups photos based on similarities in their content, thereby generating new information and opinions about the similarity of photos and expressing it through the Google Photos product; and that expression, and the information-gathering it entails, may be entitled to First Amendment protection. *See, e.g., Sorrell v. IMS Health, Inc.*, 564 U.S. 552, 570 (2011) (“[T]he creation and dissemination of information are speech within the meaning of the First Amendment.”).

Seventh, even if Class Representatives successfully certified the Class, they could still lose at trial. And, even assuming they prevailed at trial, Google still could argue that Plaintiffs should not recover statutory damages, since statutory damages under BIPA are discretionary, not mandatory. 740 ILCS 14/20 (“A prevailing party may recover for each violation [statutory damages]”); *Watson v. Legacy Healthcare Fin. Servs., LLC*, 2021 IL App (1st) 210279, ¶ 9 n.4 (“[W]e observe that damages [under BIPA] are discretionary not mandatory.”).

Further, any judgment (or order granting class certification) that the Class did obtain could be reversed on appeal, *see, e.g., In re Capital One Tel. Consumer Protection Act Litig.*, 80 F. Supp. 3d 781, 792 (N.D. Ill. 2015), or reduced on due process grounds. Indeed, the risk of a class-wide judgment being reduced on due process grounds was significant in this case given the enormity of its potential size (at least several billion dollars in the aggregate based on the estimated size of the

Settlement Class, measured at \$1,000.00 per violation committed negligently, or \$5,000.00 per violation committed intentionally or recklessly). In *Golan v. Veritas Entm't, LLC*, No. 14-cv-00069 ERW, 2017 U.S. Dist. LEXIS 144501, at *7-8 (E.D. Mo. Sep. 7, 2017), for example, a class of TCPA plaintiffs won a judgment at trial for \$1.6 billion (\$500.00 for each of approximately 3.2 million violations), only to have the trial court remit the award to \$32 million—or approximately \$10.00 per violation—on the grounds that the \$1.6 billion awarded by the jury was so annihilative as to violate the Due Process clause of the U.S. Constitution. The trial court's decision in *Golan* was recently affirmed, in its entirety, by the U.S. Court of Appeals for the Eight Circuit. *Golan v. FreeEats.com, Inc.*, 930 F.3d 950 (8th Cir. 2019). In this case, Plaintiffs' Counsel estimate that each claiming Class Member is expected to receive approximately \$200 to \$400—far more than the amount that class members ultimately recovered in *Golan*, after years of uncertain litigation and a total victory at trial. The possibility of the same outcome here, even if the Class were to prevail at trial years from now, further underscores the reasonableness of the immediate, certain, and meaningful relief provided by the Settlement.

Finally, throughout this litigation, there has been a significant risk that the Illinois legislature would amend BIPA on a retroactive basis, in a manner that would effectively wipe away Plaintiffs' and Class Members' claims for relief. For example, in 2016, legislation was introduced in the Illinois House of Representatives that, if passed by both chambers and signed by the governor, would have retroactively amended BIPA to, *inter alia*, preclude its application to uploaded digital images regardless of the information collected or the process of its extraction. *See* HB 6074 (2016). Although the bill introduced in 2016 did not pass, several more bills aimed at amending BIPA were introduced into both houses of the legislature in following years.¹³ Simply

¹³ *See* SB 2134 (2019) & SB 3592 (2020) (to eliminate the law's private right of action); SB 3591 (2020) (to permit the recovery of damages only for intentional violations, eliminating the ability to recover damages for negligent violations); SB 3776 (2020), SB 3593 (2020) & HB 5374 (2020) (to eliminate or reduce the ability of a plaintiff to recover liquidated damages); SB 3053 (2018) & HB 5103 (2018) (to eliminate protections regarding informed consent, collection, and storage of biometric information); SB 3593 (2020) & HB 5374 (2020) (to require pre-suit notice before any

put: at the time the Settlement was negotiated, there was a substantial risk that the Illinois legislature would amend BIPA in a manner that would prevent the Class from recovering any relief in this action, and that remains a risk with respect to any continued litigation.

Notably, the relief provided by this Settlement greatly exceeds the relief historically obtained through settlements in data-privacy class actions. *See, e.g., Goldschmidt v. Rack Room Shoes, Inc.*, No. 1:18-cv-21220-KMW (S.D. Fla.) (ECF Nos. 82-1, 86); approving settlement that provided \$5 cash and a \$10 voucher to each claiming class member in action alleging violation of the Telephone Consumer Protection Act, which allows for statutory damages of \$500 or \$1,500 per violation); *In re Vizio, Inc., Consumer Privacy Litig.*, No. 16-ml-02693-JLS-KES (C.D. Cal.) (ECF Nos. 282-1, 337; approving settlement that provided between \$13 and \$31 to each claiming class member in action alleging violation of the Video Privacy Protection Act, 18 U.S.C. 2710, which allows for statutory damages of \$2,500 per violation); *Kinder v. Meredith Corp.*, No. 1:14-cv-11284 (E.D. Mich.) (ECF Nos. 79, 81; approving settlement that estimated a \$50 and provided reportedly \$32.40 to each claiming class member in action alleging violation of Michigan’s Preservation of Personal Privacy Act, which allowed for statutory damages of \$5,000 per violation).

The Settlement also compares favorably with previously approved settlements in other BIPA cases alleging collection of “scan[s] of . . . face geometry” and related data. *See e.g., Miracle-Pond et al. v. Shutterfly, Inc.*, No. 2019-CH-07050 (Ill. Cir. Ct.) (on September 9, 2021, Judge Raymond W. Mitchell granted final approval to a \$6.75 million settlement in a BIPA class action

action for damages); HB 0559 (2021) & SB 0330 (2021) (to require an aggrieved person, before filing suit, to provide a private entity 30 days’ written notice identifying the specific provisions of BIPA the aggrieved person believes the entity violated, and limit an aggrieved person’s damages to their actual damages for negligent violations, or their actual damages plus liquidated damages up to the amount of actual damages for willful violations); HB 0560 (2021) (to remove private right of action and provide that any violation of BIPA would be actionable only by the Illinois Attorney General or appropriate State’s Attorney).

on behalf of at least 954,000 class members¹⁴); *In re Facebook Biometric Information Privacy Litig.*, No. 3:15-cv-03747-JD (N.D. Cal.) (ECF No. 445-2 (copy of settlement agreement), 511-2 at 3 (size of the class) (finally approved \$650 million settlement for a class size of at least 7 million settled after class certification, resolution of appeals, and on the eve of trial).

Based on the substantial monetary and non-monetary relief provided by the Settlement, and the significant risks posed by continued litigation (including loss at summary judgment, class certification or an appeal), the first and most important factor weighs heavily in favor of granting preliminary approval of the Settlement.

C. A Class-Wide Judgment Could Be Devastating to Defendant

The second factor considers Defendant's ability to satisfy a judgment at trial. *City of Chicago*, 206 Ill. App. 3d at 972. In Plaintiffs' view, the amount potentially at stake on a class-wide basis at a trial in this case is hundreds of billions of dollars, if Defendant were ultimately held to have violated BIPA, and thus potentially be liable for statutory damages, every time it collected a Class Member's biometric identifier absent a written release. *Cothron v. White Castle Sys., Inc.*, 20 F.4th 1156, 1166-67 (7th Cir. 2021) (certifying to the Illinois Supreme Court the question as to whether a BIPA claim accrues each time a person's biometric identifier is scanned and each time it is transmitted, or only upon the first scan and first transmission). While there is little doubt that Defendant is a very profitable company, a verdict in this amount could have a severe impact. Accordingly, the second factor weighs in favor of granting preliminary approval.

D. Continued Litigation Would Be Complex, Costly, and Lengthy

The third factor asks whether the settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation. *City of Chicago*, 206 Ill. App. 3d

¹⁴ As in this Action, the *Shutterfly* Plaintiffs alleged that the defendant collected scans of face geometry, without consent, from uploaded photographs. Despite the similarities, this Settlement is superior to the finally approved *Shutterfly* settlement: it provides monetary relief that is nearly 15 times greater than the monetary relief provided by the *Shutterfly* settlement, even though the number of known Google Photos users in the Settlement Class in this case is approximately 1.5 times larger than the known members of the settlement class in *Shutterfly*.

at 972; see also *Nat'l Rural Telecomms Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (“The Court shall consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation.”).

This would be lengthy and very expensive litigation if it were to continue, involving extensive motion practice, including, *inter alia*, motion for class certification (and possibly a motion for decertification), a motion to disseminate pre-trial notice to the class, motions for summary judgment, and various pretrial motions, as well as the retention of additional experts, preparation of expert reports, conducting expert depositions, and motions challenging the qualifications of retained experts. *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977) (“[C]lass action suits have a well-deserved reputation as being most complex.”). The case would probably not go to trial for well over a year. And even if Class Members recovered a judgment at trial greater than the \$100 million Settlement Fund in this proposed Settlement, post-trial motions and the appellate process would deprive them of any recovery for years, and possibly forever in the event of a reversal.

Rather than embarking on years of protracted and uncertain litigation, Plaintiffs and their counsel negotiated a Settlement that provides immediate, certain, and *meaningful* relief to all Class Members. See *DIRECTV, Inc.*, 221 F.R.D. at 526. Accordingly, the third factor weighs in favor of finding the Settlement fair, reasonable and adequate.

E. There is Presently no Opposition to the Settlement

The fourth and sixth factors consider the amount of opposition to the Settlement and the reaction of the Class to the Settlement. *City of Chicago*, 206 Ill. App. 3d at 972.

Because the Settlement is presently at the preliminary approval stage, Notice has not yet been disseminated, and the Class has not yet had an opportunity to voice any support or opposition. If the Settlement is preliminarily approved, Plaintiffs will address factors four and six in their motion for final approval of the Settlement, after dissemination of Notice and the expiration of the Objection Deadline. Nonetheless, Plaintiffs and their Counsel strongly support the Settlement,

which they believe is fair, reasonable, and adequate and in the best interest of the Settlement Class. *See infra* Section G (opinions of Class Counsel on Settlement’s fairness).

Accordingly, even at this preliminary stage of the approval process, the fourth and sixth factors weigh in favor of finding the Settlement fair, reasonable, and adequate.

F. The Settlement Was Negotiated Free of any Collusion

The fifth factor considers the presence of any collusion by the Parties in reaching the proposed settlement. *City of Chicago*, 206 Ill. App. 3d at 972.

Where a proposed class settlement is the result of zealous, arm’s-length negotiations before an experienced mediator, the settlement may be presumed fair and reasonable and entered into without any form of collusion. NEWBERG, § 11.42; *see also Coy v. CCN Managed Care, Inc.*, 2011 IL App (5th) 100068-U, ¶ 31 (no collusion where settlement agreement was reached as a result of “an arms-length negotiation between plaintiffs and defendants, entered into after years of litigation and discovery, resulting in a settlement with the aid of an experienced mediator”); *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 21 (approval warranted where there was “no evidence that the proposed settlement was not the product of ‘good faith, arm’s-length negotiations’”).

Such is the case here. The Settlement was achieved after a robust pre-filing investigation, six years of zealous litigation, a comprehensive exchange of discovery, and over three and a half years of arm’s-length negotiations overseen by several well-respected mediators. Ahdoot Aff. ¶¶ 3-4, 25; Milian Aff. ¶¶ 12, 23; Hedin Aff. ¶ 2, 10; Bursor Aff. ¶¶ 2, 10. Right up to the time of filing of this Motion, the Parties engaged in intense back-and-forth negotiations regarding every detail of the Settlement. Ahdoot Aff. ¶ 28; Milian Aff. ¶ 18; Hedin Aff. ¶ 2; Bursor Aff. ¶ 2.

Because the Settlement is thus the product of zealous, lengthy, and collusion-free negotiations between the Parties, the fifth factor weighs in favor of finding the Settlement fair, reasonable and adequate.

G. Competent Counsel Strongly Endorse the Settlement

The seventh factor is the opinion of competent counsel as to the fairness, reasonableness, and adequacy of the proposed settlement. *City of Chicago*, 206 Ill. App. 3d at 972. Courts rely on affidavits in assessing proposed class counsel's qualifications under this factor. *Id.* at 974.

Plaintiffs' counsel and proposed Class Counsel (at the law firms Ahdoot & Wolfson, PC, Carey Rodriguez Milian LLP, Hedin Hall LLP and Bursor & Fisher, P.A.) have extensive experience litigating complex data-privacy class actions, including class actions alleging claims for violation of BIPA. Ahdoot Aff. ¶¶ 37-48; Milian Aff. ¶¶ 4-11; Hedin Aff. ¶¶ 6-9; Bursor Aff. ¶¶ 6-8.

Plaintiffs' counsel strongly endorse the Settlement, which they believe is in the best interest of the Settlement Class. Ahdoot Aff. ¶¶ 32, 36, 49; Milian Aff. ¶ 25; Hedin Aff. ¶ 14; Bursor Aff. ¶ 13. As explained above, Defendant's defenses—and the resources that Defendant had committed to defending the case through trial and appeal—present numerous risks of total non-recovery by the Class had the litigation continued. In light of the substantial benefits provided by the Settlement—including the \$100 million Settlement Fund from which all Class Members are entitled to receive a pro rata share, without the need to wait for the litigation and subsequent appeals to run their course—Class Counsel consider the Settlement an excellent outcome for the Settlement Class. Ahdoot Aff. ¶¶ 5, 49; Milian Aff. ¶ 25; Hedin Aff. ¶ 14; Bursor Aff. ¶ 13.

Accordingly, the seventh factor weighs in favor of finding the Settlement fair, reasonable and adequate. *GMAC*, 236 Ill. App. 3d at 497 (experienced and competent counsel's support for a proposed class settlement weighs in favor of approving the settlement).

H. The Settlement Is the Product of Extensive Litigation and Discovery

The eighth and final factor considers the stage of the proceedings and the amount of discovery that has been completed at the time the settlement is reached. *City of Chicago*, 206 Ill. App. 3d at 972; *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012).

Prior to commencing this litigation, including each of the Google Photos BIPA Cases, Plaintiffs' counsel conducted wide-ranging investigations into every aspect of the claims and

potential defenses. Ahdoot Aff. ¶¶ 4, 6, 26; Milian Aff. ¶¶ 12, 15; Hedin Aff. ¶ 10, 12; Bursor Aff. ¶¶ 9, 11. During the litigation, the Parties collectively prepared and filed multiple complaints, motions, and comprehensive pre-mediation briefs, among numerous other materials. Ahdoot Aff. ¶¶ 7-10, 13-22; Milian Aff. ¶ 15; Hedin Aff. ¶ 2; Bursor Aff. ¶ 2. Plaintiffs' counsel served comprehensive discovery requests to Defendant and related entities; obtained and reviewed hundreds of thousands of pages of documents and ESI; deposed witnesses concerning every aspect of Plaintiffs' claims, Defendant's defenses, and issues pertaining to class certification; and consulted with and retained multiple expert witnesses to thoroughly review the relevant discovery, prepare expert reports, and ultimately testify at deposition. Ahdoot Aff. ¶¶ 11-12, 26; Milian Aff. ¶ 17; Hedin Aff. ¶ 2; Bursor Aff. ¶ 2. Armed with this information, Plaintiffs and their counsel had "a clear view of the strengths and weaknesses" of the case, *see In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 745 (S.D.N.Y. 1985), *aff'd* 798 F.2d 35 (2d Cir. 1986), and were in a strong position to negotiate a fair, reasonable, and adequate settlement on behalf of the Settlement Class, at mediation and beyond. Defendants also directed significant written discovery to plaintiffs Weiss and Rivera, reviewed their document productions, and deposed them both as well as a third-party witness for a full day each.

Settlement negotiations also were thorough, and lengthy. The parties engaged in extensive, arm's-length negotiations over the course of more than three and a half years, including during six all-day sessions of mediation overseen by three well-respected mediators, where counsel for each Party zealously advocated its position. Ahdoot Aff. ¶¶ 4, 25; Milian Aff. ¶¶ 16, 18; Hedin Aff. ¶ 2; Bursor Aff. ¶ 2. With the supervision and assistance of Judge Palmer, negotiations continued until just before the filing of this Motion. Ahdoot Aff. ¶ 4; Milian Aff. ¶ 18; Hedin Aff. ¶ 11; Bursor Aff. ¶ 10.

Where, as here, a proposed settlement is the product of arm's-length negotiations between experienced counsel after significant discovery has occurred, the Court may presume the settlement to be fair, adequate, and reasonable. *Rodriguez v. W. Publishing*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive,

negotiated resolution.”); NEWBERG § 11.41 (proposed class settlement may be presumed fair if it “is the product of arm’s length negotiations, sufficient discovery has been taken to allow the parties and the court to act intelligently, and counsel involved are competent and experienced.”).

Accordingly, the eighth and final factor weighs in favor of finding the Settlement fair, reasonable and adequate, warranting its preliminary approval.

I. The Settlement Class Should Be Provisionally Certified

The Court should provisionally certify the Class for settlement purposes only. MANUAL FOR COMPLEX LITIGATION § 21.632; *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, *reh’g denied* (June 4, 2015), *appeal denied*, 39 N.E.3d 1001 (Ill. 2015). The proposed Class (SA ¶¶ 1.8, 2.2) satisfies all prerequisites to certification under Section 801-2, as explained below.

1. The Settlement Class Is So Numerous that Joinder Is Impracticable

The first prerequisite to class certification is that “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) (47 class members sufficient to satisfy numerosity). Google’s estimate, based on the best available information, is that the Class includes at least 1.4 million Google Photos users in Illinois, as well as Illinois non-users who appeared in photos in Google Photos. *Ahdoot Aff.* ¶ 34. Joinder of all Class Members is thus obviously impracticable. Accordingly, the numerosity requirement is satisfied.

2. Common Questions of Law and Fact Predominate

Predominance of common questions, the second prerequisite to 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 generally exist where the members of a proposed class have been aggrieved by the same or similar misconduct. *Walczak v. Onyx Acceptance Corp.*, 365 Ill. App. 3d 664, 673–74 (2nd Dist. 2006).

In this case, Plaintiffs allege that all members of the proposed Class share a common statutory BIPA claim arising out of the same uniform conduct—the use of the same technology to collect and store the same type of data pertaining to the faces of persons depicted in photographs on Google Photos. That alleged uniform course of conduct presents numerous issues of law and fact common to the Class that predominate over any issues unique to individual Class Members, including whether the data Defendant collected and stored constituted “biometric identifiers” or “biometric information” within the meaning of BIPA; whether Defendant provided the requisite notices to, and obtained the requisite “signed written releases” from, Class Members; whether Defendant published publicly available retention and deletion policies; and whether Defendant’s alleged BIPA offenses were committed “negligently,” “intentionally,” or “recklessly.”

Accordingly, the commonality and predominance requirements are satisfied. 735 ILCS 5/2-801(2).

3. Plaintiffs Adequately Represent the Settlement Class

The third prerequisite to class certification under Section 2-801 is that “[t]he representative parties will fairly and adequately protect the interest of the class.” 735 ILCS 5/2-801(3). “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 (2nd Dist. 2004)); see also *Purcell & Wardrope Chartered v. Hertz Corp.*, 175 Ill. App. 3d 1069, 1078 (1st Dist. 1988). 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.” *Miner v. Gillette Co.*, 87 Ill. 2d 7, 14 (1981); *CE Design Ltd.*, 2015 IL App (1st) 131465, ¶ 16 (citing *Miner*, 87 Ill. 2d at 14).

Both prongs of the adequacy requirement are satisfied in this case. *First*, Plaintiffs’ interests in the litigation are aligned with, and not antagonistic to, those of the Settlement Class. Plaintiffs challenge the same alleged course of conduct that each Class Member challenges and seek the same relief. Plaintiffs have retained competent counsel, provided substantial assistance to their counsel in advance of and during the litigation, vigorously prosecuted the case on behalf of the Settlement Class, and worked closely with their counsel in reaching the proposed Settlement. *Ahdoot Aff.* ¶ 26; *Milian Aff.* ¶ 24; *Hedin Aff.* ¶ 13; *Bursor Aff.* ¶ 12. Each of the Class Representatives supports the Settlement and believes that it constitutes a fair, reasonable, and adequate result for the Settlement Class. *Second*, Plaintiffs’ counsel have extensive experience in complex class action litigation. *Ahdoot Aff.* ¶¶ 37-48; *Milian Aff.* ¶¶ 4-11; *Hedin Aff.* ¶¶ 6-9; *Bursor Aff.* ¶¶ 6-8. Accordingly, the Class Representatives and their counsel are adequate representatives of the Settlement Class. *See, e.g., CE Design v. Beaty Const., Inc.*, No. 07-cv-3340, 2009 U.S. Dist. LEXIS 5842, *13 (N.D. Ill. Jan. 26, 2009); *CE Design Ltd.*, 2015 IL App (1st) 131465, ¶ 17.

4. A Class Action Promotes Fairness and Efficiency

The final prerequisite to class certification is that “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).

As a threshold matter, because the proposed Settlement satisfies the numerosity, commonality, and adequacy of representation requirements, discussed above, it is “evident” that a class action is the appropriate method for the fair and efficient adjudication of this controversy. *Id.*

at 204 (explaining that a “holding that the first three prerequisites of section 2-801 are established makes it evident that the fourth requirement is fulfilled”); *Purcell & Wardrope Chartered*, 175 Ill. App. 3d at 1079.

Moreover, the U.S. Supreme Court has explained that a class action is the proper method for resolving a large-scale claim if the action 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. This is especially true in BIPA actions, where the “litigation costs are high, the likely recovery is limited,” and individuals are unlikely to prosecute individual claims absent the cost-sharing efficiencies of a class action. *Maxwell v. Arrow Fin. Servs., LLC*, No. 03-cv-1995, 2004 U.S. Dist. LEXIS 5462, at *17 (N.D. Ill. Mar. 31, 2004); *see also Gordon*, 224 Ill. App. 3d at 203-04 (noting that a “controlling factor in many cases is that the class action is the only practical means for class members to receive redress—particularly where the claims are small”); *Eshaghi v. Hanley Dawson Cadillac Co.*, 214 Ill. App. 3d 995, 1004 (1st Dist. 1991) (“In a large and impersonal society, class actions are often the last barricade of consumer protection.”). Resolution of the Class Members’ claims in a single proceeding promotes judicial efficiency and economies of scale and avoids inconsistent decisions. *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 155 (1982).

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 district 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. *GMAC*, 236 Ill. App. 3d at 493. Accordingly, the final requirement for class certification is satisfied and the Court should provisionally certify the Settlement Class.

J. The Notice Plan Should Be Approved

Upon provisionally certifying the Settlement Class, the Court may provide notice of the proposed Settlement to the Class pursuant to Section 2-803, and must provide notice to the Class to the extent necessary to comport with the constitutional requirements of due process. 735 ILCS 5/2-803; *Frank v. Tchr's Ins. & Annuity Ass'n. of Am.*, 71 Ill. 2d 583, 593 (1978). The Due Process clause to the U.S. Constitution mandates providing the “best practicable” notice to the Settlement Class, *Shaun Fauley*, 2016 IL App (2d) 150236, ¶ 36 (citing *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985)), which means notice that is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

In this case, the Settlement Agreement contemplates a multi-part Notice Plan designed to reach as many Class Members as possible. SA ¶ 6. The Class Notice will be provided directly by e-mail to all potential Class Members and, to the extent e-mails are undeliverable, the Class Notice will be sent to the Class Member by U.S. Mail where a physical address is available. *Id.* ¶¶ 6.3(b)(i), (iii). Reminder e-mails will also be sent to Class Members who have not submitted a Claim, prior to the Claims Deadline. *Id.* ¶¶ 6.3(b)(ii). The Class Notice will also be published to potential Class Members in ads prominently displayed in a number of regional newspapers in Illinois, as well as on popular social media sites. Schwartz Aff. ¶¶ 21-23; SA ¶¶ 6.3(b)(iv)-(v). The Settlement Administrator will establish a Settlement Website where Claim Forms may be submitted electronically on a simple web-based form, where inquiries may be sent to the Settlement Administrator, and where copies of important court documents, including the Claim Form, Settlement Agreement, Class Notices, the Court’s Orders, and the Applications for Fee and Expense Award and for Service Payments may be downloaded, as well as a toll-free number for Class Members to call for additional information about the Settlement. *Id.* ¶¶ 6.3(b)(vi)-(vii).

The proposed Claim Form and Class Notices (*id.*, Exs. 1, 3, 5-6, 8-9, 11), and the methods by which the Class Notices will be disseminated, readily comport with Due Process and the procedural requisites of Section 2-803. Schwartz Aff. ¶ 31.

Accordingly, Plaintiffs respectfully request that the Court, as set forth in the proposed order accompanying this Motion, find that the notice provided by the Class Notice Program: (i) is the best practicable notice; (ii) is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and of their right to object to or to exclude themselves from the proposed Settlement; (iii) constitutes due, adequate and sufficient notice to all Persons entitled to receive notice; and (iv) meets all requirements of applicable law.

K. The Court Should Set a Final Approval Schedule

The last step in the approval process, after completion of the Notice Plan, is the Final Approval Hearing, where the Court will consider the fairness, reasonableness, and adequacy of the Settlement and the requested Fee and Service Payments. Plaintiffs respectfully request that the Court schedule the Final Approval Hearing and the other Settlement-related deadlines consistent with the following timetable (which assumes entry of the Preliminary Approval Order on April 25, 2022 for the dates proposed in brackets):

1. **Notice Date:** The notice plan outlined above shall commence no later than 35 days from the Preliminary Approval Order [Proposed date: May 27, 2022];
2. **Submission of Papers in Support of Attorneys' Fees and Expenses & Service Payments:** To be filed no later than 14 days before the Objection and Exclusion Deadline [Proposed date: July 27, 2022];
3. **Objection and Exclusion Deadline:** Requests to opt-out or object must be submitted/postmarked no later than 75 days after the Notice Date [Proposed date: August 10, 2022];
4. **Submission of Papers in Support of Final Approval of Settlement:** To be filed no later than 14 days after the Objection and Exclusion Deadline [Proposed date: August 24, 2022];
5. **Final Approval Hearing:** To occur after 125 days after the Preliminary Approval Order [Proposed date: August 29, 2022 (or later)]; and

- 6. **Claims Deadline:** Claim forms must be postmarked or submitted to the Settlement Administrator within 120 days after the Notice Date [Proposed date: September 24, 2022].

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion and enter an order (in the form of the concurrently filed proposed order) that: (1) preliminarily approves the Settlement; (2) provisionally certifies the Settlement Class; (3) approves the Class Notice and the notice plan, appoints P&N as Settlement Administrator, and orders that Notice be disseminated by the Notice Date; (4) establishes a procedure and timetable, consistent with the procedure set forth in the Settlement Agreement, for Class Members to object to the Settlement, exclude themselves from the Settlement Class, and file Claims in the Settlement; and (5) sets the Final Fairness Hearing.

Dated: April 14, 2022

Respectfully submitted,

By: /s/ Robert Ahdoot
Robert Ahdoot

ROBERT AHDOOT*
TINA WOLFSON*
THEODORE W. MAYA*
AHDOOT & WOLFSON, PC
2600 West Olive Ave, Ste 500
Burbank, California 91505
rahdoot@ahdootwolfson.com
twolfson@ahdootwolfson.com
tmaya@ahdootwolfson.com
Tel: (310) 474-9111
Fax: (310) 474-8585
Firm ID: 63685

JOHN C. CAREY*
DAVID P. MILIAN*
CAREY RODRIGUEZ MILIAN LLP
1395 Brickell Ave, Ste 700
Miami, Florida 33131
jcarey@careyrodriquez.com
dmilian@careyrodriquez.com

Tel: (305) 372-7474
Fax: (305) 372-7475

FRANK S. HEDIN*
HEDIN HALL LLP
1395 Brickell Ave, Ste 1140
Miami, Florida 33131
fhedin@hedinhall.com
Tel: (305) 357-2107
Fax: (305) 200-8801

SCOTT A. BURSOR*
BURSOR & FISHER, P.A.
701 Brickell Ave, Ste 1420
Miami, Florida 33131
scott@bursor.com
Tel: (212) 989-9113
Fax: (212) 989-9163

*Admitted *Pro Hac Vice*

Counsel for Plaintiffs & Proposed Class Counsel

KATRINA CAROLL
KYLE A. SHAMBERG
CARLSON LYNCH LLP
111 West Washington St., Ste 1240
Chicago, Illinois 60602
Telephone: (312) 750-1265
kcarroll@carsonlynch.com
kshamberg@carsonlynch.com
Firm ID: 63746

Counsel for Plaintiffs

EXHIBIT 3

FILED DATE: 12/12/2022 9:19 AM 2019CH00990

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

LINDABETH RIVERA, et al.	Case No. 2019-CH-00990
Plaintiffs,	
v.	Calendar 15
GOOGLE LLC,	Hon. Anna M. Loftus
Defendant.	

**NOTICE OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

TO: See Attached Service List

1) Please take notice that on September 28, 2022 at 10:30 a.m., or as soon thereafter as counsel may be heard, the parties shall appear before the Honorable Judge Anna M. Loftus, or any judge sitting in her stead, in the courtroom usually occupied by her, Courtroom 2410 of the Richard J. Daley Center, 50 W. Washington Street, Chicago, Illinois via the Court’s Zoom hearing link to present the attached **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**, a copy of which is attached hereto and hereby served upon you.

2) The Zoom hearing link is as follows:

<https://circuitcourtofcookcounty.zoom.us/j/95535573920>

Meeting ID: 955 3557 3920. No password is required.

Dated: September 14, 2022

Respectfully submitted,

By: /s/ Robert Ahdoot
Robert Ahdoot

ROBERT AHDOOT*
TINA WOLFSON*
THEODORE W. MAYA*
AHDOOT & WOLFSON, PC
2600 West Olive Ave, Ste 500
Burbank, California 91505
rahdoot@ahdootwolfson.com
twolfson@ahdootwolfson.com
tmaya@ahdootwolfson.com
Tel: (310) 474-9111
Fax: (310) 474-8585
Firm ID: 63685

JOHN C. CAREY*
DAVID P. MILIAN*
CAREY RODRIGUEZ MILIAN LLP
1395 Brickell Ave, Ste 700
Miami, Florida 33131
jcarey@careyrodriquez.com
dmilian@careyrodriquez.com
Tel: (305) 372-7474
Fax: (305) 372-7475

FRANK S. HEDIN*
HEDIN HALL LLP
1395 Brickell Ave, Suite 1140
Miami, Florida 33131
fhedin@hedinhall.com
Tel: (305) 357-2107
Fax: (305) 200-8801

SCOTT A. BURSOR*
BURSOR & FISHER, P.A.
701 Brickell Ave, Ste 1420
Miami, Florida 33131
scott@bursor.com
Tel: (212) 989-9113
Fax: (212) 989-9163

*Admitted *Pro Hac Vice*

Class Counsel

KATRINA CARROLL
KYLE A. SHAMBERG
CARLSON LYNCH LLP

111 West Washington St., Suite 1240
Chicago, Illinois 60602
kcarroll@carsonlynch.com
kshamberg@carsonlynch.com
Telephone: (312) 750-1265
Firm ID: 63746

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2022, a copy of the foregoing Notice of Motion for Final Approval of Class Action Settlement was served via email to the following attorneys of record:

Susan D. Fahringer
Ryan Spear
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Tel: (206) 359-8000
SFahringer@perkinscoie.com
RSpear@perkinscoie.com

Kathleen A. Stetsko
PERKINS COIE LLP
131 South Dearborn Street, Suite 1700
Chicago, IL 60603-5559
Tel: (312) 324-8400
Kstetsko@perkinscoie.com
Firm I.D. No. 39225

Counsel for Defendant Google LLC

and was served via U.S. Mail to the following Objector:

Sarada Mohapatra
3820 Highknob Cir.
Naperville, IL 60564

/s/ Robert Ahdoot
Robert Ahdoot

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

LINDABETH RIVERA, et al.

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 2019-CH-00990

Calendar 15

Hon. Anna M. Loftus

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

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I. INTRODUCTION

After well over six years of litigation, Plaintiffs Lindabeth Rivera, Joseph Weiss, Michael Azzano, Brandon Molander, and Nicholas Marquez (“Plaintiffs” or “Class Representatives”) respectfully move for final approval of the class action Settlement with Google LLC (“Defendant” or “Google”) for its alleged violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”).¹

The Settlement establishes a \$100 million non-reversionary cash Settlement Fund, which if approved, will be dispersed *pro rata* to the hundreds of thousands of Class Members who submitted valid claims. In addition to the Settlement Fund, the Settlement provides robust prospective relief that directly addresses Google’s biometric-collection practices at issue in this case. There are no objections to the terms of Settlement, the request for Class Representative Service Payments, or to Class Counsels’ application for attorneys’ fees.

The Court preliminarily approved the Settlement on April 25, 2022. *See* Order Granting Preliminary Approval of Class Action Settlement (“PAO”). In granting preliminary approval, the Court found the terms of the Settlement “fair, reasonable, and adequate” and approved the robust Notice Plan and user-friendly claims process agreed to in the Settlement. *Id.* ¶¶ 2, 8-9. Since then, the Notice Plan and claims process were implemented by the Settlement Administrator. The period for filing objections or exclusions passed on August 10, 2022. Pursuant to the Preliminary Approval Order, 14 days prior to the objection / exclusion deadline (July 27, 2022), Plaintiffs filed their Motion for Class Representative Service Payments, Attorneys’ Fees and Expenses (“Fee Motion”).

The reaction from Class Members to the Settlement is resoundingly positive. As of September 9, 2022, 418,676 valid claims have been submitted, with over a week remaining until the September 24, 2022 Claims Deadline. *See* concurrently filed Affidavit of Brandon Schwartz (Director of Notice at Postlewaite & Netterville, APAC (“P&N”), the Settlement Administrator)

¹ Unless otherwise defined herein, capitalized words and terms used herein have the same meaning as ascribed to them in the Settlement Agreement (“Settlement Agreement” or “SA”), which is attached as Exhibit I to Plaintiffs’ Motion for Preliminary Approval dated April 14, 2022.

(“Schwartz Aff.”) ¶ 24. Claimants are estimated to be paid approximately \$142 each. *Id.* In contrast, only 97 Class Members submitted valid opt outs from the Settlement, there were no objections to the Settlement or the requests for attorneys’ fees or Service Payments, and one Class Member submitted comments on the Action (though this comment is entitled “Objection to Settlement” it does not interpose any objections to the Settlement itself or to the Fee Motion; instead it provides argument as to whether BIPA applies to Google Photos). *Id.* ¶¶ 26-27, Exs. H-I; *see also infra*, Sec. V.A.4. (discussion of the Class Member comment). The overwhelmingly positive reaction of the Class is not surprising, considering the substantial monetary and prospective relief the Settlement provides.

The Settlement warrants final approval, especially considering its positive reception by the Class. It meets all requirements for final approval under Section 2-801 of the Illinois Code of Civil Procedure. Plaintiffs respectfully request that the Court enter an order granting this Motion.

II. BACKGROUND

A. Factual and Procedural History

This six-plus years-long litigation, where Defendant steadfastly denied any wrongdoing of the alleged BIPA violations, was laborious and adversarial. A detailed account of the extensive factual and procedural history, and of the voluminous work performed by four law firms that comprise Class Counsel, is set forth in Plaintiffs’ Fee Motion at pp. 3-11 and in the Affidavit of Robert Ahdoot in support thereof (“Ahdoot Fee Aff.”) at ¶¶ 2-47 (both filed on July 27, 2022).

The proposed Settlement involves seven separate putative class actions (including this Action) in state and federal courts across the country (as well as an appeal and cross-appeal to the Seventh Circuit Court of Appeals) (the “Google Photos BIPA Cases”).²

B. The Parties Engaged in Extensive Settlement Negotiations

While the years-long litigation continued, the Parties engaged in extensive, arm’s-length

² In addition to this case, the Settlement resolves: *Molander v. Google LLC*, No. 5:20-cv-00918 (N.D. Cal.); *Rivera v. Google Inc.*, No. 1:16-cv-02714 (N.D. Ill.); *Weiss v. Google Inc.*, No. 1:16-cv-02870 (N.D. Ill.); *Azzano v. Google LLC*, No. 2019-CH-11153 (Ill. Cir. Ct., Cook Cnty.); *Marquez v. Google LLC*, No. 2021-CH-01460 (Ill. Cir. Ct., Cook Cnty.); and *Marquez v. Google LLC*, No. 1:20-cv-04454 (N.D. Ill.).

negotiations, which involved three experienced mediators, six in-person mediations, and numerous months of negotiations. Ahdoot Fee Aff. ¶¶ 34-42. Prior to Settlement, Class Counsel obtained and reviewed significant written discovery and documents. *Id.* ¶¶ 36-37. Class Counsel also defended the Plaintiffs' depositions, took depositions of Google employees, and retained and consulted with experts to assist in the analysis of this information. *Id.*

The Parties participated in two all-day mediations with the Honorable Layn R. Phillips (Ret.), multiple months-long discussions and an all-day mediation with Seventh Circuit Court of Appeals Mediator Jillisa Brittan, and three all-day mediations with the Honorable Stuart E. Palmer (Ret.) of JAMS. *Id.* ¶ 38. The Parties also participated in numerous lengthy phone conferences during which the myriad detailed terms of the Settlement were negotiated. *Id.* ¶ 39. This process extended for months, included several iterations and revisions of written proposals and counter proposals, discussions with Google's in-house counsel, and consultation with experts. *Id.*

The Parties also negotiated the logistics and substance of the notice and administration plan. *Id.* ¶ 40. Class Counsel obtained competitive bids from experienced and highly regarded class action administration firms, and as result of this process, agreed to retain P&N. *Id.*

C. Preliminary Settlement Approval and Dissemination of Notice

After the Court granted preliminarily approval of the Settlement on April 25, 2022, Class Counsel continued to work with P&N to supervise dissemination of Notice, respond to Class Member inquiries, supervise the claim process, and ensure the provisions of the Settlement and this Court's Preliminary Approval Order were implemented. Ahdoot Fee Aff. ¶ 43-47.

The Notice Plan (direct notice, publication notice, digital media campaign, reminder emails, toll-free hotline, search advertising, etc.) was successfully implemented. Schwartz Aff. ¶¶ 6-22. The Settlement Website makes available the Claim Form, Class Notice, the operative Consolidated Class Action Complaint, relevant motions, and all relevant case information. *Id.* ¶ 6, Ex. D. The Opt-Out and Objection Deadlines fell on August 10, 2022, and the Claims Deadline on September 24, 2022. Class Members were able to submit Claim Forms or Opt-Out requests online, or by mailing hard copies to P&N. *Id.* To date, there are 418,276 valid claims, no class

member objected to the terms of the Settlement or to the Fee and Service Payment requests, one Class Member argued that BIPA did not apply to Google Photos, and 97 Class Members submitted valid requests for exclusion. *Id.* ¶¶ 24-27, Exs. H-I.

III. THE SETTLEMENT

The Settlement provides substantial benefits to Class Members in exchange for the Release provided to Google, as summarized below.³

A. The Settlement Class

The preliminarily approved Settlement Class is defined as:

All Illinois residents who appeared in a photograph in Google Photos at any time between May 1, 2015 and the date of Preliminary Approval. Excluded from the Class are: (a) any judge, magistrate, or mediator presiding over the Google Photos BIPA Cases and members of their families; (b) Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest; (c) Class Counsel; and (d) the legal representatives, successors or assigns of any such excluded persons.

PAO ¶ 3; *see also* SA ¶ 2.2.

B. The \$100 Million Settlement Fund and Prospective Relief

The Settlement establishes a non-reversionary cash Settlement Fund of \$100 million, which Google fully funded on June 6, 2022 (approximately 45 days after Preliminary Approval). SA ¶ 3.2(a); Schwartz Aff. ¶ 23; Ahdoot Fee Aff. ¶ 47. Settlement Administration Expenses (e.g. costs of notice dissemination, claims processing, distribution of Settlement Payments, etc.), any Court-approved Service Payments and attorneys' fees and expenses will be paid from the Fund. SA ¶ 3.2(a); Schwartz Aff. ¶ 24. The remaining "Net Settlement Fund" will be used to pay Settlement Payments to Class Members with Approved Claims. SA ¶ 1.23, 3.3.

The Claims Process presented a simple form for each Class Member to submit a Claim for a *pro rata* share of the Net Settlement Fund. SA ¶ 3.3. It was incredibly successful: to date, there have been 418,676 valid claims. Schwartz Aff. ¶¶ 24, 32. The total payment to each participating Class Member will depend on the final number of valid Claim Forms submitted. *Id.* Class Members must submit their claims by September 24, 2022. *Id.* P&N estimates that each claimant will receive

³ To avoid repetition, a more detailed description of the Settlement is set forth in Plaintiffs' Preliminary Approval Motion (at pp. 4-8), filed on April 14, 2022, and is incorporated herein.

approximately \$142 each (this estimate assumes \$726,768 in notice and administration expenses, interest earned on the Settlement Fund in the amount of \$241,433, and that the Court will grant, in full, Plaintiffs' Motion for Class Representative Service Payments (\$25,000 total) and Attorneys' Fees and Expenses (\$40 million)). *Id.* ¶¶ 23-25. P&N does not anticipate the final Settlement Payment amount to substantially differ from this estimate. *Id.* ¶ 24.

Any Residual Funds (funds from uncashed checks, failed digital payment methods, etc.) will be redistributed (in a second distribution) to all Class Members who submitted a valid claim and successfully negotiated the first payment. SA ¶ 3.5. Any Residual Funds remaining after these efforts will be distributed to one or more 26 U.S.C. § 501(c)(3) non-profit organization(s) selected by the Parties, and subject to the Court's approval at a later date. At least 50% of these Residual Funds will be disbursed to organization(s) appearing on the Chicago Bar Foundation's list of Qualifying CBF-Supported Pro Bono and Legal Aid Organizations. *Id.*, Ex. 7. No portion of the Settlement Fund will be returned to Google. SA ¶ 3.2(b).

The Settlement also provides for significant prospective relief. It obligates Google to implement meaningful changes to its practices. *Id.* ¶ 3.1. Specifically, Google will provide all Face Grouping-Enabled Illinois Users and all New or Re-Enabled Illinois Grouping Users an electronic notice that discloses: (i) that the face grouping feature is enabled; (ii) that Defendant creates "face templates" or "face models" that are based on the images of faces in the photographs that are saved in the user's account; (iii) that by continuing to use Google Photos with the face grouping feature enabled, the user is consenting to Defendant's creation of data from the photographs in his or her account;⁴ and (iv) how the user can disable the feature and permanently delete any face templates or face models that may have been created from the photographs in his or her account. *Id.* ¶ 3.1(a)(1). The notice presented when a user activates Google Photos (on a mobile device or computer) will require the user to affirmatively indicate the user's consent as described in subsection (iii) above. *Id.*

⁴ This includes but is not limited to the creation of "face templates" or "face models," which enables Defendant to group photographs of similar faces and which, Plaintiffs contend, involves the collection of "biometric" data under the laws of some jurisdictions. SA ¶ 3.1(a)(1).

Google also will develop, publish, and abide by a retention policy in which it will commit to deleting face models or face templates associated with a user’s account within a reasonable period of time after the user takes any of the following actions: (i) turns off the “face grouping” feature in Google Photos (in which case, all face templates or face models would be deleted); (ii) deletes an individual photograph (in which case, face models derived from that photograph would be deleted); (iii) deletes all photographs that include images of people (in which case, all face templates or face models derived from those photographs would be deleted); or (iv) deletes his or her Google account (in which case, all photographs in the account, and all face templates or face models derived from those photographs, would be deleted). *Id.* ¶ 3.1(a)(2).

Additionally, Google will not sell, lease, or trade face templates or face models to any third party, and will store, transmit, and protect from disclosure face templates or face models using reasonable security measures and in a manner that is at least as protective as the way Google stores, transmits, and protects other confidential information. *Id.* ¶ 3.1(a)(3)-(4).

C. There Are only 97 Opt-Outs, No Objections, One Class Member Comment, and, in Contrast, 418,676 Valid Claims

Class Members were provided an opportunity to opt out of, or object to, the Settlement on or before August 10, 2022. PAO ¶¶ 10-11. Valid requests for exclusions required information described in the Notice. Schwartz Aff. ¶ 27, Ex. D. Class Members were informed that they could object to any aspect of the Settlement, including Class Counsel’s fee application and the request for Service Payments. *Id.* P&N reports that there are 97 Class Members submitted valid requests for exclusion from the Class. *Id.* ¶ 27, Ex. I. There was no objection to the Settlement or to the request for service payments or attorneys’ fees. One Class Member (Sarada Mohapatra) filed a document titled as “Objection to Settlement,” yet that filing contained no objection to either the Settlement or to the requests for Service Payments or attorneys’ fees, but contained only argument regarding whether BIPA should apply to Google Photos. *Id.* ¶ 26, Ex. H; *see also infra*, Sec. V.A.4. (for the response to Sarada Mohapatra’s argument).

D. There Were No Objections to the Narrowly Tailored Release

If the Settlement is finally approved, Plaintiffs and Class Members who did not timely request exclusion from the Class will release Google from all Claims “arising from or related to Plaintiffs’ allegations or the alleged collection, capture, receipt, storage, possession, dissemination, transfer, use, sale, lease, trade, or profit from biometric information, biometric identifiers, or any data derived from images of faces in photographs, by or for Google, including all claims arising from or relating to the subject matter of the Google Photos BIPA Cases, and all claims that were brought or could have been brought in the Google Photos BIPA Cases.” SA ¶ 1.31. Thus, the release is limited and tailored to apply only to the allegations in this Action. There were no objections to the terms of the Release.

E. There Were No Objections to the Requests for Class Representative Service Payments and Attorneys’ Fees and Expenses

On July 27, 2022, Plaintiffs filed an application for Service Payments in the amount of \$5,000 each (\$25,000 total), and for an award of reasonable attorneys’ fees in the amount of 40% of the Settlement Fund (\$40 million) to Class Counsel. There were no objections to these requests. As detailed in the Fee Motion, Class Counsel’s requested fee award is appropriate under governing Illinois law and consistent with the percentages of funds awarded in other settlements in Illinois courts, including other BIPA class actions, and warrants Court approval.

IV. THE COURT-APPROVED NOTICE PLAN WAS FULLY IMPLEMENTED

Notice of the Settlement included direct notice to Class Members as well as a robust print and digital media campaign. Schwartz Aff. ¶¶ 6-22. Direct Notice was sent via email to each Class Member identified by Google. *Id.* ¶¶ 10-15, Ex. A. For those Class Members with respect to whom email notice was returned as undeliverable, the Notice was sent via First Class U.S. Mail where a physical address was available. *Id.* ¶ 13, Ex. B. Notice also was disseminated via a robust print and digital notice program, as well as Internet search advertising. *Id.* ¶¶ 17-22, Exs. E-G. Finally, between September 2, 2022 and September 14, 2022, reminder emails were sent to all potential Class Members with valid emails and who had not yet submitted a claim. *Id.* ¶ 15, Ex. C.

The Settlement Website (www.GoogleBIPASettlement.com) with the Claim Form, Long Form Notice, and all relevant case information was deployed prior to the Notice Date. *Id.* ¶¶ 6-7, 16, Ex. D. The website allows Class Members to submit Claim Forms and Opt-Out requests electronically, and to obtain copies of the Claim Form and relevant Motions, Orders, and pleadings. *Id.* ¶ 6. Additionally, a toll-free number, email, and physical mailing address are available for Class Members to contact the Settlement Administrator. *Id.* ¶ 6, 8, 22. The date of the Final Approval Hearing and its Zoom credentials also were posted on the Website. *Id.* ¶ 6.

The Notice Plan set forth in the Settlement and approved by the Court was fully implemented, provided the best practicable notice under the circumstances, and fulfilled all due process requirements. *Id.* ¶¶ 6-22, 28-31; *see also*, Schwartz Affidavit ISO Motion for Preliminary Approval ¶¶ 8-9, 30-31 (filed on April 14, 2022); SA ¶¶ 6.1-6.3.

V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

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

To approve a class settlement, the Court must find it “fair, reasonable and adequate.” *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 493 (1st Dist. 1992). In determining whether a settlement is fair, reasonable, and adequate, Illinois courts apply an eight-factor evaluation, also known as the “*Korshak* factors.” *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990). The factors are: “(1) the strength of the case for the plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant’s ability to pay⁵; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed.” *Korshak*, 206 Ill. App. 3d at 972. Analysis of these factors supports a finding that the Settlement here is fair, reasonable, and adequate.

⁵ The second *Korshak* factor considers the defendant’s ability to pay. Here, Google funded the non-reversionary cash Settlement Fund of \$100 million approximately 45-days after Preliminary Approval. Ahdoot Fee Aff. ¶ 47; Schwartz Aff. ¶ 23. As a result, this factor is of minimal relevance.

1. The Settlement provides significant benefits to the Settlement Class

The first *Korshak* factor—the strength of Plaintiffs’ case on the merits balanced against the relief offered in Settlement—“is the most important factor in determining whether a settlement should be approved.” *Steinberg v. Sys. Software Assocs.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999); *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006). While Plaintiffs remain confident in the strength of their claims, they recognize that they would have to overcome significant obstacles to succeed. Given the obstacles and inherent risks Plaintiffs face with respect to their claims, the substantial benefits the Settlement provides favor its approval.

Here, P&N estimates that claiming Class Members will receive approximately \$142. Schwartz Aff. ¶ 24. This amount may fluctuate depending on the number of additional valid claims are made prior to the September 24, 2022, Claims deadline and the number of submitted claims deemed fraudulent or otherwise invalid by the Settlement Administrator. *Id.* While the estimated recovery does represent a discount from full recovery in an individual case,⁶ the discount to the monetary component is warranted in light of the *certain* and *immediate* payments to Class Members provided by the Settlement, the forward-looking relief designed to ensure Google’s compliance with BIPA, and the substantial risks of non-recovery that continued litigation would present. *Smith v. CRST Van Expedited, Inc.*, No. 10-CV-1116-IEG (WMC), 2013 U.S. Dist. LEXIS 6049, at *9-10 (S.D. Cal. Jan. 14, 2013) (“[T]he actual recovery realized and risks avoided here outweigh the opportunity to pursue potentially more favorable results through full adjudication”).

The risks presented by continued litigation were apparent given Google’s numerous potentially meritorious defenses as well possible legislative amendments to BIPA. These material risks are detailed in Plaintiffs’ Preliminary Approval Motion (filed on April 14, 2022; at pp. 18-24) and in the Fee Motion (at pp. 22-28), and are incorporated herein.

Despite these risks, Plaintiffs achieved an excellent result for the Class. Notably, the relief provided by this Settlement greatly exceeds the relief historically obtained through settlements in

⁶ If Plaintiffs prove their claims and certify a class in this case, the class-wide statutory damages would be either \$1,000 (if Google’s conduct were found negligent), or \$5,000 (if willful) for each violation. 740 ILCS 14/20(1)-(2).

data-privacy class actions. *See, e.g., Goldschmidt v. Rack Room Shoes, Inc.*, No. 1:18-cv-21220-KMW (S.D. Fla.) (ECF Nos. 82-1, 86) (\$5 cash and a \$10 voucher to each class member in action alleging violation of the Telephone Consumer Protection Act, which allows for statutory damages of \$500 or \$1,500 per violation); *In re Vizio, Inc., Consumer Privacy Litig.*, No. 16-ml-02693-JLS-KES (C.D. Cal.) (ECF Nos. 282-1, 337) (\$13-\$31 to each class member in action alleging violation of the Video Privacy Protection Act, 18 U.S.C. § 2710, which allows for statutory damages of \$2,500 per violation); *Kinder v. Meredith Corp.*, No. 1:14-cv-11284 (E.D. Mich.) (ECF Nos. 79, 81) (\$32.40 to each class member in action alleging violation of Michigan’s Preservation of Personal Privacy Act, which allowed for statutory damages of \$5,000 per violation).

The Settlement also compares favorably with previously approved settlements in other BIPA cases alleging collection of “scan[s] of . . . face geometry” and related data. *See, e.g., Miracle-Pond v. Shutterfly, Inc.*, No. 2019-CH-07050 (Ill. Cir. Ct.) (\$6.75 million settlement in a BIPA class action on behalf of at least 954,000 class members); *In re Facebook Biometric Information Privacy Litig.*, No. 3:15-cv-03747-JD (N.D. Cal.) (ECF No. 445-2) (settlement agreement); *In re Facebook Biometric Info. Privacy Litig.*, 522 F. Supp. 3d 617, 629 (N.D. Cal. 2022) (\$650 million settlement for a class size of at least 6.9 million, settled after class certification, appeal, and on the eve of trial).

Plaintiffs considered the significant risks and delay that would accompany continued litigation. Weighed against these risks, the Settlement ensures that Class Members will receive valuable and immediate relief and represents a fair, reasonable, and adequate result. Consequently, the first and most important *Korshak* factor weighs strongly in favor of final approval.

2. The Complexity, Length, and Expense of Further Litigation Weighs in Favor of Settlement

The third factor, the “complexity, length and expense of further litigation,” *Korshak*, 206 Ill. App. 3d at 972, also weighs heavily in favor of final approval of the Settlement. As the *Korshak* court observed, a “fair and reasonable settlement” is preferred over continued litigation which

would leave any potential recovery “in limbo.” 206 Ill. App. 3d at 973; *see also Isby v. Bayh*, 75 F.3d 1191, 1199-1200 (7th Cir. 1996) (affirming the final approval of a settlement where continued litigation “would require the resolution of many . . . complex issues” and “entail considerable additional expense”). And “[a]s courts recognize, a dollar obtained in settlement today is worth more than a dollar obtained after a trial and appeals years later.” *Goldsmith v. Tech. Sols. Co.*, No. 92 C 4374, 1995 U.S. Dist. LEXIS 15093, at *14-15 (N.D. Ill. Oct. 10, 1995).

The Settlement allows Class Members to receive immediate monetary relief, avoiding lengthy and costly additional litigation. Indeed, the Settlement makes monetary relief obtainable through submission of a simple Court-approved Claim Form in a streamlined process (far less burdensome what would be required to obtain relief in a court proceeding). Moreover, the Settlement provides prospective relief that meets or exceeds the injunctive relief that Plaintiffs would have received had Plaintiffs prevailed on the merits.

Had the Parties not reached this Settlement, this case would have proceeded to additional dispositive motions and/or class certification, with the Parties being required to expend substantial resources to go forward with their respective claims and defenses while facing a significant risk regarding any decision on the merits of the case and whether a class should be certified. And the outcome of litigation is uncertain given that BIPA jurisprudence is rapidly evolving. Even if Plaintiffs ultimately prevailed, such efforts would have required significant additional resources, while delaying resolution of this action for an indeterminate time, which would create additional injury to the affected Class Members who are in need of relief. In contrast, the Settlement provides substantial and prompt relief to the Class. This factor weighs in favor of final approval.

3. The Positive Reaction of the Class Supports Final Approval

The fourth and sixth *Korshak* factors—the amount of opposition to the Settlement and Class Members’ reaction to the Settlement—are “closely related” and often examined together. *Korshak*, 206 Ill. App. 3d at 973. Here, to date, 418,676 Class Members have filed valid claims (Schwartz Aff. ¶ 24) and await final approval of the Settlement. Despite direct notice to millions of potential class members and a robust Internet and print publication notice to many more

potential class members, only 97 individuals chose to opt out of the Settlement, no Class Member objected to any term of the Settlement or to the Fee Motion, and only one Class Member commented on the case while styling such comments as an objection (Sarada Mohapatra's filing). *Id.* ¶¶ 26-27, Exs. H-I. "Such a remarkably low level of opposition supports the Settlement." *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 965 (N.D. Ill. 2011) (the "tiny fraction" of opt-outs and objections supports approval); *see also Am. Int'l Grp., Inc. v. ACE INA Holdings, Inc.*, No. 07 CV 2898, 2012 U.S. Dist. LEXIS 25265, at *29 (N.D. Ill. Feb. 28, 2012) ("Out of a class of over thirteen hundred class members, only three . . . have objected, and just one has excluded itself from the class. Thus, . . . there has been almost no opposition to the settlement.").

4. Sarada Mohapatra's "Objection to Settlement" Is Not an Objection but, Rather, Argument that Google Did Not Violate BIPA

None of the comments raised by the Mohapatra filing provide a basis to deny final approval and relief to more than hundreds of thousands of individuals who expressed support for the Settlement by filing a claim. Indeed, none of Mohapatra's so-called objections challenged any term of the Settlement or the Fee Motion. *See* Schwartz Aff. Ex. H.

First, Mohapatra argues that BIPA "is not applicable to Google Photos since users uploaded their photographs." Mohapatra at p. 1. But if that were true, it would mean that the Settlement is even more favorable to the Settlement Class than as described by Class Counsel in this motion, because if BIPA does not apply to Google Photos, then the Settlement would be providing Class members substantial compensation for a weak case. Thus, the Mohapatra filing only underscores the adequacy of the relief provided by the Settlement. Also, other than recounting what amounts to personal decision to use Google Photos and an opinion of the Service, Mohapatra provides no legal authority or analysis in support of this argument.

Second, Mohapatra objects that "Google Photos 'People Search' is [*sic*] biggest innovation in managing photographs" and is "the feature that made me choose Google Photos over many other cloud storage providers like Dropbox." Mohapatra at p. 2. This is not a complaint that the

Settlement is deficient in any respect, but is simply a reflection of Mohapatra’s own views of Google Photos, and is irrelevant.

Third, Mohapatra also objects that “BIPA intends to protect privacy of Illinoisans, not be [*sic*] obstacle for innovation” *Id.* at p. 2. Mohapatra complains that his “‘people search’ stopped working a few months ago, likely as part of this settlement” but provides no evidence to support this allegation. Without any factual or legal support, Mohapatra contends that “[w]hile Clearview settlement furthers privacy, this settlement does not.” *Id.* This assumption is false. In addition to the historically large Settlement Fund, the Settlement also provides significant prospective relief to directly address the privacy concerns raised by Plaintiffs in this case.

In sum, the Mohapatra Objection fails to challenge any term of the Settlement, the request for fees or Service Payments, and provides no evidence undermining the fairness, reasonableness, or adequacy of the Settlement. The Mohapatra Objection should be overruled.

5. There Was No Collusion Between the Parties

The next *Korshak* factor—the presence or absence of collusion in reaching a settlement—also weighs in favor of final approval. *Korshak*, 206 Ill. App. 3d at 972. There is an initial presumption that a proposed settlement is fair and reasonable when it was the result of arm’s-length negotiations. A. Conte & H. Newberg, *NEWBERG ON CLASS ACTIONS*, § 11.42 (4th ed. 2002); *see also Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 21 (finding no collusion where there was “no evidence that the proposed settlement was not the product of ‘good faith, arm’s-length negotiations’”); *Coy v. CCN Managed Care, Inc.*, 2011 IL App (5th) 100068-U, ¶ 31 (affirming trial court’s finding of no collusion where the record showed “arms-length negotiation . . . after years of litigation and discovery, resulting in a settlement with the aid of an experienced mediator”).

Here, as this Court found when it granted preliminary approval, there is no indicia of collusion. PAO ¶ 2 (“The proposed Settlement appears to be the product of intensive, thorough, serious, informed, and non-collusive negotiations.”). The context in which the Settlement was reached confirms it was the product of hard-fought, arm’s-length negotiations between adverse

parties and their well-qualified counsel.

When negotiations began, Plaintiffs had a clear view of the strengths and weaknesses of their case and were in a strong position to make an informed decision regarding the reasonableness of a potential settlement. Class Counsel obtained and reviewed discovery concerning every aspect of the case and retained consulting experts to assist in the analysis of this information. Ahdoot Fee Aff. ¶¶ 36-37. The Parties engaged in extensive, arm's-length negotiations—including six separate mediation sessions and copious additional discussions facilitated by the Honorable Stuart E. Palmer (Ret.) of JAMS, U.S. Court of Appeals for the Seventh Circuit Mediator Jillisa Brittan, and the Honorable Layn R. Phillips (Ret.) of Phillips ADR—with such negotiations followed by further communications and negotiations before finalization of the Settlement. *Id.* ¶ 34. There is no indication of collusion or fraud in the settlement negotiations, and none exists.

6. Class Counsel Strongly Endorse the Settlement

Class Counsel have substantial experience prosecuting actions on behalf of consumers and have regularly been appointed as class counsel in numerous complex consumer class actions, including class actions involving violations of BIPA and other data privacy-related statutes, in state and federal courts across the country. Class Counsel strongly believe that final approval of the Settlement will avoid risks and delays associated with allowing the litigation to move forward.

Upon submission of a valid Claim Form and approval of their claim, Class Members are each provided immediate and meaningful relief instead of having to wait for the litigation and any subsequent appeals to run their course. Further, due to the defenses that Google indicated it would raise should the case proceed through litigation and the resources that it has committed to defend and litigate this matter through appeal, there is legitimate risk that the Class Members would receive no benefit in the absence of this Settlement. Class Counsel are confident that the Settlement is fair, reasonable, adequate, and in the best interests of the Class. This factor favors final approval.

7. The Stage of Litigation and Amount of Discovery Completed Has Ensured that the Settlement Is Fair, Reasonable, and Adequate

The final factor evaluates the stage of proceedings and the amount of discovery completed

before the parties entered into the settlement. *Korshak*, 206 Ill. App. 3d at 972.

This Action was intensely litigated, and the Settlement was reached only after extensive discovery efforts and substantial motion practice by both Parties. Plaintiffs and Class Counsel devoted substantial time, effort, and resources to this litigation, beginning with their initial investigations of Plaintiffs’ allegations, continuing through a series of discovery demands and responses, complex motion practice by both Parties, and ending with hard-fought settlement negotiations. Ultimately, Google disclosed substantial evidence and information through formal discovery and under mediation privilege.

From these efforts, the Parties were able to adequately assess the strengths and weaknesses of the claims and defenses and engage in informed, arm’s-length, adversarial negotiations. The Settlement was reached only after more than three-and-a-half years of arm’s-length negotiations overseen by three well-respected mediators and after substantial discovery had been taken. Class Counsel had sufficient information to make an informed decision about the merits of the Settlement, and to determine that it represented a fair, reasonable, and adequate result for the Class.

B. The Class Meets the Elements for Certification Under 735 ILCS 5/2-801

In its Preliminary Approval Order, the Court found that all applicable requirements of Section 2-801 of the Illinois Code of Civil Procedure were met and certified the Settlement Class. *See* PAO ¶¶ 3, 5. There is no reason for the Court to depart from its previous decision, and no party argues otherwise.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their Motion for final approval of the proposed Settlement, enter a Final Judgment and Order, and provide any further relief the Court deems proper.

Dated: September 14, 2022

Respectfully submitted,

By: /s/ Robert Ahdoot
Robert Ahdoot

ROBERT AHDOOT*
TINA WOLFSON*
THEODORE W. MAYA*
AHDOOT & WOLFSON, PC
2600 West Olive Ave, Ste 500
Burbank, California 91505
rahdoot@ahdootwolfson.com
twolfson@ahdootwolfson.com
tmaya@ahdootwolfson.com
Tel: (310) 474-9111; Fax: (310) 474-8585
Firm ID: 63685

JOHN C. CAREY*
DAVID P. MILIAN*
CAREY RODRIGUEZ MILIAN LLP
1395 Brickell Ave, Ste 700
Miami, Florida 33131
jcarey@careyrodriquez.com
dmilian@careyrodriquez.com
Tel: (305) 372-7474; Fax: (305) 372-7475

FRANK S. HEDIN*
HEDIN HALL LLP
1395 Brickell Ave, Ste 1140
Miami, Florida 33131
fhedin@hedinhall.com
Tel: (305) 357-2107; Fax: (305) 200-8801

SCOTT A. BURSOR*
BURSOR & FISHER, P.A.
701 Brickell Ave, Ste 1420
Miami, Florida 33131
scott@bursor.com
Tel: (212) 989-9113; Fax: (212) 989-9163

*Admitted *Pro Hac Vice*

Class Counsel

KATRINA CAROLL
KYLE A. SHAMBERG
CARLSON LYNCH LLP
111 West Washington St., Ste 1240
Chicago, Illinois 60602
Telephone: (312) 750-1265
kcarroll@carsonlynch.com
kshamberg@carsonlynch.com
Firm ID: 63746

Counsel for Plaintiffs

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION**

LINDABETH RIVERA, et al.

Plaintiffs,

v.

GOOGLE, LLC,

Defendant.

Case No. 2019-CH-00990

Judge: Hon. Anna M. Loftus

**AFFIDAVIT OF BRANDON SCHWARTZ REGARDING THE STATUS OF
NOTICE AND SETTLEMENT ADMINISTRATION**

I, Brandon Schwartz, hereby declare and state as follows:

1. I am the Director of Notice for Postlethwaite & Netterville, APAC (“P&N”), a full-service administration firm providing legal administration services, including the design, development, and implementation of unbiased complex legal notification programs.

2. In the *Affidavit of Brandon Schwartz on Settlement Notice Plan* (the “Notice Plan Affidavit”) filed with the Court on September 14, 2022 and submitted along with my C.V., I detailed the proposed Notice Plan to administer the claims process in the above-referenced matter (the “Action”)¹. As stated in the Notice Plan Affidavit, P&N designed the Notice Plan to give notice to the Settlement Class in the most practicable manner possible. To do so, P&N designed, and the Court approved, a multifaceted approach utilizing a combination of (1) direct email/mail notice, (2) supplemental online display, (3) supplemental social media, (4) supplemental print notice, (5) supplemental search advertising, (6) toll-free settlement hotline, and a (7) Settlement Website.

3. On April 25, 2022, the Court approved the Notice Plan, related notice forms, and appointed P&N as the Settlement Administrator in the *Order Granting Preliminary Approval of Class Action Settlement* (“Preliminary Approval Order”). Preliminary Approval Order ¶¶ 7-8.

4. In the Order, the Court “directs that the Settlement Administrator cause a copy of the Summary Notice be sent to all members of the Settlement Class who have been identified by Defendant through its records via e-mail no later than the Notice Date. If any Summary Notice that has been emailed is returned as undeliverable and has not been successfully delivered to another email address believed to be associated with the same person, the Settlement Administrator shall attempt one (1) other email execution (where feasible). If unsuccessful, the Settlement Administrator will send the Summary Notice by United States mail, postage prepaid, to the extent a current physical mailing address can be identified by the Class Administrator using publicly available resources or proprietary databases. Prior to the dissemination of any Notice,

¹ All capitalized terms not otherwise defined in this document shall have the meaning ascribed to them in the Settlement Agreement.

the Settlement Administrator shall cause copies of the Settlement Agreement, Long Form Notice, Summary Notice, and Claim Form, in forms available for download, to be posted on a website developed for the Settlement ('Settlement Website'). The Settlement Website shall also include a toll-free telephone number, email address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly." *Id.* ¶ 9.

5. Upon entry of the Preliminary Approval Order, P&N began to implement the Notice Plan in accordance with its requirements. This Affidavit details the current status of the Notice Plan and Settlement Administration. P&N will provide a supplemental Affidavit to the Court regarding the status of the Notice Plan upon completion of the claims period (the Claim Deadline is September 24, 2022) and prior to the final fairness hearing.

NOTICE PLAN SUMMARY

Settlement Website

6. On May 27, 2022, a neutral informational Settlement Website, www.GoogleBIPASettlement.com, was created to provide Settlement Class Members access to the Claim Form, Notices (both online and mail in versions), Settlement Agreement, and other relevant documents. The Settlement Website also includes relevant dates, answers to frequently asked questions, instructions for how Settlement Class Members may opt-out (request exclusion) from or object to the Settlement, contact information for the Settlement Administrator, and provided Settlement Class Members with the ability to submit (i) a claim using the online claim form and instructions, or (ii) a request for exclusion online prior to the deadline of August 10, 2022. The Settlement Website also provided the date of the Final Hearing and its Zoom meeting credentials on its landing page.

7. As of September 9, 2022, the Settlement Website has received 12,349,709 page views from 3,030,439 unique visitors.

Dedicated Toll-Free Hotline

8. On May 27, 2022, a toll-free hotline, 1-833-927-3418, was established for Settlement Class Members to call and obtain essential information regarding the Settlement and responses to frequently asked questions. The automated phone system is available 24 hours a day, 7 days a week.

9. As of September 9, 2022, there have been 2,480 calls to the hotline, totaling 8,204 minutes.

Direct Notice

10. On or about May 4, 2022, P&N received a document from Google, LLC that included email addresses for potential Settlement Class Members. The Notice Plan provided, and the Order directed, that individual notice be sent via Email Notice and a Postcard Notice be mailed to all undeliverable email addresses.

11. P&N followed standard email best practices, including utilizing “unsubscribe” links and the Settlement Administrator contact information in the Email Notice. Prior to sending, P&N performed an email hygiene and verification process designed to protect the integrity of the email campaign and maximize deliverability. Steps included deduplication, syntax validation, misspelled domain detection and correction, domain validation, and risk validation. The final email list included 5,833,705 email addresses for potential Settlement Class Members.

12. Beginning on May 27, 2022, P&N caused Email Notice to be sent to the 5,833,705 email addresses for potential Settlement Class Members that passed the hygiene and verification process. Ultimately, the Email Notice was successfully delivered to 5,748,803 email addresses, or 98.5% deliverability. A sample copy of the Email Notice sent is attached as **Exhibit A**.

13. In the instance where an email was returned undeliverable, P&N mailed a Postcard Notice by United States Postal Service (“USPS”). After a reverse lookup and processing the mailing addresses through the NCOA database maintained by the USPS to help ensure address information is up-to-date and accurately formatted for mailing, in addition to certifying the mailing addresses via the Coding Accuracy Support System (CASS) to ensure the quality of the

zip code and verified through Delivery Point Validation (DPV) to verify the accuracy of the addresses, a total of 31,766 Postcard Notices were mailed. A sample copy of the Postcard Notice that was mailed is attached as **Exhibit B**.

14. A summary of the direct notice dissemination statistics is included in the table below:

Settlement Notice Dissemination Statistics		
Description	Volume	Percentage of Potential Class Members (%)
Potential Class Member Email Addresses	5,833,705	100.00%
Email Notices		
Total Email Notices Sent	5,833,705	100.0%
Total Email Notices Delivered	5,748,803	98.5%
Total Email Notices Bounced/Undeliverable	84,902	1.5%
Mail Notice		
Total Postcard Notices Mailed	31,766	0.5%
Total Postcard Notices Returned as Undeliverable	3,241	0.1%

Notice Reach Statistics		
Description	Volume	Percentage of Potential Class Members (%)
Potential Class Member Email Addresses	5,833,705	100.00%
Received Email Notice	5,748,803	98.5%
Received Postcard Notice	28,525	0.5%
Received Direct Notice	5,777,328	99.0%

15. Commencing on September 2, 2022 through September 14, 2022, P&N transmitted 5,575,000 reminder emails to all email addresses to which the initial Email Notice was successfully delivered and that had not yet submitted a claim. A sample copy of the reminder email is attached hereto as **Exhibit C**.

16. A copy of the Long Form Notice (English version) available on the Settlement Website is attached hereto as **Exhibit D**. The Settlement Website also makes available a Spanish

version of the Long Form Notice, and a copy of the Summary Notice disseminated by direct notice and publication notice as described above.

Publication Notice

17. The Notice Plan includes an approximate one-eighth page version of the Summary Notice (“Print Notice”) to be published in not less than three widely circulated newspapers in Illinois. The Print Notice was placed in seven publications and appeared three times in non-consecutive days. Additionally, the Notice appeared in the online version of each publication in substantially similar form to the Print Notice or in the form of a banner notice, depending on each publication’s specifications and guidelines.

18. A summary of the Print Notice campaign is as follows:

<i>Newspaper</i>	<i>Distribution</i>	<i>Circulation</i>	<i>Run Dates</i>
<i>Chicago Tribune</i>	Chicago, IL	283,590	June 8, June 15, and June 22, 2022
<i>The Journal Star</i>	Peoria, IL	25,097	
<i>News-Gazette</i>	Champaign/Urbana, IL	24,000	
<i>Rockford Register Star</i>	Rockford, IL	14,979	
<i>The State Journal</i>	Springfield, IL	14,000	
<i>The Herald-Whig</i>	Quincy, IL	11,528	
<i>The Southern Illinoisan</i>	Carbondale, IL	5,000	

19. A copy of the Print Notice as it appeared in each publication is attached hereto as **Exhibit E**.

Digital Banner Notice

20. After the Notice Date, P&N caused digital banner notices to run across the Google Display Network, Facebook, and Instagram. The digital notices targeted individuals by demography, behavior, geography, contextual, remarketing, interest groups, look-alike, and customer match targeting, among others, and allowed viewers to identify themselves as potential Settlement Class Members and click through to the Settlement Website. In total, 88,189,836 banner impressions were generated. Screenshots of the digital banner notices are attached hereto as **Exhibit F**.

Search Advertising

21. After the Notice Date, P&N caused search-based advertising notice to be placed on Google.com. Keywords such as “Google Class Action Lawsuit”, “Google BIPA”, “Google Photos”, and “Google Photos Lawsuit” were used to generate a short descriptive notice below the search field which allowed Settlement Class Members to click through to the Settlement Website. In total, 11,273 search-based impressions were generated. Screenshots of the search-based notices are attached as **Exhibit G**.

Settlement P.O. Box

22. P&N maintains a designated P.O. Box for the administration of the Settlement: Rivera, et al. v. Google, LLC, P.O. Box 5529, Baton Rouge, LA 70821. P&N monitors the Settlement P.O. Box for Settlement-related mail such as objections, exclusion requests, and inquiries about the Settlement. P&N promptly handles all mail received at the Settlement P.O. Box. As of September 9, 2022, P&N has received 412 pieces of administrative mail through the P.O. Box.

Qualified Settlement Fund

23. On June 6, 2022, Google deposited the entire amount of the Settlement Fund (\$100 million) into the Qualified Settlement Fund (“QSF”), established by P&N, pursuant to the terms and conditions of the Settlement. As of August 31, 2022, the interest earned on the fund equals to \$241,433.56.

Claim Form Submissions

24. The deadline for Settlement Class Members to submit a Claim Form is September 24, 2022. P&N has employed all reasonable efforts to administer the Claims efficiently and avoid unnecessary fees and expenses. Moreover, P&N has exercised its usual and customary industry standard steps to prevent fraud and abuse and has taken reasonable steps to prevent fraud and abuse in the Claim Process. These efforts include safeguards to ensure that claims that had indications of automation were submitted by real persons, such as Internet Protocol Address location validation as well as email, physical address, and digital payment verifications. As of

September 9, 2022, P&N has received 418,676 claim submissions that it has deemed to be valid. Using this claims number, total Administration Expenses in the amount of \$726,768, \$25,000 in court approved Service Payments, and \$40 million as the attorneys' fee and expense award, P&N estimates that the Settlement Payment to each valid claim will be approximately \$142. P&N shall continue to analyze claims that have already been received as well as any additional timely claims received or postmarked by September 24, 2022. Such efforts may yield some fluctuation in the total number of valid claims made by the September 24, 2022 Claims Deadline and the number of submitted claims ultimately deemed fraudulent or otherwise invalid, which may in turn reduce or increase the estimated payment amount per valid claim; based on P&N's experience in similar circumstances during its administration of other settlements, any such change in the per-claimant payment amount is not anticipated to be substantial.

Notice and Administration Expenses

25. As of September 9, 2022, P&N has invoiced \$506,754.50 for its services. I estimate that P&N will incur an additional \$220,014 in charges through the conclusion of this matter. P&N originally estimated a total notice and administration fee of \$365,363, based on the assumption of a total of 205,000 claims. The new estimated total amount takes into account the higher number of valid claims submitted by Class Members (*see* paragraph 24). The substantially higher number of valid claims results in additional costs related to (i) class member communications; (ii) review and analysis of invalid and/or fraudulent claims (including requests for additional information from claimants with suspicious or deficient claims); and (iii) distribution of funds (via physical check or digital payment).

Objections and Exclusions

26. Pursuant to the Court's Preliminary Approval Order, "[a]ny Settlement Class Member may comment in support of, or in opposition to, the Settlement Agreement at his or her own expense. Any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be valid and entertained by the Court at the Final Approval Hearing only if, on or before the Objection and Exclusion Deadline of August 10, 2022 (i.e. seventy-five (75)

days after the Notice Date), the person making an objection: (i) files his/her objection with the Clerk of Court; (ii) files copies of such papers he/she proposes to submit at the Final Approval Hearing with the Clerk of Court; and (iii) sends copies of such papers via United States mail, hand delivery, or overnight delivery to Class Counsel and Defendant's Counsel. A copy of the objection must also be mailed to the Settlement Administrator at the address that the Settlement Administrator will establish to receive requests for exclusion or objections, Claim Forms, and any other communication relating to this Settlement." To date, P&N is aware of only one mailing that can be considered an objection: an envelope postmarked August 10, 2022, from Sarada Mohapatra, which includes a document "Objection to Settlement," and which is attached hereto as **Exhibit H**.

27. Pursuant to the Court's Preliminary Approval Order, "[a] member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked, or submitted electronically via the Settlement Website, or submitted to an e-mail address established by the Administrator for the purpose of receiving exclusion requests, on or before the Objection and Exclusion Deadline of August 10, 2022 (i.e. seventy-five (75) days after the Notice Date). In order to exercise the right to be excluded via postal mail, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his/her name, address, and telephone number; the name and number of this case; a statement that he/she wishes to be excluded from the Settlement Class; and a handwritten signature. A request to be excluded that is sent to an email address other than that designated in the Class Notice, or that is not electronically submitted or postmarked within the time specified, shall be invalid and the person serving such a request shall be considered a member of the Settlement Class and shall be bound as Settlement Class Members by the Agreement, if approved. The request for exclusion must be personally signed by the person requesting exclusion. So-called 'mass' or 'class' exclusion requests shall not be allowed." To date, 108 requests for exclusion have been received by P&N, 97 of which contain information sufficient to be valid. A list of all 97 individuals who have submitted valid Request for Exclusion is attached hereto as **Exhibit I**.

Conclusion

28. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, and by case law pertaining to the recognized notice standards under relevant Illinois law and Federal Rules of Civil Procedure, Rule 23 (“FRCP 23”). This framework directs that the notice plan be optimized to reach the class and, in a settlement notice situation such as this, that the notice or notice plan itself not limit knowledge of legal rights—nor the ability to exercise other options—to class members in any way. All of these requirements were met in this case.

29. In my opinion, the above-described Notice Plan was consistent with other effective class action notice programs.

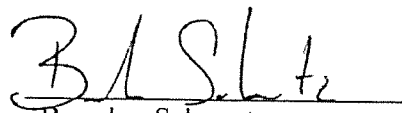
30. It is my opinion, based on my expertise and experience and that of my team, that the methods of notice dissemination implemented by this Settlement, and the Court’s Preliminary Approval Order, provided effective notice of the Settlement, provided the best notice that is practicable, adhered to FRCP 23, followed the guidance set forth in the Manual for Complex Litigation 4th Ed. and FJC guidance, and met the requirements of due process, including its “desire to actually inform” requirement.

31. The Notice Plan schedule afforded enough time to provide full and proper notice to Class Members before the opt-out and objection deadlines.

32. P&N will provide a supplemental declaration to the Court prior to the Final Approval Hearing, which will provide updated settlement administration statistics.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 14th day of September 2022 in Portland, Oregon.


Brandon Schwartz

[ORIGINAL EXHIBITS
OMITTED]

Hearing Date: 12/19/2022 9:30 AM - 9:35 AM
Location: <<CourtRoomNumber>>
Judge: Calendar, 15

FILED
12/12/2022 9:19 AM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2019CH00990
Calendar, 15
20629162

FILED DATE: 12/12/2022 9:19 AM 2019CH00990

EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement (“**Agreement**”) is entered into by Plaintiffs Lindabeth Rivera, Joseph Weiss, Michael Azzano, Brandon Molander, and Nicholas Marquez (“**Plaintiffs**”), individually and on behalf of the Settlement Class as defined below, by and through Class Counsel, and Defendant Google LLC (“**Defendant**” or “**Google**”). Plaintiffs and Defendant are each referred to herein as a **Party**, and collectively, as the **Parties**.

RECITALS

WHEREAS, on March 1, 2016, Plaintiff Rivera filed a putative class action captioned *Rivera v. Google Inc.*, No. 1:16-cv-02714 (“**Rivera Federal Action**”) in the United States District Court for the Northern District of Illinois (“**Northern District of Illinois**”), alleging claims for damages and other legal and equitable remedies resulting from Defendant’s alleged unlawful collection, storage, and use of Plaintiff’s and other similarly situated individuals’ alleged biometric identifiers and biometric information (collectively, “biometric data”), in connection with Google Photos, without informed written consent, and in violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”) (*Rivera Federal Action*, ECF No. 1).

WHEREAS, on March 4, 2016, Plaintiff Weiss filed a putative class action captioned *Weiss v. Google Inc.*, No. 1:16-cv-02870 (“**Weiss Federal Action**”) against Google alleging violations of BIPA in connection with Google Photos in the Northern District of Illinois (*Weiss Federal Action*, ECF No. 1).

WHEREAS, on or about May 24, 2016, the Northern District of Illinois terminated the *Weiss Federal Action*, placed the complaint in that case on the docket in the *Rivera Federal Action*, and consolidated the two actions there (*Weiss Federal Action*, ECF No. 33; *Rivera Federal Action*, ECF No. 36).

WHEREAS, Google filed a motion to dismiss the consolidated *Rivera* and *Weiss Federal Actions* on June 17, 2016 (*Rivera Federal Action*, ECF Nos. 48, 49), which the Plaintiffs in that action opposed (*Rivera Federal Action*, ECF No. 51), and in support of which Google filed a reply (*Rivera Federal Action*, ECF No. 52).

WHEREAS, the Northern District of Illinois denied Google’s motion to dismiss the consolidated *Rivera* and *Weiss Federal Actions*. *See Rivera v. Google Inc.*, 238 F. Supp. 3d 1088 (N.D. Ill. 2017) (*Rivera Federal Action*, ECF No. 60).

WHEREAS, on March 9, 2017, Google filed a motion to amend the Court’s order denying its motion to dismiss to include a certification permitting an interlocutory appeal of the order pursuant to 28 U.S.C. § 1292(b), and a motion to stay the case pending such appeal (*Rivera Federal Action*, ECF Nos. 66, 67), which the Plaintiffs in that action opposed (*Rivera Federal Action*, ECF No. 68), and in support of which Google filed a reply (*Rivera Federal Action*, ECF No. 69).

WHEREAS, on June 27, 2017, the Northern District of Illinois denied Google's motion for certification of interlocutory appeal and to stay the *Rivera* Federal Action pending such appeal (*Rivera* Federal Action, ECF No. 76).

WHEREAS, on April 23, 2018, Google moved for summary judgment in the consolidated *Rivera* and *Weiss* Federal Actions, raising an Article III standing challenge and other defenses (*Rivera* Federal Action, ECF Nos. 151-55), which the Plaintiffs in that action opposed (*Rivera* Federal Action, ECF No. 166), and in support of which Google filed a reply (*Rivera* Federal Action, ECF Nos. 177-80).

WHEREAS, on December 29, 2018, the Northern District of Illinois granted Google's motion for summary judgment on the ground that Plaintiffs *Rivera* and *Weiss* lacked Article III standing to pursue their claims in federal court. *See Rivera v. Google, Inc.*, 366 F. Supp. 3d 998 (N.D. Ill. 2018) (*Rivera* Federal Action, ECF Nos. 206, 207).

WHEREAS, on January 24, 2019, Plaintiffs *Rivera* and *Weiss* appealed the order granting summary judgment to Google to the United States Court of Appeals for the Seventh Circuit (*Rivera v. Google LLC*, No. 19-1182 (7th Cir.)).

WHEREAS, also on January 24, 2019, Plaintiffs *Rivera* and *Weiss* filed a putative class action, captioned *Rivera v. Google LLC*, No. 2019-CH-00990 ("***Rivera* State Action**"), in the Circuit Court of Cook County, Illinois, County Department, Chancery Division, alleging claims for damages and other legal and equitable remedies resulting from Defendant's alleged unlawful collection, storage, and use of Plaintiffs' and other similarly situated individuals' alleged biometric data, in connection with Google Photos, without informed written consent, and in violation of BIPA.

WHEREAS, on February 8, 2019, Google cross-appealed the District Court's order denying Google's motion to dismiss the *Rivera* Federal Action (*Google LLC v. Rivera*, No. 19-1242 (7th Cir.)) ("**Google's Cross-Appeal**").

WHEREAS, on February 12, 2019, the Seventh Circuit issued an order requiring jurisdictional briefing on Google's Cross-Appeal (Google's Cross-Appeal, ECF No. 3).

WHEREAS, on February 25, 2019, Google filed its jurisdictional memorandum in response to the Seventh Circuit's order (Google's Cross-Appeal, ECF No. 15) and, on March 6, 2019, Plaintiffs filed a response to that jurisdictional memorandum (Google's Cross-Appeal, ECF No. 19).

WHEREAS, on June 17, 2019, this Court stayed the *Rivera* State Action pending resolution of the appeal in the *Rivera* Federal Action, in response to a motion filed by Google, which Plaintiffs in the *Rivera* State Action opposed.

WHEREAS, on September 26, 2019, plaintiffs Michael Azzano and Noe Gamboa filed a related putative class action, captioned *Azzano v. Google LLC*, No. 2019-CH-11153 ("***Azzano* State Action**") in the Circuit Court of Cook County, Illinois, County Department, Chancery

Division, alleging claims for damages and other legal and equitable remedies resulting from Defendant's alleged unlawful collection, storage, and use of Plaintiffs' and other similarly situated individuals' alleged biometric data, in connection with Google Photos, without informed written consent, in violation of BIPA.

WHEREAS, on or about December 3, 2019, Google moved to stay the *Azzano* State Action, which Plaintiffs opposed at a presentment hearing by the Court on Google's motion to stay held on December 9, 2019.

WHEREAS, on December 9, 2019, this Court stayed the *Azzano* State Action pending resolution of the appeal in the *Rivera* Federal Action.

WHEREAS, on February 6, 2020, Plaintiff Molander filed a putative class action captioned *Molander v. Google LLC*, No. 5:20-cv-00918 ("**Molander Federal Action**") in the United States District Court for the Northern District of California alleging claims for damages and other legal and equitable remedies resulting from Defendant's alleged unlawful collection, storage, and use of Plaintiff's and other similarly situated individuals' alleged biometric data, in connection with Google Photos, without informed written consent, and in violation of BIPA (*Molander* Federal Action, ECF No. 1).

WHEREAS, on June 18, 2020, Google moved to dismiss, transfer, or stay the *Molander* Federal Action (*Molander* Federal Action, ECF No. 35), which motion Plaintiff Molander opposed (*Molander* Federal Action, ECF No. 39), and in support of which Google filed a reply (*Molander* Federal Action, ECF No. 45).

WHEREAS, on July 22, 2020, the Northern District of California stayed the *Molander* Federal Action pending resolution of the *Rivera* Federal Action (*Molander* Federal Action, ECF No. 47).

WHEREAS, on March 23, 2020, Plaintiff Marquez filed a putative class action captioned *Marquez v. Google LLC*, No. 20-CH-500 ("**Marquez State Action**") in the Circuit Court of the Twelfth Judicial District, Will County, Joliet, Illinois alleging claims for damages and other legal and equitable remedies resulting from Defendant's alleged collection, storage, and use of Plaintiff's and other similarly situated individuals' biometric data, in connection with Google Photos, without informed written consent, and in violation of BIPA.

WHEREAS, on July 29, 2020, Google removed the *Marquez* State Action to the Northern District of Illinois, No. 1:20-cv-04454 ("**Marquez Federal Action**").

WHEREAS, on August 28, 2020, Plaintiff Marquez filed a motion to remand his claim for violation of Section 15(a) of BIPA back to the Circuit Court of the Twelfth Judicial District, Will County, Joliet, Illinois, for lack of Article III standing (*Marquez* Federal Action, ECF No. 11), which Google opposed (*Marquez* Federal Action, ECF No. 15), and in support of which Plaintiff Marquez filed a reply (*Marquez* Federal Action, ECF No. 16).

WHEREAS, on October 27, 2020, the Northern District of Illinois granted Plaintiff Marquez's motion to remand and remanded his claim under Section 15(a) of BIPA back to the Circuit Court of the Twelfth Judicial District, Will County, Joliet, Illinois (*Marquez Federal Action*, ECF No. 18).

WHEREAS, on January 20, 2021, Plaintiff Marquez voluntarily dismissed without prejudice his claim under Section 15(b) of BIPA pursuant to Fed. R. Civ. P. 41(a)(1) (*Marquez Federal Action*, ECF No. 24), and thereafter the *Marquez State Action* was transferred to the Circuit Court of Cook County and consolidated with the *Rivera State Action*.

WHEREAS, on December 2, 2020, and in light of *Bryant v. Compass Group USA, Inc.*, 958 F.3d 617 (7th Cir. 2020) and *Fox v. Dakota Integrated Sys., LLC*, 980 F.3d 1146 (7th Cir. 2020), Google filed a Motion for Relief from Judgment and Indicative Ruling in the *Rivera Federal Action* (*Rivera Federal Action*, ECF No. 232). Google's motion asked the Northern District of Illinois to issue an indicative ruling stating that, if the Seventh Circuit were to remand the then-pending appeal in the *Rivera Federal Action*, then the Northern District of Illinois would grant Google's motion for Rule 60(b)(6) relief and vacate the Court's order granting summary judgment to Google on Plaintiffs' claim under Section 15(b) of BIPA.

WHEREAS, on December 23, 2020, the Northern District of Illinois granted Google's motion and stated that "if the Seventh Circuit were to remand this case, then this Court would vacate the judgment that the Plaintiffs lack Article III standing to pursue the claims under Section 15(b) of the Illinois Biometric Information Privacy Act. The judgment would remain intact that the Plaintiffs lack Article III standing under Section 15(a) of the Act." (*Rivera Federal Action*, ECF No. 235).

WHEREAS, on January 21, 2021, the Seventh Circuit issued its mandate remanding the *Rivera Federal Action* to the Northern District of Illinois (*Rivera Federal Action*, ECF No. 237).

WHEREAS, on January 22, 2021, Plaintiffs Rivera and Weiss moved to stay the *Rivera Federal Action* in favor of the *Rivera State Action* (*Rivera Federal Action*, ECF No. 238).

WHEREAS, Google opposed Plaintiffs' motion to stay the *Rivera Federal Action* (*Rivera Federal Action*, ECF No. 242), Plaintiffs filed a reply (*Rivera Federal Action*, ECF No. 243), and Google filed a sur-reply (*Rivera Federal Action*, ECF No. 249).

WHEREAS, on March 10, 2021, Plaintiffs moved to lift the stay in the *Rivera State Action*.

WHEREAS, on June 17, 2021, the Circuit Court of Cook County granted Plaintiffs' motion to lift the stay of the *Rivera State Action*, and on August 30, 2021, the Northern District of Illinois granted Plaintiffs' motion to stay the *Rivera Federal Action* (*Rivera Federal Action*, ECF No. 258).

WHEREAS, throughout the course of the litigation described above, the Parties engaged in extensive arm's-length settlement negotiations, which included participation in numerous mediation sessions, including an all-day mediation in August 2018 with the Honorable Layn R. Phillips (Ret.), a multiple-months-long mediation in 2019 and 2020 with Seventh Circuit Mediator

Jillisa Brittan, an August 2021 all-day mediation with Judge Phillips, a December 2021 all-day mediation with the Honorable Stuart E. Palmer (Ret.) of JAMS, two additional all-day mediation sessions in January 2022 with Judge Palmer, and extensive negotiations thereafter under the supervision of Judge Palmer.

WHEREAS, after extensive arm's-length negotiations, the Parties reached an agreement in principle to settle on the terms and conditions embodied in this Agreement.

WHEREAS, Plaintiffs have investigated, developed, and thoroughly litigated the *Rivera* Federal Action, conducted extensive discovery in the *Rivera* Federal Action (including the depositions of Google employees and review of hundreds of thousands of documents), have analyzed the legal issues in the *Rivera* Federal Action and the later-filed cases, have retained and consulted with experts, have engaged in extensive motion practice in the *Rivera* Federal Action and the later-filed cases, have kept abreast of the changing legal landscape as it pertains to the *Rivera* Federal Action and the later-filed cases, and believe that the proposed settlement with Defendant, as set forth herein, is fair, reasonable, and adequate, and in the best interests of the putative Settlement Class and that this Agreement therefore warrants approval by the Court pursuant to Section 2-801 of the Illinois Code of Civil Procedure.

WHEREAS, Defendant denies that it has engaged in any wrongdoing and denies all claims alleged by Plaintiffs in the *Rivera* Federal Action, the *Weiss* Federal Action, the *Rivera* State Action, the *Azzano* State Action, the *Molander* Federal Action, the *Marquez* State Action, and the *Marquez* Federal Action (collectively, the "Google Photos BIPA Cases"). This Agreement shall in no event be construed or deemed to be evidence of or an admission, presumption or concession on the part of Defendant of any fault, liability, or wrongdoing as to any facts or claims asserted in the Google Photos BIPA Cases (or any infirmity in the defenses it has asserted or could assert in the Google Photos BIPA Cases), or any other actions or proceedings, and shall not be interpreted, construed, offered, or received in evidence or otherwise used against Defendant in any other action or proceeding, whether civil, criminal or administrative (except in an action brought to enforce its terms).

WHEREAS, while Plaintiffs believe the claims in the Google Photos BIPA Cases have merit and while Defendant disputes such claims and does not acknowledge in any way any fault or liability, the Parties have agreed to enter into this Agreement as a compromise of Plaintiffs' and the Settlement Class Members' claims in order to resolve all controversies between them and to avoid the uncertainty, risk, expense, and burdens posed by continued prosecution and defense of the Google Photos BIPA Cases.

WHEREAS, the Parties believe that this Agreement resolving the Google Photos BIPA Cases can and should be approved to avoid the time, expense, and uncertainty of protracted litigation; and in the event that this Agreement does not receive final and binding approval from the Court or is terminated according to its terms, Plaintiffs expressly reserve the right to seek class certification and to try the Google Photos BIPA Cases to judgment, while Defendant reserves the right to challenge class certification and reserves its other defenses.

WHEREAS, pursuant to the terms and conditions of this Agreement, the Parties agree to stay proceedings in the *Rivera* State Action, and in the other Google Photos BIPA Cases, including any further discovery or motion practice, pending final and binding approval from the Court presiding over the *Rivera* State Action.

NOW, THEREFORE, subject to Court approval and the other conditions set forth herein, it is hereby AGREED by the Parties that, in consideration of the undertakings, promises, and payment set forth in this Agreement and upon the entry by the Circuit Court of Cook County of a Final Order and Judgment approving the settlement and directing the implementation of the terms and conditions of this Agreement, the Google Photos BIPA Cases shall be settled and compromised upon the terms and conditions set forth herein.

The foregoing Recitals are true and correct and are hereby fully incorporated in, and made a part of, this Agreement.

1. DEFINITIONS

As used in this Agreement and the attached exhibits, in addition to any definitions set forth elsewhere in this Agreement, the following terms shall be defined as set forth below:

1.1 **“Administration Expenses”** shall mean expenses associated with the Settlement Administrator, including but not limited to costs in providing notice, communicating with Class Members, establishing and maintaining the Settlement Website, resolving any disputed Claims, and disbursing payments to the Settlement Class Members, any Service Payments to Class Representatives, and any Fee and Expense Award to Class Counsel.

1.2 **“Approved Claim(s)”** shall mean a complete and timely Claim, as evidenced by a Claim Form, submitted by a Settlement Class Member that has been approved for payment by the Settlement Administrator.

1.3 **“BIPA”** shall mean the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.*

1.4 **“Business Day(s)”** shall mean, for a period expressed in “business days,” the number of calendar days identified in the period, excluding the day of the event that triggers the period, that are not Saturdays, Sundays, or legal holidays.

1.5 **“Claim(s)”** shall mean a Class Member’s claim or request for settlement benefits, as evidenced by a submitted Claim Form.

1.6 **“Claim Form”** shall mean the form that Settlement Class Members may submit to obtain compensation under this Settlement, which shall be substantially in the form attached hereto as Exhibit 1.

1.7 **“Claims Deadline”** shall mean the date by which all Claim Forms must be postmarked (if mailed) or submitted electronically (if submitted on the Settlement Website) to be

considered timely, and which shall be one hundred and twenty (120) Days after the Notice Date. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order, the Notice, the Claim Form, and on the Settlement Website.

1.8 **“Class” or “Settlement Class”** shall mean and include all Illinois residents who appeared in a photograph in Google Photos at any time between May 1, 2015 and the date of Preliminary Approval. Excluded from the Class are: (a) any judge, magistrate, or mediator presiding over the Google Photos BIPA Cases and members of their families; (b) Defendant, Defendant’s subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest; (c) Class Counsel; and (d) the legal representatives, successors or assigns of any such excluded persons.

1.9 **“Class Member” or “Settlement Class Member”** shall mean a person who falls within the definition of the Class, as defined in Sections 1.8 and 2.2 of this Agreement, and who does not submit a valid request for exclusion.

1.10 **“Class Counsel”** shall mean collectively Robert Ahdoot and Tina Wolfson of Ahdoot & Wolfson, PC; John C. Carey and David P. Milian of Carey Rodriguez Milian, LLP; Scott Bursor of Bursor & Fisher, P.A.; and Frank S. Hedin of Hedin Hall LLP.

1.11 **“Class Representatives” or “Plaintiffs”** shall mean Plaintiffs Michael Azzano, Nicholas Marquez, Brandon Molander, Lindabeth Rivera, and Joseph Weiss.

1.12 **“Court”** shall mean the Circuit Court of Cook County, Illinois, County Department, Chancery Division, the Honorable Anna M. Loftus presiding (or any other Circuit Court of Cook County Judge assigned to the *Rivera* State Action).

1.13 **“Days”** shall mean, for a period expressed in “days,” the number of calendar days identified in the period, excluding the day of the event that triggers the period, but including the last day of the period except when the last day is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

1.14 **“Defendant” or “Google”** means Google LLC.

1.15 **“Defendant’s Counsel”** means Perkins Coie LLP.

1.16 **“Effective Date”** means the date on which the Final Order and Judgment becomes “Final,” which shall be one Business Day after the latest of the following events: (a) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Order and Judgment approving this Agreement; (b) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee and Expense Award, the date of completion, in a manner that finally affirms and leaves in place the Final Order and Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (c) the date of final dismissal of any appeal or the final dismissal of any

proceeding on certiorari.

1.17 **“Fee and Expense Award”** means the amount of attorneys’ fees and reimbursement of costs and expenses awarded by the Court to Class Counsel to compensate them for conferring the benefits upon the Settlement Class under this Agreement and for their professional time, fees, advances, and expenses incurred in connection with the prosecution and resolution of the Google Photos BIPA Cases and this Agreement. Any request for the Fee and Expense Award shall be filed with the Court and posted to the Settlement Website on or before fourteen (14) Days prior to the Objection and Exclusion Deadline.

1.18 **“Final Approval Hearing”** means the hearing to be conducted by the Court in connection with the final determination that this Agreement is fair, reasonable, and adequate and in the best interests of the Class as a whole, and which shall be on a date no earlier than one hundred twenty-five (125) Days after entry of the Preliminary Approval Order, or such other date approved by the Court.

1.19 **“Final Order and Judgment”** means an order that is entered by the Court and which shall be substantially in the form attached hereto as Exhibit 2, and approves this Agreement as fair, reasonable, and adequate, and in the best interests of the Class as a whole, and makes such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Agreement.

1.20 **“Google Photos”** means the photo-storage and photo organization service offered by Defendant, as further described by Defendant at www.google.com/photos/about/ (last visited March 15, 2022).

1.21 **“Google Photos BIPA Cases”** means, collectively, the following cases: *Rivera v. Google LLC*, No. 1:16-cv-02714 (N.D. Ill.); *Weiss v. Google Inc.*, No. 1:16-cv-02870 (N.D. Ill.); *Rivera v. Google LLC*, No. 2019-CH-00990 (Ill. Cir. Ct., Cook Cnty.); *Azzano v. Google LLC*, No. 2019-CH-11153 (Ill. Cir. Ct., Cook Cnty.); *Molander v. Google LLC*, No. 5:20-cv-00918 (N.D. Cal.); *Marquez v. Google LLC*, No. 2021-CH-01460 (Ill. Cir. Ct., Cook Cnty.), and *Marquez v. Google LLC*, No. 1:20-cv-04454 (N.D. Ill.).

1.22 **“Long Form Notice”** means the legal notice of the proposed Settlement terms to be provided to potential Settlement Class Members pursuant to the terms and conditions of this Agreement, substantially similar to the form attached hereto as Exhibit 3.

1.23 **“Net Settlement Fund”** means the balance remaining in the Settlement Fund after (i) the addition of any interest accrued in the Escrow Account (described in Section 3.2.e herein), and (ii) payment of all of the following: (a) Settlement Administration Expenses, (b) any Service Payments to the Class Representatives, (c) Taxes, and (d) any Fee and Expense Award to Class Counsel.

1.24 **“Notice(s)”** means the notices of this proposed Settlement and the scheduling of the Final Approval Hearing, which are to be disseminated to potential Settlement Class Members substantially in the manner set forth in this Agreement and approved by the Court, fulfilling the

requirements of due process and 735 ILCS 5/2-803, and substantially in the form of Exhibits 1, 3, 5, 6, 8, 9, and 11 attached hereto.

1.25 “**Notice Date**” means the date by which the Notice is initially disseminated to the Settlement Class by the Settlement Administrator, which shall be a date no later than thirty-five (35) Days after the Court’s entry of the Preliminary Approval Order.

1.26 “**Notice Plan**” means the plan described in this Agreement for disseminating Notice to the Settlement Class Members of the terms of this Agreement and the Final Approval Hearing.

1.27 “**Objection and Exclusion Deadline**” means the date by which a written objection to the Settlement or a request for exclusion by a person within the Settlement Class must be made, which shall be designated as a date no later than seventy-five (75) Days after the Notice Date.

1.28 “**Preliminary Approval Order**” means the Court’s Order granting preliminary approval of this Agreement and which shall be substantially in the form attached hereto as Exhibit 4, conditionally certifying the Settlement Class and conditionally appointing Class Counsel, approving the Notice of Proposed Class Action Settlement and the manner of providing notice to the Class, and setting forth a schedule for briefing regarding the fairness of the settlement, deadlines for submitting exclusion requests and objections, and the date of the Final Approval Hearing, in a form as agreed to by the Parties.

1.29 “**Publication Notice**” means the legal notice summarizing the proposed Settlement terms that informs potential Settlement Class Members of the Settlement, to be published in the manner described herein and in a form substantially similar to the form attached hereto as Exhibit 5.

1.30 “**Release**” or “**Releases**” means the Releases set forth in Section 11 of this Agreement.

1.31 “**Released Claims**” means any and all claims, liabilities, rights, demands, suits, matters, obligations, damages (including consequential damages), losses or costs, liquidated damages, statutory damages, attorneys’ fees and costs, actions or causes of action, of every kind and description, whether known or unknown (including “**Unknown Claims**” as defined below), fixed or contingent, accrued or not accrued, matured or not yet matured, asserted or unasserted, suspected or unsuspected, including without limitation those related to unknown and unsuspected injuries as well as unknown and unsuspected consequences of known or suspected injuries, that the Releasing Parties now own or hold, or have owned or held at any time prior to the Effective Date of this Agreement, arising from or related to Plaintiffs’ allegations or the alleged collection, capture, receipt, storage, possession, dissemination, transfer, use, sale, lease, trade, or profit from biometric information, biometric identifiers, or any data derived from images of faces in photographs, by or for Google, including all claims arising from or relating to the subject matter of the Google Photos BIPA Cases, and all claims that were brought or could have been brought in the Google Photos BIPA Cases.

1.32 “**Released Parties**” means Defendant and its direct and indirect corporate parents, subsidiaries, affiliates, principals, investors, owners, members, controlling shareholders, trustees,

estates, heirs, executors, administrators, partners, and joint venturers, along with the officers, directors, shareholders, employees, attorneys, representatives, agents, contractors, insurers, successors, predecessors, and assigns of such persons or entities.

1.33 **“Releasing Parties”** means Plaintiffs and the Settlement Class Members and their respective present or past heirs, executors, estates, administrators, trustees, 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.

1.34 **“Rivera State Action”** means *Rivera v. Google LLC*, No. 2019-CH-00990, filed in the Circuit Court of Cook County, Illinois, County Department, Chancery Division.

1.35 **“Service Payment(s)”** means such payments as may be approved by the Court to the Class Representatives in recognition of their time, effort, service, and expenses incurred in pursuing the Google Photos BIPA Cases or in otherwise fulfilling their obligations and responsibilities as the Settlement Class Representatives on behalf of the Settlement Class. Any request for Service Payments shall be filed with the Court and posted to the Settlement website on or before fourteen (14) Days prior to the Objection and Exclusion Deadline.

1.36 **“Settlement,” “Settlement Agreement,” or “Agreement”** means this Settlement Agreement and the settlement embodied in this Settlement Agreement, including all attached Exhibits (which are an integral part of this Settlement Agreement and Release and are incorporated herein in their entirety by reference).

1.37 **“Settlement Amount”** means One Hundred Million United States Dollars and Zero Cents (\$100,000,000.00) to be paid by Defendant and is the total amount that Defendant will be obligated to pay in consideration of the settlement of all Plaintiffs’ and Class Members’ Released Claims, provided that the relevant terms and conditions of this Agreement are met.

1.38 **“Settlement Administrator”** means Postlethwaite & Netterville (“P&N”), the third-party entity that is jointly selected by the Parties to administer and provide notice of the Settlement pursuant to the terms and conditions of this Agreement.

1.39 **“Settlement Fund”** means the non-reversionary cash fund that shall be funded by Defendant in the total amount of the Settlement Amount (i.e., One Hundred Million United States Dollars and Zero Cents (\$100,000,000.00)) and any other funds held in escrow by the Settlement Administrator pursuant to this Agreement, including accrued interest. The following shall be paid out of the Settlement Fund pursuant to the terms and conditions of this Agreement: All Settlement Payments as a result of Approved Claims made by Class Members, Administration Expenses, any Service Payment to the Class Representatives, Taxes, and any Fee and Expense Award to Class Counsel.

1.40 **“Settlement Payment(s)”** means the payments to be made in response to Approved Claims.

1.41 **“Settlement Website”** means the Internet website with the URL address www.GoogleBIPASettlement.com, which is to be created, launched, and maintained by the Settlement Administrator, where Class Members may obtain information about the Settlement, file electronic Claim Forms and requests for exclusion from the Settlement, and obtain copies of relevant case-related documents (including the Long Form Notice (in both English and Spanish), information about the submission of Claim Forms, and other relevant documents, such as the operative complaints filed in the Google Photos BIPA Cases, this Agreement, the Preliminary Approval Order, any application for the Fee and Expense Award and Service Payments, any brief filed by the Parties in support of the Settlement, and the Final Approval Order), including downloadable Claim Forms.

1.42 **“Summary Notice”** means the legal notice summarizing the proposed Settlement terms, substantially in the form attached as Exhibit 6.

1.43 **“Taxes”** means all federal, state, or local taxes of any kind on any income earned by the Settlement Fund and the expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, interest, penalties and the reasonable expenses of tax attorneys and accountants). All (i) Taxes (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Released Parties or their counsel with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes, and (ii) expenses and costs incurred in connection with the operation and implementation of this Agreement (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Agreement (“Tax Expenses”), shall be paid out of the Settlement Fund. Further, Taxes and Tax Expenses shall be treated as, and considered to be, an Administration Expense and shall be timely paid by the Settlement Administrator, out of the Settlement Fund, without prior order from the Court and the Settlement Administrator shall be authorized (notwithstanding anything herein to the contrary) to withhold from distribution to Class Members with Approved Claims any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treasury Regulation § 1.468B-2(l)(2)). The Parties hereto agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Agreement. For the purpose of Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the Settlement Administrator shall be the “administrator.” The Settlement Administrator shall timely and properly file or cause to be filed all informational and other tax returns necessary or advisable with respect to the Settlement Fund and the escrow account (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)). Such returns (as well as the election described in this Agreement) shall be consistent with this Section and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in this Agreement.

1.44 **“Unknown Claims”** means claims that could have been raised in the Google Photos BIPA Cases and that any or all of the Releasing Parties do not know or suspect to exist,

which, if known by him or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object or not object to the Settlement, or seek exclusion from the Class. Upon the Effective Date, the Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Upon the Effective Date, the Releasing Parties also shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Section.

2. THE SETTLEMENT CLASS

2.1 For the purposes of this Settlement only, the Parties stipulate and agree that: (a) the Class shall be certified in accordance with the definition contained in Section 2.2, below; (b) Plaintiffs shall represent the Class for settlement purposes and shall be appointed as the Class Representatives; and (c) Plaintiffs' Counsel shall be appointed as Class Counsel.

2.2 Subject to Court approval, the following Class shall be certified for settlement purposes:

All Illinois residents who appeared in a photograph in Google Photos at any time between May 1, 2015 and the date of Preliminary Approval. Excluded from the Class are: (a) any judge, magistrate, or mediator presiding over the Google Photos BIPA Cases and members of their families; (b) Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest; (c) Class Counsel; and (d) the legal representatives, successors or assigns of any such excluded persons.

2.3 Defendant conditionally agrees and consents to certification of the Settlement Class for settlement purposes only, and within the context of this Agreement only. If this Agreement, for any reason, is not finally approved or is otherwise terminated, then (a) Defendant reserves the right to assert any and all objections and defenses to certification of a class; (b) neither this Agreement

nor any Order or other action relating to this Agreement shall be offered by any person as evidence in support of a motion to certify a class for a purpose other than settlement; (c) the Settlement proposed herein shall become null and void and shall have no legal effect and may never be mentioned at trial or in dispositive or class motions or motion papers; and (d) the Parties will return to their respective positions existing immediately before the execution of this Agreement.

2.4 To the fullest extent permitted by law, neither the fact of, nor any provision contained in, this Agreement or its attachments, nor any action taken hereunder shall constitute, be construed as, or be admissible in evidence as, any admission of the validity of any claim or any fact alleged by Plaintiffs in the Google Photos BIPA Cases or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law or liability of any kind on the part of Defendant or admission by any of the Parties of the validity or lack thereof of any claim, allegation or defense asserted in the Google Photos BIPA Cases or in any other action.

3. SETTLEMENT RELIEF

3.1 Prospective Relief

a. Without admitting any liability or that it is required by law to do so, Defendant agrees to take the following steps in connection with this Settlement:

1. Within sixty (60) Days of the Effective Date, Defendant shall present the notice described in this paragraph to all Google Photos account holders who Defendant can reasonably determine are located in Illinois and who have the “face grouping” feature enabled in Google Photos (“Grouping-Enabled Illinois Users”) and to any new Google Photos users who Defendant can reasonably determine to be located in Illinois when activating Google Photos for the first time and any existing Google Photos users who Defendant can reasonably determine to be located in Illinois when presented with an option to re-enable the “face grouping” feature in Google Photos (“New or Re-Enabled Grouping Illinois Users”). The notice shall disclose (i) that the face grouping feature is enabled; (ii) that Defendant creates “face templates” or “face models” that are based on the images of faces in the photographs that are saved in the user’s account; (iii) that by continuing to use Google Photos with the face grouping feature enabled, the user is consenting to Defendant’s creation of data from the photographs in his or her account, including but not limited to the creation of face templates or face models, which enables Defendant to group photographs of similar faces and which, Plaintiffs contend, involve the collection of “biometric” data in some jurisdictions, and that such consent is provided on behalf of the user, and on behalf of all other people appearing in the photographs stored in the user’s account for whom the user is authorized to provide such consent; and (iv) how the user can disable the feature and permanently delete any face templates or face models that may have been created from the photographs in his or her account. Nothing in this provision will require Defendant to use specific wording or terminology, or to provide notices that do not accurately describe how Google Photos operates. Nonetheless, for as long as Defendant provides a feature that enables users to group photos in their private Google Photos accounts based on the faces that appear in those photographs, Defendant will provide to Grouping-Enabled Illinois Users and New or Re-Enabled Grouping Illinois Users the information described in subsections (i)-(iv) above, irrespective of any changes to the technological process(es) used to generate the data used to implement that face grouping

feature. Defendant anticipates making these notices available (1) when Google Photos is activated by the user (in mobile or on computer), (2) in the Google Photos Help Center, and (3) through the Google Photos Settings, or, in Defendant's judgment, in other places that will provide reasonably equivalent notice. The notice presented when Google Photos is activated by the user (in mobile or on computer) will require the user to affirmatively indicate the user's consent as described in subsection (iii) above.

2. Within sixty (60) Days of the Effective Date, Defendant will develop, publish, and abide by a retention policy in which it commits to deleting face templates or face models associated with a Google Photos user's account, within a reasonable period of time, and consistent with other legal obligations and requirements, after the Google Photos user takes any of the following actions: (i) turns off the "face grouping" feature in Google Photos (in which case, all face templates or face models would be deleted); (ii) deletes an individual photograph (in which case, face templates or face models derived from that photograph would be deleted); (iii) deletes all photographs that include images of people (in which case, all face templates or face models derived from those photographs would be deleted); and (iv) deletes his or her Google account (in which case, all photographs in the account, and all face templates or face models derived from those photographs, would be deleted). Nothing in this provision will require Defendant to use specific wording or terminology, or to include information in its retention policy that does not accurately describe what Defendant is doing. Defendant anticipates making this retention policy available in the Google Photos Help Center or in other places that will provide reasonably equivalent notice.

3. Google will not sell, lease, or trade face templates or face models to any third party outside of Google.

4. Google will store, transmit, and protect from disclosure face templates or face models using reasonable security measures and in a manner that is at least as protective as the manner in which Google stores, transmits, and protects other confidential and sensitive information.

b. The Prospective Relief set forth in this Section shall be incorporated in the Final Order and Judgment of the Court.

3.2 Establishment of Settlement Fund

a. Defendant agrees to pay the Settlement Amount, i.e., the total sum of One Hundred Million United States Dollars and Zero Cents (\$100,000,000.00), to create the Settlement Fund. Defendant shall pay the Settlement Amount in accordance with the terms and conditions of this Section 3.2. The Settlement Fund shall be used to pay all Settlement Payments as a result of Approved Claims made by Class Members, the Administration Expenses, any Service Payments to the Class Representatives, Taxes, and any Fee and Expense Award to Class Counsel. The Settlement Fund represents the total extent of Defendant's monetary obligations under this Agreement, and neither Defendant nor any Released Party shall have any obligation to make any further payments into the Settlement Fund or any financial responsibility or obligation relating to the Settlement beyond payment of the Settlement Amount.

b. No portion of the Settlement Fund shall revert back to or be refunded to Defendant after the Settlement becomes Final.

c. Within fifteen (15) Days after the later of (a) entry of the Preliminary Approval Order, which shall include an order establishing the Settlement Fund pursuant to Treasury Regulation § 1.468B-1(c)(1), or (b) receipt from the Settlement Administrator of detailed wire instructions and a completed W-9 form, Google agrees to and shall cause the sum of Five Hundred Thousand United States Dollars and Zero Cents (\$500,000.00) to be deposited in an interest-bearing bank escrow account established and administered by the Settlement Administrator (the “**Escrow Account**”). The Escrow Account shall be held in a Qualified Settlement Fund (defined below) in interest-bearing bank account deposits with commercial banks with excess capital exceeding One Billion United States Dollars and Zero Cents (\$1,000,000,000.00), with a rating of “A” or higher by S&P and in an account that is fully insured by the United States Government or the FDIC.

d. Within forty-five (45) Days after the entry of the Preliminary Approval Order, Google agrees to and shall cause to be deposited the additional sum of Ninety-Nine Million Five Hundred Thousand United States Dollars and Zero Cents (\$99,500,000.00) into the Escrow Account.

e. All interest on the funds in the Escrow Account shall accrue to the benefit of the Settlement Class. Any interest shall not be subject to withholding and shall, if required, be reported appropriately to the Internal Revenue Service by the Settlement Administrator. The Administrator is responsible for the payment of all Taxes.

f. The funds in the Escrow Account shall be deemed a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1 at all times after the creation of the Escrow Account. All Taxes shall be paid out of the Escrow Account. Defendant, Defendant’s Counsel, Plaintiffs, and Class Counsel shall have no liability or responsibility for any of the Taxes. The Escrow Account shall indemnify and hold Defendant, Defendant’s Counsel, Plaintiffs, and Class Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

g. For the purpose of the Internal Revenue Code and the Treasury regulations thereunder, the Settlement Administrator shall be designated as the “administrator” of the Settlement Fund. The Settlement Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)). Such returns (as well as the election described in the previous paragraph) shall be consistent with this paragraph and in all events shall reflect that all taxes (including the Taxes, any estimated Taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

h. The Settlement Administrator shall maintain control over the Settlement Fund and shall be responsible for all disbursements. The Settlement Administrator shall not disburse any portion of the Settlement Fund except as provided in this Agreement and with the

written agreement of Class Counsel and Defendant's Counsel or by order of the Court.

i. All funds held by the Settlement Administrator shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement or further order of the Court.

j. Refund Upon Termination. In the event that the Court does not enter the Final Order and Judgment or if for any other reason final approval of the Settlement does not occur, is successfully objected to, or successfully challenged on appeal, the remaining Settlement Fund (including accrued interest), less (a) any Administration Expenses actually incurred, and (b) any amounts and Taxes incurred or due and owing and payable from the Settlement Fund in accordance with this Agreement, shall be refunded to Defendant.

3.3 Distribution of Settlement Fund

a. All Settlement Class Members shall be entitled to submit a Claim by submitting a Claim Form (to seek a Settlement Payment from the Settlement Fund) prior to the Claim Deadline. Each Class Member is limited to one Claim. A Settlement Class Member, or a Settlement Class Member's legally authorized representative on behalf of a given Settlement Class Member, may submit the Claim Form by mailing the Claim Form to the Settlement Administrator or submitting the Claim Form through the Settlement Website. The Claim Form, whether electronic or in paper form, shall be substantially in the form attached hereto as Exhibit 1. The Net Settlement Fund shall be divided equally among all Class Members with Approved Claims, such that each Class Member with an Approved Claim will be entitled to a Settlement Payment, from the Settlement Fund, equal to that Class Member's *pro rata* share of the Net Settlement Fund.

b. Within ninety (90) Days after the Effective Date, or such other date as the Court may set, the Settlement Administrator shall send Settlement Payments from the Settlement Fund by check, digital payment, or electronic deposit, as elected by each Class Member with an Approved Claim. Each payment issued to a Class Member via check will state on the face of the check that it will become null and void unless cashed within one hundred and eighty (180) Days after the date of issuance.

3.4 In the event that an electronic deposit to a Class Member cannot be processed, the Settlement Administrator shall send a physical check to the Class Member via the U.S. Postal Service.

3.5 To the extent that a check issued to a Class Member is not cashed within one hundred and eighty (180) calendar Days after the date of issuance, or a digital payment or electronic deposit is unable to be processed within one hundred and eighty (180) Days of the first attempt, such funds shall remain in the Settlement Fund and shall be apportioned in a second distribution, if practicable, on a *pro rata* basis to Class Members with Approved Claims who, in the initial distribution, cashed their check or successfully received payment electronically. To the extent that any second distribution is impracticable or second-distribution funds remain in the Settlement Fund after an additional one hundred and eighty (180) Days, such funds ("Residual

Funds”) shall be distributed to one or more 26 U.S.C. § 501(c)(3) non-profit Eligible Organization(s) (as this term is defined by 735 ILCS 5/2-807) selected by the Parties and thereafter approved by the Court. In addition, subject to the Court’s approval, at least fifty percent (50%) of the Residual Funds shall be disbursed to one or more organizations appearing on the Chicago Bar Foundation’s list of Qualifying CBF-Supported Pro Bono and Legal Aid Organizations (<https://chicagobarfoundation.org/pdf/support/cy-pres/state-fact-sheet.pdf>, p. 2 (last visited March 15, 2022 and attached hereto as Exhibit 7)). The distribution of the Residual Funds shall comply with 735 ILCS 5/2-807.

3.6 Under no circumstances shall any of the Settlement Amount paid by Defendant into the Settlement Fund revert to Defendant, except in the event the Settlement does not become Final or is terminated in accordance with Sections 3.2.j and 14 herein. In no event shall any of the Settlement Fund be paid to any Class Counsel except for the amount of an approved Fee and Expense Award in accordance with the terms and conditions of this Settlement.

4. PRELIMINARY APPROVAL AND FINAL APPROVAL

4.1 This Agreement shall be subject to approval of the Court. As set forth in Section 14, Defendant shall have the right to terminate this Agreement if the Court does not approve all material aspects of this Agreement.

4.2 Plaintiffs, through Class Counsel, shall file an unopposed motion for entry of an Order conditionally certifying the Settlement Class, granting Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, approving the Class Notice and Claim Form, appointing Class Counsel and Plaintiffs as the Class Representatives, and for entry of the Preliminary Approval Order. The Preliminary Approval Order shall seek a Final Approval Hearing date and approve the Notices and Claim Form for dissemination in accordance with the Notice Program set forth in Section 6.3. The Preliminary Approval Order shall also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of this Agreement and its implementing documents (including all exhibits to this Agreement) so long as they are consistent in all material respects with the terms of the Final Order and Judgment set forth below and do not limit or impair the rights of the Class.

4.3 The Parties shall request that the Final Approval Hearing be scheduled approximately one hundred twenty-five (125) Days after entry of the Preliminary Approval Order and that the Court approve the Settlement of the Google Photos BIPA Cases as set forth herein.

4.4 Within fourteen (14) Days after the Objection and Exclusion Deadline, or by another date if directed by the Court, Plaintiffs shall: (a) move for final approval of the Settlement; (b) move for final certification of the Settlement Class, including for the entry of a Final Approval Order; (c) respond to any objections or comments from Settlement Class Members; and (d) file memorandums in support of the motion for final approval and in response to objections or comments from Settlement Class Members, if any.

4.5 Defendant may file a separate brief in support of the Court's entry of the Preliminary Approval Order or the Final Order and Judgment but is not obligated to do so.

5. SETTLEMENT ADMINISTRATION

5.1 The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Agreement by providing Notice and processing Claim Forms in a reasonable, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel and Defendant's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. Without limiting the foregoing, the Settlement Administrator shall:

a. Receive requests to be excluded from the Class and promptly provide Class Counsel and Defendant's Counsel copies thereof. If the Settlement Administrator receives any exclusion forms after the deadline for submission of such forms, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;

b. Provide weekly reports to Class Counsel and Defendant's Counsel regarding the number of Claim Forms received and the categorization and description of Claim Forms rejected, in whole or in part, by the Settlement Administrator;

c. Make available for inspection by Class Counsel and Defendant's Counsel the Claim Forms received by the Settlement Administrator at any time upon reasonable notice.

5.2 The Settlement Administrator shall employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud. The Settlement Administrator shall determine whether a Claim Form submitted by a Class Member is an Approved Claim and shall reject Claim Forms that fail to (a) comply with the instructions on the Claim Form or the terms and conditions of this Agreement, or (b) provide full and complete information as requested on the Claim Form. In the event a person submits a timely Claim Form by the Claims Deadline but the Claim Form is not otherwise complete, then the Settlement Administrator shall give such person reasonable opportunity to provide any requested missing information, which information must be received by the Settlement Administrator by the Claims Deadline, or fourteen (14) Days after the Settlement Administrator sends the email or regular mail notice to the Settlement Class Member regarding the deficiencies in the Claim Form, whichever is later. In the event the Settlement Administrator receives such information after the deadline set forth in this subsection, then any such claim shall be denied, unless both Class Counsel and Defendant's Counsel agree that such claim should be accepted. The Settlement Administrator may contact any person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form. Class Counsel and Defendant's Counsel shall both have the right to challenge the acceptance or rejection of a Claim Form submitted to the Settlement Administrator. The Settlement Administrator shall follow any joint decisions of Class Counsel and Defendant's Counsel as to the validity of any disputed submitted Claim Form. Where Class Counsel and Defendant's Counsel

disagree as to the validity of a submitted Claim Form, the Settlement Administrator will resolve the dispute and the Claim Form will be treated in the manner designated by the Settlement Administrator.

6. NOTICE TO THE CLASS

6.1 Direct Notice List. Within seven (7) Business Days after the Court's entry of the Preliminary Approval Order, Defendant will provide to the Settlement Administrator, in digital form, a list of names (where available) and email addresses associated with persons that Google has determined, based on a reasonable review of its records, are potential Class Members. Given the information users provide, as well as how Google's records are kept, Google represents and warrants that it may not be able to identify each and every Class Member and/or may include persons who do not qualify as Class Members. The list shall include (to the extent available in Google's records and to the best of Google's ability) the (i) email address(es) associated with each potential Class Member and (ii) the name(s), if any, of each potential Class Member (collectively, the "Direct Notice List").

6.2 Use of the Direct Notice List. The Settlement Administrator shall keep the Direct Notice List, including names and email addresses, of all persons appearing thereon, strictly confidential, and shall not disclose it to any other person or entity under any circumstances, without prior express written consent from Defendant. The Direct Notice List may not be used by the Settlement Administrator for any purpose other than disseminating and verifying the dissemination of the Notice in accordance with the terms and conditions of this Agreement, processing Claims, making Settlement Payments, responding to Class Member inquiries, processing Class Member requests for exclusion and objection, if any, notifying Settlement Class Members of their rights under this Agreement, and otherwise effectuating the terms of this Agreement or the duties arising thereunder. The parties will ensure that the Class Administrator shall provide information regarding how it will keep the Direct Notice List safe, private, and secure, and how it will destroy the list when the matter is fully concluded.

6.3 Notice Program. The notice program shall be approved by the Court in the Preliminary Approval Order and shall consist of the following:

a. Long Form Notice. The Long Form Notice shall be in a form substantially similar to the document attached as Exhibit 3 hereto. The Long Form Notice shall (i) contain a description of the nature of the Action and the proposed Settlement, including information on the definition of the Settlement Class, how the proposed Settlement would provide relief to Settlement Class Members, and other relevant information; (ii) contain a description of what claims are released under the proposed Settlement; (iii) advise the Settlement Class that those members of the Settlement Class who do not file valid and timely exclusion requests will be releasing their claims under those actions; (iv) inform members of the Settlement Class of their right to opt out of the proposed Settlement and provide the deadlines and procedures for exercising this right; (v) inform Settlement Class Members of their right to object to the proposed Settlement, Fee and Expense Award, and/or Service Payments and to appear at the Final Approval Hearing, and provide the deadlines and procedures for exercising these rights; (vi) inform the Settlement Class that fees and expenses related to the Settlement Administrator will be deducted from the Settlement

Fund, and set forth the maximum Fee and Expense Award and Service Payments to be sought; and (vii) inform and provide instruction to the Settlement Class about the process for making a Claim. The Notice will make clear that this Agreement shall be binding on all Settlement Class Members, i.e., those who do not timely and properly submit requests for exclusion from the Settlement Class, including those who do not submit Claims. The Settlement Administrator shall make a version of the Long Form Notice available on the Settlement Website in Spanish.

b. Form of Notice. The Notice shall be presented in multiple forms and presented through multiple media, as set forth below.

i. Notice by Email. No later than the Notice Date, the Settlement Administrator shall send the Summary Notice of the Settlement (substantially in the form attached as Exhibit 6), with a link to a Spanish language version, via email, to every email address on the Direct Notice List.

ii. Reminder Emails. No later than fourteen (14) Days before the Claims Deadline, the Settlement Administrator will email a reminder notice (substantially in the form attached as Exhibit 8) to all valid email addresses on the Direct Notice List that are associated with persons who have not submitted a Claim Form as of that date. The reminder email shall remind persons that should they wish to submit a Claim Form they must do so by the Claim Deadline.

iii. Postal Notice Where Email Notice is Fatally Undeliverable. If any Summary Notice that has been emailed is returned as undeliverable and has not been successfully delivered to another email address believed to be associated with the same person, the Settlement Administrator shall attempt one (1) other email execution (where feasible) and, if unsuccessful, the Settlement Administrator will send the Summary Notice (in postcard form attached hereto as Exhibit 9) by U.S. mail, postage prepaid, to the extent a current physical mailing address is available and/or can be identified by the Class Administrator using publicly available resources or proprietary databases. For any Summary Notice that has been mailed via U.S. mail and returned by the Postal Service as undeliverable, the Settlement Administrator shall re-mail the notice to the forwarding address, if any, provided by the Postal Service on the face of the returned mail or—if no forwarding address is provided on the returned mail—to the forwarding address, if any, in the United States Postal Service's National Change of Address Database.

iv. Print Publication Notice. Following the Notice Date, the Settlement Administrator shall arrange for the placement of the Publication Notice in the print versions of newspapers circulated in Illinois, as set forth in the Declaration of Settlement Administrator, attached hereto as Exhibit 5. The Settlement Administrator shall complete such placement of the Publication Notice within thirty (30) Days after the Notice Date.

v. Targeted Media Publication Notice. Following the Notice Date, the Settlement Administrator shall arrange for a digital media campaign as set forth in the Declaration of Settlement Administrator, which is attached hereto as Exhibit 10. The ads shall be substantially in the form(s) attached as Exhibit 11.

vi. Settlement Website. Prior to the dissemination of any Notice, the Settlement Administrator will complete the set-up of the Settlement Website and ensure that it is publicly accessible and operational in all respects, including but not limited to compliance with the Americans with Disabilities Act (42 U.S.C. § 12101). The website will be active until at least ninety (90) calendar Days after the Effective Date, or until such time as the Settlement is fully administered, whichever is later. However, the Settlement Administrator may disable online submission of the Claim Form the day after the Claims Deadline. The Settlement Website shall also include a toll-free telephone number, email address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly.

vii. Toll-Free Number. Prior to the Notice Date, the Settlement Administrator shall establish a toll-free telephone number, which will be staffed by the Settlement Administrator, to assist in answering questions from Settlement Class Members. The toll-free number shall provide a voice response unit with message and interactive voice response (“IVR”) capabilities, in both English and Spanish. Any scripts, FAQs or other materials for such purpose shall be made available for review and approval by Defendant’s Counsel and Class Counsel prior to their use.

viii. Inquiries from the Settlement Class. The Settlement Administrator will establish an email account and P.O. Box to which Settlement Class Members may submit questions regarding the Settlement. The Settlement Administrator will monitor the email account and P.O. Box and respond promptly to inquiries received from Settlement Class Members. The Settlement Administrator will also establish and maintain a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries and to answer the questions of Settlement Class Members who call with or otherwise communicate such inquiries.

ix. All costs associated with providing all forms of notice, responding to inquiries from Settlement Class Members referenced in this Section 6, and performing all other of the Settlement Administrator’s duties under this Agreement shall be paid out of the Settlement Fund.

x. Prior to the Final Approval Hearing, Class Counsel and Defendant’s Counsel shall cause to be filed with the Court an appropriate affidavit or declaration from the Settlement Administrator with respect to complying with the Court-approved Notice Program set forth in this Section 6.

7. SUBMISSION AND EVALUATION OF CLAIMS

7.1 All claims must be submitted to the Settlement Administrator via the Claim Form, and must be submitted by the Claims Deadline, either electronically *via* the Settlement Website on or before the Claims Deadline or by U.S. Mail, postmarked on or before the Claims Deadline.

7.2 The Claim Form shall be substantially in the form attached as Exhibit 1 and shall require the person submitting the form to provide:

a. His or her full name, mailing address, email address, and contact telephone number if required for digital payment;

- b. In the event the claimant is no longer an Illinois resident, the address he or she resided at in Illinois during the class period;
- c. An affirmation that the person is a member of the Settlement Class; and
- d. A signature and affirmation of the truth of the contents of the Claim Form.

7.3 The Claim Form shall further state that: (a) each Settlement Class Member may submit only one Claim Form and receive compensation from Defendant for settlement of the Released Claims only once, (b) submitting false information will render a Claim Form invalid, and (c) each Settlement Class Member who timely submits a valid Claim Form will be entitled to receive a *pro rata* share of the Net Settlement Fund as set forth in Section 3.3.a above.

7.4 Every Claim Form that is timely submitted as required by Section 7.1 and that is fully completed with the information required by Section 7.2 shall be considered a valid Claim Form, but shall remain subject to the approval and verification procedures set forth in Section 5.2. Any Claim Form that lacks the requisite information shall be deemed to be incomplete and ineligible for payment. Any Claim Form that includes false information shall be deemed to be ineligible for payment. For any partially-completed Claim Form, the Settlement Administrator shall attempt to contact the Settlement Class Member who submitted the Claim Form at least once by e-mail or, if no email address is available, by regular U.S. mail (a) to inform the Settlement Class Member of any error(s) and/or omission(s) in the Claim Form and (b) to give the Settlement Class Member one opportunity to cure any errors and/or omissions in the Claim Form. The Settlement Class Member must cure the error(s) and/or omission(s) by the Claims Deadline, or fourteen (14) Days after the Settlement Administrator sends the email or regular mail notice to the Settlement Class Member regarding the deficiencies in the Claim Form, whichever is later. If the Settlement Class Member cures the error(s) and/or omission(s) by the deadline set forth in this subsection, his or her Claim Form will be considered a valid Claim Form.

7.5 Counsel for the Parties shall meet and confer in an effort to resolve any disputes over any challenged claims. If the challenges are not withdrawn or resolved, the decision of the Settlement Administrator will be upheld.

7.6 The Settlement Administrator shall notify the Parties that all Approved Claims have been paid within five (5) Business Days of the last such payment.

8. OPT-OUT RIGHTS

8.1 Except for those persons who properly request exclusion as described below, all members of the Class will be deemed Settlement Class Members for all purposes under this Agreement. Any person who properly requests exclusion shall not be entitled to relief or other benefits under this Agreement, shall not be entitled to object to any aspect of this Agreement, and shall not be affected by this Agreement.

8.2 A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a postmarked request sent via postal mail, or submitted electronically *via* the

Settlement Website, or by submitting a request to an email address established by the Administrator for the purpose of receiving exclusion requests, on or before the Objection and Exclusion Deadline. In order to exercise the right to be excluded via postal mail, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his/her name, address, and telephone number; the name and number of this case; a statement that he/she wishes to be excluded from the Settlement Class; and a handwritten signature. A request to be excluded that is sent to an email address other than that designated in the Class Notice, or that is not electronically submitted or postmarked as required herein and within the time specified, shall be invalid and the person serving such a request shall be considered a member of the Settlement Class and shall be bound as Settlement Class Members by the Agreement, if approved. The request for exclusion must be personally signed only by the person requesting exclusion (except for requests for exclusion by Settlement Class Members under the age of eighteen (18), which may be submitted and signed by the person's parent or legal guardian so long as the request for exclusion indicates that the request is being made by such Settlement Class Member's parent or legal guardian).

8.3 Settlement Class Members must submit their requests for exclusion individually. So-called "mass" or "class" exclusions or opt outs, whether filed by third parties on behalf of a "mass" or "class" of Settlement Class Members or multiple Settlement Class Members where no personal statement has been signed by each and every individual Settlement Class Member, shall not be allowed.

8.4 Settlement Class Members who submit a timely request for exclusion or opt out may not file an objection to the Settlement (except where such person files a valid and timely Claim Form after previously having submitted a timely request for exclusion, in which case the valid timely filed Claim Form shall control) and shall be deemed to have waived any rights or benefits under this Settlement.

8.5 Settlement Class Members who submit a valid and timely Claim Form, but either simultaneously or subsequently also submit a valid and timely request for exclusion or opt out, will be deemed to have opted out of the Settlement and their Claim will be void and invalid.

8.6 The Parties shall have the right to challenge the timeliness and validity of any exclusion request. Class Counsel shall also have the right to effectuate the withdrawal of any exclusion filed in error and any exclusion that a person wishes to withdraw for purposes of participating in the Settlement as set forth in this Agreement. A list reflecting all individuals who timely and validly exclude themselves from the Settlement Class shall be filed with the Court at the time of the motion for final approval of the Settlement, and the Court shall determine whether any contested exclusion request is valid.

8.7 Within seven (7) Days after the Objection and Exclusion Deadline, the Settlement Administrator shall provide to the Parties (a) a list of all persons who opted out by validly requesting exclusion and (b) each written request for exclusion, including both valid and invalid requests.

9. OBJECTIONS TO THE SETTLEMENT

9.1 The Notices shall advise Settlement Class Members of their rights, including the right to be excluded from or object to this Agreement and its terms. The Notices shall specify that any objection to this Agreement, and any papers submitted in support of said objection, shall be valid and entertained by the Court at the Final Approval Hearing only if, on or before the Objection and Exclusion Deadline, the person making an objection: (a) files his/her objection with the Clerk of Court; (b) files copies of such papers he/she proposes to submit at the Final Approval Hearing with the Clerk of the Court; and (c) sends copies of such papers *via* United States mail, hand delivery, or overnight delivery to Class Counsel and Defendant's Counsel. A copy of the objection must also be mailed to the Settlement Administrator at the address that the Settlement Administrator will establish to receive requests for exclusion or objections, Claim Forms, and any other communication relating to this Settlement.

9.2 Any Settlement Class Member who intends to object to the Settlement must include in any such objection: (a) his/her full name, address and current telephone number; (b) the case name and number of the *Rivera* State Action; (c) proof that he/she is in the Settlement Class; (d) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; and (e) the objector's signature. If represented by counsel, the objecting Settlement Class Member must also provide the name and telephone number of his/her counsel in addition to the information set forth in (a) through (e) above. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he/she must so state in the written objection, and must also identify any witnesses he/she may call to testify at the Final Approval Hearing and all exhibits he/she intends to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection.

9.3 Any Settlement Class Member who fails to timely file and serve a written objection and notice of intent to appear at the Final Approval Hearing in compliance with the provisions set forth herein and pursuant to this Agreement shall not be permitted to object to the approval of this Agreement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of this Agreement by appeal or other means.

9.4 Settlement Class Members cannot both object to and exclude themselves from this Agreement. Any Settlement Class Member who attempts to both object to and exclude themselves from this Agreement will be deemed to have excluded themselves (except if the Settlement Class Member, after having filed a request for exclusion, submits a valid Claim Form or otherwise revokes his or her request for exclusion prior to filing the purported objection) and will forfeit the right to object to this Agreement or any of its terms. Settlement Class Members who submit a valid and timely Objection and/or Claim Form, but also submit a valid and timely request for exclusion or opt out, will be deemed to have opted out of the Settlement and their Objection and/or Claim will be void and invalid.

10. EXCLUSIVE REMEDY; DISMISSAL OF ACTION; JURISDICTION OF COURT

10.1 This Agreement shall be the sole and exclusive remedy for every Class Member with respect to any and all Released Claims. Upon entry of the Final Order and Judgment, each member of the Settlement Class, except for those who opted-out, shall be barred from initiating, asserting, or prosecuting any claim that is released by operation of this Agreement and the Final Order and Judgment. In the event any member of the Settlement Class attempts to prosecute an action in contravention of the Final Order and Judgment and this Agreement, counsel for any of the Parties may forward this Agreement and the Final Order and Judgment to such Class Member and advise him, her, or it of the releases provided pursuant to this Agreement. If so requested by Defendant or Defendant's Counsel, Class Counsel shall provide this information to the Settlement Class Member.

10.2 Upon the Effective Date, all of the Google Photos BIPA Cases, other than the *Rivera* State Action (the dismissal of which is addressed in Sections 13.1 and 13.2.d), shall be dismissed with prejudice. Releasing Parties may not commence or prosecute any action on any Released Claims against any Released Party upon the Effective Date.

11. RELEASES

11.1 The obligations incurred pursuant to this Agreement shall be a full and final disposition of the Google Photos BIPA Cases and any and all Released Claims, as against all Released Parties.

11.2 Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and each of them.

11.3 Upon the Effective Date, the Releasing Parties covenant and agree that they, and each of them, will forever refrain from asserting, instituting, maintaining, prosecuting, continuing to maintain or prosecute, or threatening or attempting to assert, institute, maintain, or prosecute the Released Claims, in whole or in part, against the Released Parties.

12. SERVICE PAYMENTS AND CLASS COUNSEL'S ATTORNEYS' FEES, COSTS AND EXPENSES

12.1 In recognition of the time and effort the named Plaintiffs expended in pursuing the claims resulting in this Settlement and fulfilling their obligations and responsibilities as Settlement Class Representatives, and of the benefits conferred on all Settlement Class Members by the Settlement, Class Counsel may ask the Court for the payment of a Service Payment of no more than Five Thousand United States Dollars and Zero Cents (\$5,000.00) per Class Representative, to be paid from the Settlement Fund to each of them. Google shall not oppose or appeal any such application that does not exceed Five Thousand United States Dollars and Zero Cents (\$5,000.00) for each Class Representative. Class Counsel may apply for such an application on or before fourteen (14) Days prior to the Objection and Exclusion Deadline. If the Court awards the Service

Payment, the Settlement Administrator shall deliver to Class Counsel checks, each in the amount of the Service Payments, made payable to each of the Class Representatives who has been awarded a Service Payment, within fifteen (15) Days after (a) the date a completed W-9 form for each Class Representative is provided to the Settlement Administrator, or (b) the Effective Date, whichever is later.

12.2 Class Counsel may apply for and request a Fee and Expense Award. Class Counsel's request for attorneys' fees in the application for the Fee and Expense Award will not exceed forty percent (40%) of the Settlement Fund or Forty Million United States Dollars and Zero Cents (\$40,000,000.00), plus reasonable costs and expenses incurred by Class Counsel, to be paid by the Settlement Administrator from the Settlement Fund in accordance with the terms set forth herein. Class Counsel shall file their application for the Fee and Expense Award on or before fourteen (14) Days prior to the Objection and Exclusion Deadline. The Fee and Expense Award, to the extent awarded by the Court, shall be paid subject to the terms and conditions of this Section 12. Defendant shall not oppose, object to, or appeal any such fee, cost and expense application, or on any order based thereon, so long as the attorneys' fee portion of the application for the Fee and Expense Award does not exceed Forty Million United States Dollars and Zero Cents (\$40,000,000.00).

12.3 The respective share of each Class Counsel law firm of the Fee and Expense Award shall be paid, upon the joint approval of Class Counsel, by the Settlement Administrator within three (3) Business Days after the earlier of: (a) the Effective Date; or (b) the first date on which all of the following conditions have occurred: (i) the entry of the Court's order so awarding the Fee and Expense Award, notwithstanding any appeal, (ii) service by that Class Counsel law firm (on Defendant's Counsel, the other Class Counsel, and the Settlement Administrator) of the respective Undertaking Regarding Attorneys' Fees and Costs (the "Undertaking"), attached hereto as Exhibits 12-1 to 12-4, fully executed by each respective Class Counsel law firm and two principals listed on the respective Undertaking (i.e., the separate Undertaking for each of Ahdoot & Wolfson, PC; Carey Rodriguez Milian LLP; Bursor & Fisher, P.A.; and Hedin Hall, LLP as set forth in Exhibits 12-1 to 12-4), and (iii) the submission of joint payment instructions to the Settlement Administrator executed by all Class Counsel.

12.4 In the event (a) the Final Order and Judgment (or the order awarding the Fee and Expense Award) is reversed, vacated, modified, and/or remanded for further proceedings or otherwise disposed of in any manner other than one resulting in an affirmance, (b) Class Counsel have served a fully executed Undertaking to Defendant, and (c) the Settlement Administrator has paid Class Counsel the Fee and Expense Award from the Settlement Fund, then Class Counsel (or, as applicable, any and all successor(s) or assigns of their respective firms) shall, within ten (10) Business Days of such event, (i) severally repay to the Settlement Fund, the respective amount of the Fee and Expense Award paid to each of them, or (ii) repay to the Settlement Fund each of their proportional shares of the amount by which the Fee and Expense Award has been reduced.

12.5 Class Counsel expressly disclaim any and all rights to collect attorneys' fees and expenses from any person in excess of the amount awarded by the Court, as provided in Section 12.2 above, and agree, upon demand, to execute a release of any person's obligation to pay such sums. Class Counsel is responsible for distributing any award of attorneys' fees and expenses

Google Photos BIPA Cases;

e. Incorporate the Releases set forth above, make the Releases effective as of the Effective Date, and forever discharge the Released Parties from the Released Claims as set forth herein;

f. Permanently bar and enjoin all Class Members who have not properly sought exclusion from the 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;

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

h. Find that pursuant to 735 ILCS 5/2-1301, there is no just reason for the delay of entry of final judgment with respect to the foregoing.

14. MODIFICATION OR TERMINATION OF THIS AGREEMENT

14.1 The performance of this Agreement is expressly contingent upon entry of the Final Order and Judgment. If the Court substantially denies the relief requested in the motion for Final Approval or does not issue the Final Order and Judgment materially in the same form as set forth in Exhibit 2 of this Agreement following conclusion of the Final Approval Hearing, the Agreement will be terminated, having no force or effect whatsoever, and shall be null and void and will not be admissible as evidence for any purpose in any pending or future litigation in any jurisdiction.

14.2 In the event that the number of persons who timely and validly request exclusion from the Settlement in accordance with Section 8 herein (“Opt-Outs”) exceeds fifteen thousand (15,000), then Defendant may elect to terminate this Agreement on the ground that exclusion at that level threatens to frustrate the essential purpose of this Agreement. Defendant may exercise its right to terminate this Agreement under this subsection by providing written notification to Class Counsel of its election no later than five (5) Business Days after the Settlement Administrator has delivered to the Parties a written list of all persons who have opted out of the Settlement in accordance with Section 8.7 above. Neither Defendant, all of the Released Parties, nor anyone acting on their behalf, shall, either directly or indirectly, solicit, request, encourage, or induce any Settlement Class Member to request exclusion from or opt out of the Settlement Agreement.

14.3 The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that, after entry of the Final Order and Judgment, the Parties may, by written agreement, effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court’s Final Order and Judgment and do not materially alter, reduce, or limit the rights of Settlement Class Members under this Agreement.

14.4 Terms and Intent of Agreement. This Agreement is entered into only for purposes of settlement. In the event that the Court enters an order preliminarily or finally approving the Settlement in a manner that is materially inconsistent with the terms and intent of this Agreement, the Parties shall meet and confer in good faith regarding any modifications made to the proposed order. If, after meeting and conferring in good faith, either Defendant or Plaintiffs determine that the modifications materially alter the terms and intent of this Agreement, including but not limited to, because the modifications may materially increase Defendant's liability or any of the material obligations set forth in this Agreement, decrease the benefits to the Settlement Class, or reduce or expand the scope of the releases of the Settlement Class, or if the Court refuses to grant Final Approval of this Agreement or the Effective Date does not come to pass, then either Party shall have the option to terminate this Agreement. Each Party reserves the right to prosecute or defend the Google Photos BIPA Cases in the event that this Agreement is terminated or otherwise does not become final and binding.

14.5 In the event any court makes a material modification to the terms or conditions of this Agreement (other than those pertaining to the Fee and Expense Award and/or Service Payments), including any such modification that would materially affect the benefits provided to the Settlement Class, or the cost to or burden on Defendant, the content or extent of notices required to Class Members, or the scope of any of the releases in this Agreement, then either Party in its sole discretion may declare this Agreement null and void (with the exception of Sections 3.2.f to 3.2.j, 6.2, 6.3.b.ix, 14.1, 14.4 to 14.8, 15.7 to 15.8, 15.10, and 15.17 herein) within ten (10) Business Days from the occurrence of any such material modification.

14.6 In the event that a party exercises his/her/its option to withdraw from, rescind, revoke, and/or terminate this Agreement pursuant to any provision herein, then the Settlement proposed herein shall become null and void (with the exception of Sections 3.2.f to 3.2.j, 6.2, 6.3.b.ix, 14.1, 14.4 to 14.8, 15.7 to 15.8, 15.10, and 15.17 herein) and shall have no legal effect and may never be mentioned at trial or in dispositive or class motions or motion papers (except as necessary to explain the timing of the procedural history of the Action), and the Parties will return to their respective positions existing immediately before the execution of this Agreement.

14.7 Notwithstanding any provision of this Agreement, in the event this Agreement is not approved by any court, or terminated for any reason, or the Settlement set forth in this Agreement is declared null and void, or in the event that the Effective Date does not occur, Settlement Class Members, Plaintiffs, and Class Counsel shall not in any way be responsible or liable for any Administration Expenses, Taxes, or any expenses, including costs of notice and administration associated with this Settlement or this Agreement, except that each Party shall bear its own attorneys' fees and costs and Defendant's future payment obligations, if any, shall cease.

14.8 Notwithstanding any provision of this Agreement, in the event this Agreement is not approved by any court, or terminated for any reason, or the Settlement set forth in this Agreement is declared null and void, or in the event that the Effective Date does not occur, then Defendant shall have no further obligations to pay the Settlement Fund and shall be responsible for only the Administration Expenses and Taxes actually incurred as of such date, which will be paid out of the Escrow Account, and for which Plaintiffs and Class Counsel are not liable.

15. MISCELLANEOUS PROVISIONS

15.1 This Agreement, including all attached exhibits, shall constitute the entire Agreement between the Parties with regard to the subject matter of this Agreement and shall supersede any previous agreements and understandings between the Parties. No representations, warranties or inducements have been made to any party concerning this Agreement or its exhibits other than the representations, warranties and covenants contained and memorialized in such documents.

15.2 This Agreement may not be changed, modified or amended except in writing and signed by both Class Counsel and Defendant's Counsel, subject to Court approval if required.

15.3 The Parties may (but are not obligated to) jointly agree in writing, subject to approval of the Court where required, to reasonable extensions of time to carry out the provisions of this Agreement.

15.4 Each Party represents and warrants that it enters into this Agreement of his, her, or its own free will. Each Party is relying solely on its own judgment and knowledge and is not relying on any statement or representation made by any other Party or any other Party's agents or attorneys concerning the subject matter, basis, or effect of this Agreement.

15.5 This Agreement has been negotiated at arm's length by Class Counsel and Defendant's Counsel. In the event of any dispute arising out of this Agreement or in any proceeding to enforce any of the terms of this Agreement, no Party shall be deemed to be the drafter of this Agreement or of any particular provision or provisions, and no part of this Agreement shall be construed against any Party on the basis of that Party's identity as the drafter of any part of this Agreement.

15.6 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.

15.7 Whether or not the Effective Date occurs or this Settlement Agreement is terminated, neither this Agreement nor the Settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of this 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 the Plaintiffs, the deficiency of any defense that has been or could have been asserted in the Google Photos BIPA Cases, the violation of any law or statute, the reasonableness of the Settlement Amount or the Fee and Expense 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, misrepresentation or omission with respect

to any statement or written document approved or made by the Released Parties, or any of them;

c. 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, the Settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. Further, if this Agreement is approved by the Court, any Party or any of the Released Parties may file this Agreement and/or the Final Order and 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;

d. is, may be deemed, or shall be construed against Plaintiffs, the Class, the Releasing Parties, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

e. is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiffs, the Class, the Releasing Parties, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiffs' claims are with or without merit or that damages recoverable in the Google Photos BIPA Cases would have exceeded or would have been less than any particular amount.

15.8 The Parties agree to cooperate fully and to take all additional action that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement. The Parties (including their counsel, successors, and assigns) agree to cooperate fully and in good faith with one another and to use their best efforts to effectuate the Settlement, including without limitation in seeking preliminary and final Court approval of this Agreement and the Settlement embodied herein, carrying out the terms of this Agreement, and promptly agreeing upon and executing all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement. In the event that the Court fails to approve the Settlement or fails to issue the Final Order and Final Judgment, the Parties agree to use all reasonable efforts, consistent with this Settlement Agreement, to cure any defect identified by the Court.

15.9 This Agreement shall be binding upon and inure to the benefit of all Settlement Class Members, Defendant, and their respective representatives, heirs, successors and assigns.

15.10 The headings of the sections of this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

15.11 This Agreement will be construed in accordance with the laws of the state of Illinois without reference to the conflicts of laws provisions thereof.

15.12 If any provision, paragraph, section, subsection, or other portion of this Agreement is found to be void (except for Sections 2, 3, 6, 8, 9, 11, 13, and 14.2), all of the remaining provisions of this Agreement shall remain in full force and effect.

15.13 The Parties each represent and warrant that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim or demand covered by this Agreement.

15.14 The signatories to this Agreement represent that they have been duly authorized to execute this Agreement on behalf of the Parties they purport to represent.

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

15.16 This Agreement may be executed by the Parties in one or more counterparts exchanged by hand, messenger, facsimile, or PDF as an electronic mail attachment, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

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

[Remainder of Page Intentionally Left Blank]

[signature pages follow]

IT IS SO AGREED TO BY THE PARTIES:

Dated: Apr 13, 2022

LINDABETH RIVERA

By: *Lindabeth Rivera*
Lindabeth Rivera (Apr 13, 2022 11:26 CDT)

Lindabeth Rivera, individually and as representative of the Class

Dated: _____

JOSEPH WEISS

By: _____

Joseph Weiss, individually and as representative of the Class

Dated: _____

MICHAEL AZZANO

By: _____

Michael Azzano, individually and as representative of the Class

Dated: _____

NICHOLAS MARQUEZ

By: _____

Nicholas Marquez, individually and as representative of the Class

Dated: _____

BRANDON MOLANDER

By: _____

Brandon Molander, individually and as representative of the Class

Dated: _____

GOOGLE LLC

By: _____

Name:

Title:

Google LLC

IT IS SO AGREED TO BY THE PARTIES:

Dated: _____

LINDABETH RIVERA

By: _____
Lindabeth Rivera, individually and as representative
of the Class

Dated: Apr 13, 2022

JOSEPH WEISS

By: Joseph Weiss
Joseph Weiss (Apr 13, 2022 12:42 EDT)
Joseph Weiss, individually and as representative of
the Class

Dated: _____

MICHAEL AZZANO

By: _____
Michael Azzano, individually and as representative
of the Class

Dated: _____

NICHOLAS MARQUEZ

By: _____
Nicholas Marquez, individually and as
representative of the Class

Dated: _____

BRANDON MOLANDER

By: _____
Brandon Molander, individually and as
representative of the Class

Dated: _____

GOOGLE LLC

By: _____
Name:
Title:
Google LLC

IT IS SO AGREED TO BY THE PARTIES:

Dated: _____

LINDABETH RIVERA

By: _____

Lindabeth Rivera, individually and as representative of the Class

Dated: _____

JOSEPH WEISS

By: _____

Joseph Weiss, individually and as representative of the Class

Dated: Apr 13, 2022

MICHAEL AZZANO

By: *Michael Azzano*
Michael Azzano (Apr 13, 2022 10:58 CDT)

Michael Azzano, individually and as representative of the Class

Dated: _____

NICHOLAS MARQUEZ

By: _____

Nicholas Marquez, individually and as representative of the Class

Dated: _____

BRANDON MOLANDER

By: _____

Brandon Molander, individually and as representative of the Class

Dated: _____

GOOGLE LLC

By: _____

Name:

Title:

Google LLC

IT IS SO AGREED TO BY THE PARTIES:

Dated: _____

LINDABETH RIVERA

By: _____

Lindabeth Rivera, individually and as representative of the Class

Dated: _____

JOSEPH WEISS

By: _____

Joseph Weiss, individually and as representative of the Class

Dated: _____


MICHAEL AZZANO

By: _____

Michael Azzano, individually and as representative of the Class

Dated: Apr 13, 2022

NICHOLAS MARQUEZ

By:  _____
Nicholas Marquez (Apr 13, 2022 11:48 CDT)

Nicholas Marquez, individually and as representative of the Class

Dated: _____

BRANDON MOLANDER

By: _____

Brandon Molander, individually and as representative of the Class

Dated: _____

GOOGLE LLC

By: _____

Name:

Title:

Google LLC

IT IS SO AGREED TO BY THE PARTIES:

Dated: _____

LINDABETH RIVERA

By: _____

Lindabeth Rivera, individually and as representative of the Class

Dated: _____

JOSEPH WEISS

By: _____

Joseph Weiss, individually and as representative of the Class

Dated: _____

MICHAEL AZZANO

By: _____

Michael Azzano, individually and as representative of the Class

Dated: _____


NICHOLAS MARQUEZ

By: _____

Nicholas Marquez, individually and as representative of the Class

Dated: Apr 13, 2022

BRANDON MOLANDER

By: 
Brandon Molander (Apr 13, 2022 14:39 CDT)

Brandon Molander, individually and as representative of the Class

Dated: _____

GOOGLE LLC

By: _____

Name:

Title:

Google LLC

IT IS SO AGREED TO BY THE PARTIES:

Dated: _____

LINDABETH RIVERA

By: _____

Lindabeth Rivera, individually and as representative of the Class

Dated: _____

JOSEPH WEISS

By: _____

Joseph Weiss, individually and as representative of the Class

Dated: _____

MICHAEL AZZANO

By: _____

Michael Azzano, individually and as representative of the Class

Dated: _____

NICHOLAS MARQUEZ

By: _____

Nicholas Marquez, individually and as representative of the Class

Dated: _____

BRANDON MOLANDER

By: _____

Brandon Molander, individually and as representative of the Class

Dated: 4/14/2022

GOOGLE LLC

DocuSigned by:

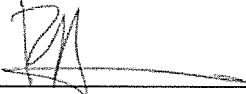
By: Nora Puckett
DB45A1943EAE4F1...

Name: Nora Puckett
Title: Director, Litigation
Google LLC

IT IS SO STIPULATED BY COUNSEL:

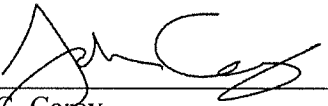
Dated: April 14, 2022

AHDOOT & WOLFSON, PC

By: 
Robert Ahdoot
rahdoot@ahdootwolfson.com
Tina Wolfson
twolfson@ahdootwolfson.com
Theodore Maya
tmaya@ahdootwolfson.com
Bradley K. King
bking@ahdootwolfson.com
AHDOOT & WOLFSON, PC
2600 West Olive Avenue, Suite 500
Burbank, California 91505
Tel: (310) 474-9111
Fax: (310) 474-8585

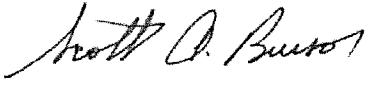
Dated: April 14, 2022

CAREY RODRIGUEZ MILIAN, LLP

By: 
John C. Carey
jcarey@careyrodriquez.com
David P. Milian
dmilian@careyrodriquez.com
CAREY RODRIGUEZ MILIAN, LLP
1395 Brickell Avenue, Suite 700
Miami, Florida 33131
Tel: (305) 372-7474
Fax: (305) 372-7475

Dated: April 13, 2022

BURSOR & FISHER, P.A.

By: 
Scott A. Bursor
scott@bursor.com
BURSOR & FISHER, P.A.
888 Seventh Avenue
New York, New York 10019
Tel: (646) 837-7150
Fax: (212) 989-9163

Dated: April 13, 2022

HEDIN HALL LLP

By: 
Frank S. Hedin
fhedin@hedinhall.com
HEDIN HALL LLP
1395 Brickell Avenue, Suite 1140
Miami, Florida 33131
Tel: (305) 357-2107
Fax: (305) 200-8801

Attorneys for the Class Representatives and the Settlement Class

Dated: _____

PERKINS COIE LLP

By: _____
Susan D. Fahringer
SFaringer@perkinscoie.com
Ryan Spear
RSpear@perkinscoie.com
Nicola C. Menaldo
NMenaldo@perkinscoie.com
PERKINS COIE LLP
1201 Third Avenue
Seattle, Washington 98101
Tel: (206) 359-8000
Fax: (206) 359-90000

Dated: _____

BURSOR & FISHER, P.A.

By: _____
Scott A. Bursor
scott@bursor.com
BURSOR & FISHER, P.A.
888 Seventh Avenue
New York, New York 10019
Tel: (646) 837-7150
Fax: (212) 989-9163

Dated: _____

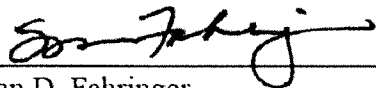
HEDIN HALL LLP

By: _____
Frank S. Hedin
fhedin@hedinhall.com
HEDIN HALL LLP
1395 Brickell Avenue, Suite 1140
Miami, Florida 33131
Tel: (305) 357-2107
Fax: (305) 200-8801

*Attorneys for the Class Representatives and the
Settlement Class*

Dated: 4/14/2022

PERKINS COIE LLP

By:  _____
Susan D. Fahringer
SFaringer@perkinscoie.com
Ryan Spear
RSpear@perkinscoie.com
Nicola C. Menaldo
NMenaldo@perkinscoie.com
PERKINS COIE LLP
1201 Third Avenue
Seattle, Washington 98101
Tel: (206) 359-8000
Fax: (206) 359-90000

Sunita Bali
SBali@perkinscoie.com
505 Howard Street, Suite 1000
San Francisco, California 94105
Tel: (415) 344-7000
Fax: (415) 344-7050

Attorneys for Google LLC

Hearing Date: 12/12/2022 9:30 AM - 9:35 AM Edelson PC Mail - Fwd: [Ext] Fwd: Claim Determination Notice - Rivera, et al. v. Google LLC
Location: <<CourtRoomNumber>>
Judge: Calendar, 15

Edelson

2019CH00990

FILED
12/12/2022 9:19 AM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2019CH00990
Calendar, 15
20629162

Fwd: [Ext] Fwd: Claim Determination Notice - Rivera, et al. v. Google LLC
1 message

FILED DATE: 12/12/2022 9:19 AM 2019CH00990

From: Google BIPA Settlement <notice@pnclassaction.com>
Date: November 24, 2022 at 12:31:53 AM CST
To: Jodi White Jones <[REDACTED]>
Subject: Claim Determination Notice - Rivera, et al. v. Google LLC
Reply-To: Google BIPA Settlement <info@googlebipasettlement.com>

[Click here](#) to view this message in a browser window.

Settlement Claim ID: GJQ-5500438

Claim Determination Notice

Dear Jodi White Jones,

Your claim submitted in connection with the Rivera, et al. v. Google LLC class action settlement was reviewed by the Settlement Administrator, and it was determined that additional information is required to validate your claim. **To validate your claim, you are required to provide a photocopy of your valid driver's license or government-issued photo ID and the Username or Email Address associated with the Google Photos account to which a photograph of you was uploaded.** If you do not currently reside in the state of Illinois, you must also provide proof of residency during the Class Period (May 1, 2015 through April 25, 2022).

You must provide the required information using the "[Upload Documentation for My Claim](#)" option located on the "I would like to..." tab of the [Settlement Website](#) by no

12/9/22, 1:52 PM

Edelson PC Mail - Fwd: [Ext] Fwd: Claim Determination Notice - Rivera, et al. v. Google LLC

later than December 4, 2022. Here, you will provide the Username or Email Address associated with the Google Photos account to which a photograph of you was uploaded and upload a photocopy of your valid driver's license or government-issued photo ID. You will also be required to provide your Settlement Claim ID, first and last name, and current email address.

You will not receive additional notice about your claim. Failure to respond to this notice before December 4, 2022, or providing an incomplete response, will result in the rejection of your claim submission. Completion of the deficiency response form does not guarantee payment of your claim.

You may address questions regarding this notice by sending an email to info@GoogleBIPASettlement.com. For additional information about the settlement, please visit the case website at www.GoogleBIPASettlement.com.

Sincerely,

Office of the Settlement Administrator

PLEASE NOTE: The information you provide will be used solely for the purpose of the claims administration process for this matter, and will not be used for any other purpose. Personally Identifiable Information (PII) is stored in a combination of paper and electronic files and is protected by security measures appropriate to the nature of the information. PII is retained to the extent required to fulfill our obligations as outlined in orders of the Court.

Rivera, et al. v. Google LLC Settlement
PO 5229
Baton Rouge, LA, 70821

If you do not wish to receive future email, [click here](#).
(You can also send your request to the **Settlement Administrator** at the street address above.)

FILED DATE: 12/12/2022 9:19 AM 2019CH00990

Hearing Date: 12/19/2022 9:30 AM - 9:35 AM
Location: <<CourtRoomNumber>>
Judge: Calendar, 15

FILED
12/12/2022 9:19 AM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2019CH00990
Calendar, 15
20629162

FILED DATE: 12/12/2022 9:19 AM 2019CH00990

EXHIBIT 3

Google BIPA Settlement Administrator
P.O. Box XXXX
Baton Rouge, LA 70821

**Your Claim Form Must Be
Submitted On or Before
Month Day, 2022**

GOOGLE BIPA CLASS ACTION SETTLEMENT

Rivera, et al. v. Google LLC, Case No. 2019-CH-00990 (Cir. Ct. Cook Cnty.)

Claim Form

IF, AT ANY TIME BETWEEN MAY 1, 2015 AND [Date], YOU APPEARED IN A PHOTOGRAPH IN GOOGLE PHOTOS WHILE YOU WERE AN ILLINOIS RESIDENT, YOU MAY BE ENTITLED TO GET A PAYMENT FROM A CLASS ACTION SETTLEMENT.

TO RECEIVE A PAYMENT, YOU MUST COMPLETE THIS CLAIM FORM AND SUBMIT IT BY MONTH DD, 2022.

INSTRUCTIONS: To complete this Claim Form, provide the requested information in Step 1; If you are no longer an Illinois resident, provide the Illinois address where you resided during the class period (between May 1, 2015 and [Date]) in Step 2; select a payment method and provide any requested information in Step 3; sign the certification in Step 4; and submit the Claim Form using one of the methods stated in Step 5 (you can submit this Claim Form online at www.GoogleBIPASettlement.com or by U.S. Mail). **You must fully complete and submit this Claim Form by Month DD, 2022 to receive payment.**

You may only submit one claim. Duplicate claims will be rejected. If you timely submit a valid Claim Form, you will be entitled to receive a payment representing a pro rata share of the Net Settlement Fund (the actual cash amount an individual will receive will depend on the number of valid claims submitted) as set forth in Section 3.3.a of the Settlement Agreement available at www.GoogleBIPASettlement.com. Submitting false information will render your Claim Form invalid. Please note that all information provided on the Claim Form will not be used for any purpose other than for this Settlement.

STEP 1 - CLAIMANT INFORMATION

In the spaces below, print your (i) full name, (ii) current mailing address, (iii) email address, and (iv) Settlement Claim ID (optional):

Remember that you are only eligible for a claim if, at any time between May 1, 2015 and [Date], you appeared in a photograph in Google Photos while you were an Illinois Resident.

First Name																								Middle Initial	
------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	----------------	--

Last Name																													
-----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Mailing Address: Street Address/P.O. Box (include Apartment/Suite/Floor Number)																													
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City															State		Zip Code		
------	--	--	--	--	--	--	--	--	--	--	--	--	--	--	-------	--	----------	--	--

Current Email Address																													
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Settlement Claim ID (Optional)				
--------------------------------	--	--	--	--

FILED DATE: 12/13/2022 8:19 PM 2019CH00990

STEP 2 - IF YOU ARE NO LONGER AN ILLINOIS RESIDENT

If you are no longer an Illinois resident, please provide the address where you resided at in Illinois during the class period (between May 1, 2015 and [Date])

[Grid for Mailing Address: Street Address (include Apartment/Suite/Floor Number)]

Mailing Address: Street Address (include Apartment/Suite/Floor Number)

[Grid for City]

City

[Grid for State]

State

[Grid for Zip Code]

Zip Code

STEP 3 - SELECT A PAYMENT METHOD

Select the appropriate box indicating how you would like to receive your payment and provide the requested information:

Venmo

[Grid for Venmo Account Email Address or Phone Number]

Venmo Account Email Address or Phone Number

Zelle

[Grid for Zelle Account Email Address or Phone Number]

Zelle Account Email Address or Phone Number

PayPal

[Grid for PayPal Account Email Address]

PayPal Account Email Address

Prepaid Digital MasterCard

[Grid for Current Email Address]

Current Email Address

Check: If you prefer to receive your payment via check, please provide your mailing address (if different from the address provided in Step 1).

[Grid for Mailing Address: Street Address/P.O. Box (include Apartment/Suite/Floor Number)]

Mailing Address: Street Address/P.O. Box (include Apartment/Suite/Floor Number)

[Grid for City]

City

[Grid for State]

State

[Grid for Zip Code]

Zip Code

STEP 4 - CERTIFICATION

I _____, affirm that:
Full Name

I appeared in a photograph in Google Photos at any time between May 1, 2015 and [date], while I was an Illinois resident.

I affirm that the above statement is true and correct, and that this is the only Claim Form that I have submitted and/or will submit in connection with this Settlement. I also understand, acknowledge and agree that I am eligible to submit only one Claim Form as part of this settlement. I understand that this Claim Form will be reviewed for authenticity and completeness.

Signature: _____

Date: [Grid] / [Grid] / 20[Grid]

STEP 5 - METHODS OF SUBMISSION

Please submit the completed Claim Form through one of the following methods:

1. Online by visiting www.GoogleBIPASettlement.com, and completing an online Claim Form no later than **Month DD, 2022**;

OR

2. By mailing via U.S. Mail a completed and signed Claim Form to the Settlement Administrator, postmarked no later than **Month DD, 2022**, and addressed to:

Rivera, et al. v. Google LLC,
Case No. 2019-CH-00990 (Cir. Ct. Cook Cnty.)
P.O. Box XXXX
Baton Rouge, LA 70821

FILED DATE: 12/12/2022 8:19 AM 2019CH00990

Hearing Date: 12/19/2022 9:30 AM - 9:35 AM
Location: <<CourtRoomNumber>>
Judge: Calendar, 15

FILED
12/12/2022 9:19 AM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2019CH00990
Calendar, 15
20629162

FILED DATE: 12/12/2022 9:19 AM 2019CH00990

EXHIBIT 4

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION**

LINDABETH RIVERA, et al.

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 2019-CH-00990

Calendar 15

Hon. Anna M. Loftus

**NOTICE OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

TO: See Attached Service List

1) Please take notice that on September 28, 2022 at 10:30 a.m., or as soon thereafter as counsel may be heard, the parties shall appear before the Honorable Judge Anna M. Loftus, or any judge sitting in her stead, in the courtroom usually occupied by her, Courtroom 2410 of the Richard J. Daley Center, 50 W. Washington Street, Chicago, Illinois via the Court's Zoom hearing link to present the attached **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**, a copy of which is attached hereto and hereby served upon you.

2) The Zoom hearing link is as follows:

<https://circuitcourtofcookcounty.zoom.us/j/95535573920>

Meeting ID: 955 3557 3920. No password is required.

Dated: September 14, 2022

Respectfully submitted,

By: /s/ Robert Ahdoot
Robert Ahdoot

ROBERT AHDOOT*
TINA WOLFSON*
THEODORE W. MAYA*
AHDOOT & WOLFSON, PC
2600 West Olive Ave, Ste 500
Burbank, California 91505
rahdoot@ahdootwolfson.com
twolfson@ahdootwolfson.com
tmaya@ahdootwolfson.com
Tel: (310) 474-9111
Fax: (310) 474-8585
Firm ID: 63685

JOHN C. CAREY*
DAVID P. MILIAN*
CAREY RODRIGUEZ MILIAN LLP
1395 Brickell Ave, Ste 700
Miami, Florida 33131
jcarey@careyrodriquez.com
dmilian@careyrodriquez.com
Tel: (305) 372-7474
Fax: (305) 372-7475

FRANK S. HEDIN*
HEDIN HALL LLP
1395 Brickell Ave, Suite 1140
Miami, Florida 33131
fhedin@hedinhall.com
Tel: (305) 357-2107
Fax: (305) 200-8801

SCOTT A. BURSOR*
BURSOR & FISHER, P.A.
701 Brickell Ave, Ste 1420
Miami, Florida 33131
scott@bursor.com
Tel: (212) 989-9113
Fax: (212) 989-9163

*Admitted *Pro Hac Vice*

Class Counsel

KATRINA CARROLL
KYLE A. SHAMBERG
CARLSON LYNCH LLP

111 West Washington St., Suite 1240
Chicago, Illinois 60602
kcarroll@carsonlynch.com
kshamberg@carsonlynch.com
Telephone: (312) 750-1265
Firm ID: 63746

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2022, a copy of the foregoing Notice of Motion for Final Approval of Class Action Settlement was served via email to the following attorneys of record:

Susan D. Fahringer
Ryan Spear
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Tel: (206) 359-8000
SFahringer@perkinscoie.com
RSpear@perkinscoie.com

Kathleen A. Stetsko
PERKINS COIE LLP
131 South Dearborn Street, Suite 1700
Chicago, IL 60603-5559
Tel: (312) 324-8400
Kstetsko@perkinscoie.com
Firm I.D. No. 39225

Counsel for Defendant Google LLC

and was served via U.S. Mail to the following Objector:

Sarada Mohapatra
3820 Highknob Cir.
Naperville, IL 60564

/s/ Robert Ahdoot
Robert Ahdoot

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

LINDABETH RIVERA, et al.

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 2019-CH-00990

Calendar 15

Hon. Anna M. Loftus

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

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I. INTRODUCTION

After well over six years of litigation, Plaintiffs Lindabeth Rivera, Joseph Weiss, Michael Azzano, Brandon Molander, and Nicholas Marquez (“Plaintiffs” or “Class Representatives”) respectfully move for final approval of the class action Settlement with Google LLC (“Defendant” or “Google”) for its alleged violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”).¹

The Settlement establishes a \$100 million non-reversionary cash Settlement Fund, which if approved, will be dispersed *pro rata* to the hundreds of thousands of Class Members who submitted valid claims. In addition to the Settlement Fund, the Settlement provides robust prospective relief that directly addresses Google’s biometric-collection practices at issue in this case. There are no objections to the terms of Settlement, the request for Class Representative Service Payments, or to Class Counsels’ application for attorneys’ fees.

The Court preliminarily approved the Settlement on April 25, 2022. *See* Order Granting Preliminary Approval of Class Action Settlement (“PAO”). In granting preliminary approval, the Court found the terms of the Settlement “fair, reasonable, and adequate” and approved the robust Notice Plan and user-friendly claims process agreed to in the Settlement. *Id.* ¶¶ 2, 8-9. Since then, the Notice Plan and claims process were implemented by the Settlement Administrator. The period for filing objections or exclusions passed on August 10, 2022. Pursuant to the Preliminary Approval Order, 14 days prior to the objection / exclusion deadline (July 27, 2022), Plaintiffs filed their Motion for Class Representative Service Payments, Attorneys’ Fees and Expenses (“Fee Motion”).

The reaction from Class Members to the Settlement is resoundingly positive. As of September 9, 2022, 418,676 valid claims have been submitted, with over a week remaining until the September 24, 2022 Claims Deadline. *See* concurrently filed Affidavit of Brandon Schwartz (Director of Notice at Postlewaite & Netterville, APAC (“P&N”), the Settlement Administrator)

¹ Unless otherwise defined herein, capitalized words and terms used herein have the same meaning as ascribed to them in the Settlement Agreement (“Settlement Agreement” or “SA”), which is attached as Exhibit 1 to Plaintiffs’ Motion for Preliminary Approval dated April 14, 2022.

(“Schwartz Aff.”) ¶ 24. Claimants are estimated to be paid approximately \$142 each. *Id.* In contrast, only 97 Class Members submitted valid opt outs from the Settlement, there were no objections to the Settlement or the requests for attorneys’ fees or Service Payments, and one Class Member submitted comments on the Action (though this comment is entitled “Objection to Settlement” it does not interpose any objections to the Settlement itself or to the Fee Motion; instead it provides argument as to whether BIPA applies to Google Photos). *Id.* ¶¶ 26-27, Exs. H-I; *see also infra*, Sec. V.A.4. (discussion of the Class Member comment). The overwhelmingly positive reaction of the Class is not surprising, considering the substantial monetary and prospective relief the Settlement provides.

The Settlement warrants final approval, especially considering its positive reception by the Class. It meets all requirements for final approval under Section 2-801 of the Illinois Code of Civil Procedure. Plaintiffs respectfully request that the Court enter an order granting this Motion.

II. BACKGROUND

A. Factual and Procedural History

This six-plus years-long litigation, where Defendant steadfastly denied any wrongdoing of the alleged BIPA violations, was laborious and adversarial. A detailed account of the extensive factual and procedural history, and of the voluminous work performed by four law firms that comprise Class Counsel, is set forth in Plaintiffs’ Fee Motion at pp. 3-11 and in the Affidavit of Robert Ahdoot in support thereof (“Ahdoot Fee Aff.”) at ¶¶ 2-47 (both filed on July 27, 2022).

The proposed Settlement involves seven separate putative class actions (including this Action) in state and federal courts across the country (as well as an appeal and cross-appeal to the Seventh Circuit Court of Appeals) (the “Google Photos BIPA Cases”).²

B. The Parties Engaged in Extensive Settlement Negotiations

While the years-long litigation continued, the Parties engaged in extensive, arm’s-length

² In addition to this case, the Settlement resolves: *Molander v. Google LLC*, No. 5:20-cv-00918 (N.D. Cal.); *Rivera v. Google Inc.*, No. 1:16-cv-02714 (N.D. Ill.); *Weiss v. Google Inc.*, No. 1:16-cv-02870 (N.D. Ill.); *Azzano v. Google LLC*, No. 2019-CH-11153 (Ill. Cir. Ct., Cook Cnty.); *Marquez v. Google LLC*, No. 2021-CH-01460 (Ill. Cir. Ct., Cook Cnty.); and *Marquez v. Google LLC*, No. 1:20-cv-04454 (N.D. Ill.).

negotiations, which involved three experienced mediators, six in-person mediations, and numerous months of negotiations. Ahdoot Fee Aff. ¶¶ 34-42. Prior to Settlement, Class Counsel obtained and reviewed significant written discovery and documents. *Id.* ¶¶ 36-37. Class Counsel also defended the Plaintiffs' depositions, took depositions of Google employees, and retained and consulted with experts to assist in the analysis of this information. *Id.*

The Parties participated in two all-day mediations with the Honorable Layn R. Phillips (Ret.), multiple months-long discussions and an all-day mediation with Seventh Circuit Court of Appeals Mediator Jillisa Brittan, and three all-day mediations with the Honorable Stuart E. Palmer (Ret.) of JAMS. *Id.* ¶ 38. The Parties also participated in numerous lengthy phone conferences during which the myriad detailed terms of the Settlement were negotiated. *Id.* ¶ 39. This process extended for months, included several iterations and revisions of written proposals and counter proposals, discussions with Google's in-house counsel, and consultation with experts. *Id.*

The Parties also negotiated the logistics and substance of the notice and administration plan. *Id.* ¶ 40. Class Counsel obtained competitive bids from experienced and highly regarded class action administration firms, and as result of this process, agreed to retain P&N. *Id.*

C. Preliminary Settlement Approval and Dissemination of Notice

After the Court granted preliminarily approval of the Settlement on April 25, 2022, Class Counsel continued to work with P&N to supervise dissemination of Notice, respond to Class Member inquiries, supervise the claim process, and ensure the provisions of the Settlement and this Court's Preliminary Approval Order were implemented. Ahdoot Fee Aff. ¶ 43-47.

The Notice Plan (direct notice, publication notice, digital media campaign, reminder emails, toll-free hotline, search advertising, etc.) was successfully implemented. Schwartz Aff. ¶¶ 6-22. The Settlement Website makes available the Claim Form, Class Notice, the operative Consolidated Class Action Complaint, relevant motions, and all relevant case information. *Id.* ¶ 6, Ex. D. The Opt-Out and Objection Deadlines fell on August 10, 2022, and the Claims Deadline on September 24, 2022. Class Members were able to submit Claim Forms or Opt-Out requests online, or by mailing hard copies to P&N. *Id.* To date, there are 418,276 valid claims, no class

member objected to the terms of the Settlement or to the Fee and Service Payment requests, one Class Member argued that BIPA did not apply to Google Photos, and 97 Class Members submitted valid requests for exclusion. *Id.* ¶¶ 24-27, Exs. H-I.

III. THE SETTLEMENT

The Settlement provides substantial benefits to Class Members in exchange for the Release provided to Google, as summarized below.³

A. The Settlement Class

The preliminarily approved Settlement Class is defined as:

All Illinois residents who appeared in a photograph in Google Photos at any time between May 1, 2015 and the date of Preliminary Approval. Excluded from the Class are: (a) any judge, magistrate, or mediator presiding over the Google Photos BIPA Cases and members of their families; (b) Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest; (c) Class Counsel; and (d) the legal representatives, successors or assigns of any such excluded persons.

PAO ¶ 3; *see also* SA ¶ 2.2.

B. The \$100 Million Settlement Fund and Prospective Relief

The Settlement establishes a non-reversionary cash Settlement Fund of \$100 million, which Google fully funded on June 6, 2022 (approximately 45 days after Preliminary Approval). SA ¶ 3.2(a); Schwartz Aff. ¶ 23; Ahdoot Fee Aff. ¶ 47. Settlement Administration Expenses (e.g. costs of notice dissemination, claims processing, distribution of Settlement Payments, etc.), any Court-approved Service Payments and attorneys' fees and expenses will be paid from the Fund. SA ¶ 3.2(a); Schwartz Aff. ¶ 24. The remaining "Net Settlement Fund" will be used to pay Settlement Payments to Class Members with Approved Claims. SA ¶ 1.23, 3.3.

The Claims Process presented a simple form for each Class Member to submit a Claim for a *pro rata* share of the Net Settlement Fund. SA ¶ 3.3. It was incredibly successful: to date, there have been 418,676 valid claims. Schwartz Aff. ¶¶ 24, 32. The total payment to each participating Class Member will depend on the final number of valid Claim Forms submitted. *Id.* Class Members must submit their claims by September 24, 2022. *Id.* P&N estimates that each claimant will receive

³ To avoid repetition, a more detailed description of the Settlement is set forth in Plaintiffs' Preliminary Approval Motion (at pp. 4-8), filed on April 14, 2022, and is incorporated herein.

approximately \$142 each (this estimate assumes \$726,768 in notice and administration expenses, interest earned on the Settlement Fund in the amount of \$241,433, and that the Court will grant, in full, Plaintiffs' Motion for Class Representative Service Payments (\$25,000 total) and Attorneys' Fees and Expenses (\$40 million)). *Id.* ¶¶ 23-25. P&N does not anticipate the final Settlement Payment amount to substantially differ from this estimate. *Id.* ¶ 24.

Any Residual Funds (funds from uncashed checks, failed digital payment methods, etc.) will be redistributed (in a second distribution) to all Class Members who submitted a valid claim and successfully negotiated the first payment. SA ¶ 3.5. Any Residual Funds remaining after these efforts will be distributed to one or more 26 U.S.C. § 501(c)(3) non-profit organization(s) selected by the Parties, and subject to the Court's approval at a later date. At least 50% of these Residual Funds will be disbursed to organization(s) appearing on the Chicago Bar Foundation's list of Qualifying CBF-Supported Pro Bono and Legal Aid Organizations. *Id.*, Ex. 7. No portion of the Settlement Fund will be returned to Google. SA ¶ 3.2(b).

The Settlement also provides for significant prospective relief. It obligates Google to implement meaningful changes to its practices. *Id.* ¶ 3.1. Specifically, Google will provide all Face Grouping-Enabled Illinois Users and all New or Re-Enabled Illinois Grouping Users an electronic notice that discloses: (i) that the face grouping feature is enabled; (ii) that Defendant creates "face templates" or "face models" that are based on the images of faces in the photographs that are saved in the user's account; (iii) that by continuing to use Google Photos with the face grouping feature enabled, the user is consenting to Defendant's creation of data from the photographs in his or her account;⁴ and (iv) how the user can disable the feature and permanently delete any face templates or face models that may have been created from the photographs in his or her account. *Id.* ¶ 3.1(a)(1). The notice presented when a user activates Google Photos (on a mobile device or computer) will require the user to affirmatively indicate the user's consent as described in subsection (iii) above. *Id.*

⁴ This includes but is not limited to the creation of "face templates" or "face models," which enables Defendant to group photographs of similar faces and which, Plaintiffs contend, involves the collection of "biometric" data under the laws of some jurisdictions. SA ¶ 3.1(a)(1).

Google also will develop, publish, and abide by a retention policy in which it will commit to deleting face models or face templates associated with a user's account within a reasonable period of time after the user takes any of the following actions: (i) turns off the "face grouping" feature in Google Photos (in which case, all face templates or face models would be deleted); (ii) deletes an individual photograph (in which case, face models derived from that photograph would be deleted); (iii) deletes all photographs that include images of people (in which case, all face templates or face models derived from those photographs would be deleted); or (iv) deletes his or her Google account (in which case, all photographs in the account, and all face templates or face models derived from those photographs, would be deleted). *Id.* ¶ 3.1(a)(2).

Additionally, Google will not sell, lease, or trade face templates or face models to any third party, and will store, transmit, and protect from disclosure face templates or face models using reasonable security measures and in a manner that is at least as protective as the way Google stores, transmits, and protects other confidential information. *Id.* ¶ 3.1(a)(3)-(4).

C. There Are only 97 Opt-Outs, No Objections, One Class Member Comment, and, in Contrast, 418,676 Valid Claims

Class Members were provided an opportunity to opt out of, or object to, the Settlement on or before August 10, 2022. PAO ¶¶ 10-11. Valid requests for exclusions required information described in the Notice. Schwartz Aff. ¶ 27, Ex. D. Class Members were informed that they could object to any aspect of the Settlement, including Class Counsel's fee application and the request for Service Payments. *Id.* P&N reports that there are 97 Class Members submitted valid requests for exclusion from the Class. *Id.* ¶ 27, Ex. I. There was no objection to the Settlement or to the request for service payments or attorneys' fees. One Class Member (Sarada Mohapatra) filed a document titled as "Objection to Settlement," yet that filing contained no objection to either the Settlement or to the requests for Service Payments or attorneys' fees, but contained only argument regarding whether BIPA should apply to Google Photos. *Id.* ¶ 26, Ex. H; *see also infra*, Sec. V.A.4. (for the response to Sarada Mohapatra's argument).

D. There Were No Objections to the Narrowly Tailored Release

If the Settlement is finally approved, Plaintiffs and Class Members who did not timely request exclusion from the Class will release Google from all Claims “arising from or related to Plaintiffs’ allegations or the alleged collection, capture, receipt, storage, possession, dissemination, transfer, use, sale, lease, trade, or profit from biometric information, biometric identifiers, or any data derived from images of faces in photographs, by or for Google, including all claims arising from or relating to the subject matter of the Google Photos BIPA Cases, and all claims that were brought or could have been brought in the Google Photos BIPA Cases.” SA ¶ 1.31. Thus, the release is limited and tailored to apply only to the allegations in this Action. There were no objections to the terms of the Release.

E. There Were No Objections to the Requests for Class Representative Service Payments and Attorneys’ Fees and Expenses

On July 27, 2022, Plaintiffs filed an application for Service Payments in the amount of \$5,000 each (\$25,000 total), and for an award of reasonable attorneys’ fees in the amount of 40% of the Settlement Fund (\$40 million) to Class Counsel. There were no objections to these requests. As detailed in the Fee Motion, Class Counsel’s requested fee award is appropriate under governing Illinois law and consistent with the percentages of funds awarded in other settlements in Illinois courts, including other BIPA class actions, and warrants Court approval.

IV. THE COURT-APPROVED NOTICE PLAN WAS FULLY IMPLEMENTED

Notice of the Settlement included direct notice to Class Members as well as a robust print and digital media campaign. Schwartz Aff. ¶¶ 6-22. Direct Notice was sent via email to each Class Member identified by Google. *Id.* ¶¶ 10-15, Ex. A. For those Class Members with respect to whom email notice was returned as undeliverable, the Notice was sent via First Class U.S. Mail where a physical address was available. *Id.* ¶ 13, Ex. B. Notice also was disseminated via a robust print and digital notice program, as well as Internet search advertising. *Id.* ¶¶ 17-22, Exs. E-G. Finally, between September 2, 2022 and September 14, 2022, reminder emails were sent to all potential Class Members with valid emails and who had not yet submitted a claim. *Id.* ¶ 15, Ex. C.

The Settlement Website (www.GoogleBIPASettlement.com) with the Claim Form, Long Form Notice, and all relevant case information was deployed prior to the Notice Date. *Id.* ¶¶ 6-7, 16, Ex. D. The website allows Class Members to submit Claim Forms and Opt-Out requests electronically, and to obtain copies of the Claim Form and relevant Motions, Orders, and pleadings. *Id.* ¶ 6. Additionally, a toll-free number, email, and physical mailing address are available for Class Members to contact the Settlement Administrator. *Id.* ¶ 6, 8, 22. The date of the Final Approval Hearing and its Zoom credentials also were posted on the Website. *Id.* ¶ 6.

The Notice Plan set forth in the Settlement and approved by the Court was fully implemented, provided the best practicable notice under the circumstances, and fulfilled all due process requirements. *Id.* ¶¶ 6-22, 28-31; *see also*, Schwartz Affidavit ISO Motion for Preliminary Approval ¶¶ 8-9, 30-31 (filed on April 14, 2022); SA ¶¶ 6.1-6.3.

V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

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

To approve a class settlement, the Court must find it “fair, reasonable and adequate.” *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 493 (1st Dist. 1992). In determining whether a settlement is fair, reasonable, and adequate, Illinois courts apply an eight-factor evaluation, also known as the “*Korshak* factors.” *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990). The factors are: “(1) the strength of the case for the plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant’s ability to pay⁵; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed.” *Korshak*, 206 Ill. App. 3d at 972. Analysis of these factors supports a finding that the Settlement here is fair, reasonable, and adequate.

⁵ The second *Korshak* factor considers the defendant’s ability to pay. Here, Google funded the non-reversionary cash Settlement Fund of \$100 million approximately 45-days after Preliminary Approval. Ahdoot Fee Aff. ¶ 47; Schwartz Aff. ¶ 23. As a result, this factor is of minimal relevance.

1. The Settlement provides significant benefits to the Settlement Class

The first *Korshak* factor—the strength of Plaintiffs’ case on the merits balanced against the relief offered in Settlement—“is the most important factor in determining whether a settlement should be approved.” *Steinberg v. Sys. Software Assocs.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999); *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006). While Plaintiffs remain confident in the strength of their claims, they recognize that they would have to overcome significant obstacles to succeed. Given the obstacles and inherent risks Plaintiffs face with respect to their claims, the substantial benefits the Settlement provides favor its approval.

Here, P&N estimates that claiming Class Members will receive approximately \$142. Schwartz Aff. ¶ 24. This amount may fluctuate depending on the number of additional valid claims are made prior to the September 24, 2022, Claims deadline and the number of submitted claims deemed fraudulent or otherwise invalid by the Settlement Administrator. *Id.* While the estimated recovery does represent a discount from full recovery in an individual case,⁶ the discount to the monetary component is warranted in light of the *certain* and *immediate* payments to Class Members provided by the Settlement, the forward-looking relief designed to ensure Google’s compliance with BIPA, and the substantial risks of non-recovery that continued litigation would present. *Smith v. CRST Van Expedited, Inc.*, No. 10-CV-1116-IEG (WMC), 2013 U.S. Dist. LEXIS 6049, at *9-10 (S.D. Cal. Jan. 14, 2013) (“[T]he actual recovery realized and risks avoided here outweigh the opportunity to pursue potentially more favorable results through full adjudication”).

The risks presented by continued litigation were apparent given Google’s numerous potentially meritorious defenses as well possible legislative amendments to BIPA. These material risks are detailed in Plaintiffs’ Preliminary Approval Motion (filed on April 14, 2022; at pp. 18-24) and in the Fee Motion (at pp. 22-28), and are incorporated herein.

Despite these risks, Plaintiffs achieved an excellent result for the Class. Notably, the relief provided by this Settlement greatly exceeds the relief historically obtained through settlements in

⁶ If Plaintiffs prove their claims and certify a class in this case, the class-wide statutory damages would be either \$1,000 (if Google’s conduct were found negligent), or \$5,000 (if willful) for each violation. 740 ILCS 14/20(1)-(2).

data-privacy class actions. *See, e.g., Goldschmidt v. Rack Room Shoes, Inc.*, No. 1:18-cv-21220-KMW (S.D. Fla.) (ECF Nos. 82-1, 86) (\$5 cash and a \$10 voucher to each class member in action alleging violation of the Telephone Consumer Protection Act, which allows for statutory damages of \$500 or \$1,500 per violation); *In re Vizio, Inc., Consumer Privacy Litig.*, No. 16-ml-02693-JLS-KES (C.D. Cal.) (ECF Nos. 282-1, 337) (\$13-\$31 to each class member in action alleging violation of the Video Privacy Protection Act, 18 U.S.C. § 2710, which allows for statutory damages of \$2,500 per violation); *Kinder v. Meredith Corp.*, No. 1:14-cv-11284 (E.D. Mich.) (ECF Nos. 79, 81) (\$32.40 to each class member in action alleging violation of Michigan’s Preservation of Personal Privacy Act, which allowed for statutory damages of \$5,000 per violation).

The Settlement also compares favorably with previously approved settlements in other BIPA cases alleging collection of “scan[s] of . . . face geometry” and related data. *See, e.g., Miracle-Pond v. Shutterfly, Inc.*, No. 2019-CH-07050 (Ill. Cir. Ct.) (\$6.75 million settlement in a BIPA class action on behalf of at least 954,000 class members); *In re Facebook Biometric Information Privacy Litig.*, No. 3:15-cv-03747-JD (N.D. Cal.) (ECF No. 445-2) (settlement agreement); *In re Facebook Biometric Info. Privacy Litig.*, 522 F. Supp. 3d 617, 629 (N.D. Cal. 2022) (\$650 million settlement for a class size of at least 6.9 million, settled after class certification, appeal, and on the eve of trial).

Plaintiffs considered the significant risks and delay that would accompany continued litigation. Weighed against these risks, the Settlement ensures that Class Members will receive valuable and immediate relief and represents a fair, reasonable, and adequate result. Consequently, the first and most important *Korshak* factor weighs strongly in favor of final approval.

2. The Complexity, Length, and Expense of Further Litigation Weighs in Favor of Settlement

The third factor, the “complexity, length and expense of further litigation,” *Korshak*, 206 Ill. App. 3d at 972, also weighs heavily in favor of final approval of the Settlement. As the *Korshak* court observed, a “fair and reasonable settlement” is preferred over continued litigation which

would leave any potential recovery “in limbo.” 206 Ill. App. 3d at 973; *see also Isby v. Bayh*, 75 F.3d 1191, 1199-1200 (7th Cir. 1996) (affirming the final approval of a settlement where continued litigation “would require the resolution of many . . . complex issues” and “entail considerable additional expense”). And “[a]s courts recognize, a dollar obtained in settlement today is worth more than a dollar obtained after a trial and appeals years later.” *Goldsmith v. Tech. Sols. Co.*, No. 92 C 4374, 1995 U.S. Dist. LEXIS 15093, at *14-15 (N.D. Ill. Oct. 10, 1995).

The Settlement allows Class Members to receive immediate monetary relief, avoiding lengthy and costly additional litigation. Indeed, the Settlement makes monetary relief obtainable through submission of a simple Court-approved Claim Form in a streamlined process (far less burdensome what would be required to obtain relief in a court proceeding). Moreover, the Settlement provides prospective relief that meets or exceeds the injunctive relief that Plaintiffs would have received had Plaintiffs prevailed on the merits.

Had the Parties not reached this Settlement, this case would have proceeded to additional dispositive motions and/or class certification, with the Parties being required to expend substantial resources to go forward with their respective claims and defenses while facing a significant risk regarding any decision on the merits of the case and whether a class should be certified. And the outcome of litigation is uncertain given that BIPA jurisprudence is rapidly evolving. Even if Plaintiffs ultimately prevailed, such efforts would have required significant additional resources, while delaying resolution of this action for an indeterminate time, which would create additional injury to the affected Class Members who are in need of relief. In contrast, the Settlement provides substantial and prompt relief to the Class. This factor weighs in favor of final approval.

3. The Positive Reaction of the Class Supports Final Approval

The fourth and sixth *Korshak* factors—the amount of opposition to the Settlement and Class Members’ reaction to the Settlement—are “closely related” and often examined together. *Korshak*, 206 Ill. App. 3d at 973. Here, to date, 418,676 Class Members have filed valid claims (Schwartz Aff. ¶ 24) and await final approval of the Settlement. Despite direct notice to millions of potential class members and a robust Internet and print publication notice to many more

potential class members, only 97 individuals chose to opt out of the Settlement, no Class Member objected to any term of the Settlement or to the Fee Motion, and only one Class Member commented on the case while styling such comments as an objection (Sarada Mohapatra’s filing). *Id.* ¶¶ 26-27, Exs. H-I. “Such a remarkably low level of opposition supports the Settlement.” *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 965 (N.D. Ill. 2011) (the “tiny fraction” of opt-outs and objections supports approval); *see also Am. Int’l Grp., Inc. v. ACE INA Holdings, Inc.*, No. 07 CV 2898, 2012 U.S. Dist. LEXIS 25265, at *29 (N.D. Ill. Feb. 28, 2012) (“Out of a class of over thirteen hundred class members, only three . . . have objected, and just one has excluded itself from the class. Thus, . . . there has been almost no opposition to the settlement.”).

4. Sarada Mohapatra’s “Objection to Settlement” Is Not an Objection but, Rather, Argument that Google Did Not Violate BIPA

None of the comments raised by the Mohapatra filing provide a basis to deny final approval and relief to more than hundreds of thousands of individuals who expressed support for the Settlement by filing a claim. Indeed, none of Mohapatra’s so-called objections challenged any term of the Settlement or the Fee Motion. *See* Schwartz Aff. Ex. H.

First, Mohapatra argues that BIPA “is not applicable to Google Photos since users uploaded their photographs.” Mohapatra at p. 1. But if that were true, it would mean that the Settlement is even more favorable to the Settlement Class than as described by Class Counsel in this motion, because if BIPA does not apply to Google Photos, then the Settlement would be providing Class members substantial compensation for a weak case. Thus, the Mohapatra filing only underscores the adequacy of the relief provided by the Settlement. Also, other than recounting what amounts to personal decision to use Google Photos and an opinion of the Service, Mohapatra provides no legal authority or analysis in support of this argument.

Second, Mohapatra objects that “Google Photos ‘People Search’ is [*sic*] biggest innovation in managing photographs” and is “the feature that made me choose Google Photos over many other cloud storage providers like Dropbox.” Mohapatra at p. 2. This is not a complaint that the

Settlement is deficient in any respect, but is simply a reflection of Mohapatra’s own views of Google Photos, and is irrelevant.

Third, Mohapatra also objects that “BIPA intends to protect privacy of Illinoisans, not be [*sic*] obstacle for innovation” *Id.* at p. 2. Mohapatra complains that his “‘people search’ stopped working a few months ago, likely as part of this settlement” but provides no evidence to support this allegation. Without any factual or legal support, Mohapatra contends that “[w]hile Clearview settlement furthers privacy, this settlement does not.” *Id.* This assumption is false. In addition to the historically large Settlement Fund, the Settlement also provides significant prospective relief to directly address the privacy concerns raised by Plaintiffs in this case.

In sum, the Mohapatra Objection fails to challenge any term of the Settlement, the request for fees or Service Payments, and provides no evidence undermining the fairness, reasonableness, or adequacy of the Settlement. The Mohapatra Objection should be overruled.

5. There Was No Collusion Between the Parties

The next *Korshak* factor—the presence or absence of collusion in reaching a settlement—also weighs in favor of final approval. *Korshak*, 206 Ill. App. 3d at 972. There is an initial presumption that a proposed settlement is fair and reasonable when it was the result of arm’s-length negotiations. A. Conte & H. Newberg, *NEWBERG ON CLASS ACTIONS*, § 11.42 (4th ed. 2002); *see also Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 21 (finding no collusion where there was “no evidence that the proposed settlement was not the product of ‘good faith, arm’s-length negotiations’”); *Coy v. CCN Managed Care, Inc.*, 2011 IL App (5th) 100068-U, ¶ 31 (affirming trial court’s finding of no collusion where the record showed “arms-length negotiation . . . after years of litigation and discovery, resulting in a settlement with the aid of an experienced mediator”).

Here, as this Court found when it granted preliminary approval, there is no indicia of collusion. PAO ¶ 2 (“The proposed Settlement appears to be the product of intensive, thorough, serious, informed, and non-collusive negotiations.”). The context in which the Settlement was reached confirms it was the product of hard-fought, arm’s-length negotiations between adverse

parties and their well-qualified counsel.

When negotiations began, Plaintiffs had a clear view of the strengths and weaknesses of their case and were in a strong position to make an informed decision regarding the reasonableness of a potential settlement. Class Counsel obtained and reviewed discovery concerning every aspect of the case and retained consulting experts to assist in the analysis of this information. *Ahdoot Fee Aff.* ¶¶ 36-37. The Parties engaged in extensive, arm’s-length negotiations—including six separate mediation sessions and copious additional discussions facilitated by the Honorable Stuart E. Palmer (Ret.) of JAMS, U.S. Court of Appeals for the Seventh Circuit Mediator Jillisa Brittan, and the Honorable Layn R. Phillips (Ret.) of Phillips ADR—with such negotiations followed by further communications and negotiations before finalization of the Settlement. *Id.* ¶ 34. There is no indication of collusion or fraud in the settlement negotiations, and none exists.

6. Class Counsel Strongly Endorse the Settlement

Class Counsel have substantial experience prosecuting actions on behalf of consumers and have regularly been appointed as class counsel in numerous complex consumer class actions, including class actions involving violations of BIPA and other data privacy-related statutes, in state and federal courts across the country. Class Counsel strongly believe that final approval of the Settlement will avoid risks and delays associated with allowing the litigation to move forward.

Upon submission of a valid Claim Form and approval of their claim, Class Members are each provided immediate and meaningful relief instead of having to wait for the litigation and any subsequent appeals to run their course. Further, due to the defenses that Google indicated it would raise should the case proceed through litigation and the resources that it has committed to defend and litigate this matter through appeal, there is legitimate risk that the Class Members would receive no benefit in the absence of this Settlement. Class Counsel are confident that the Settlement is fair, reasonable, adequate, and in the best interests of the Class. This factor favors final approval.

7. The Stage of Litigation and Amount of Discovery Completed Has Ensured that the Settlement Is Fair, Reasonable, and Adequate

The final factor evaluates the stage of proceedings and the amount of discovery completed

before the parties entered into the settlement. *Korshak*, 206 Ill. App. 3d at 972.

This Action was intensely litigated, and the Settlement was reached only after extensive discovery efforts and substantial motion practice by both Parties. Plaintiffs and Class Counsel devoted substantial time, effort, and resources to this litigation, beginning with their initial investigations of Plaintiffs' allegations, continuing through a series of discovery demands and responses, complex motion practice by both Parties, and ending with hard-fought settlement negotiations. Ultimately, Google disclosed substantial evidence and information through formal discovery and under mediation privilege.

From these efforts, the Parties were able to adequately assess the strengths and weaknesses of the claims and defenses and engage in informed, arm's-length, adversarial negotiations. The Settlement was reached only after more than three-and-a-half years of arm's-length negotiations overseen by three well-respected mediators and after substantial discovery had been taken. Class Counsel had sufficient information to make an informed decision about the merits of the Settlement, and to determine that it represented a fair, reasonable, and adequate result for the Class.

B. The Class Meets the Elements for Certification Under 735 ILCS 5/2-801

In its Preliminary Approval Order, the Court found that all applicable requirements of Section 2-801 of the Illinois Code of Civil Procedure were met and certified the Settlement Class. *See* PAO ¶¶ 3, 5. There is no reason for the Court to depart from its previous decision, and no party argues otherwise.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their Motion for final approval of the proposed Settlement, enter a Final Judgment and Order, and provide any further relief the Court deems proper.

Dated: September 14, 2022

Respectfully submitted,

By: /s/ Robert Ahdoot
Robert Ahdoot

ROBERT AHDOOT*
TINA WOLFSON*
THEODORE W. MAYA*
AHDOOT & WOLFSON, PC
2600 West Olive Ave, Ste 500
Burbank, California 91505
rahdoot@ahdootwolfson.com
twolfson@ahdootwolfson.com
tmaya@ahdootwolfson.com
Tel: (310) 474-9111; Fax: (310) 474-8585
Firm ID: 63685

JOHN C. CAREY*
DAVID P. MILIAN*
CAREY RODRIGUEZ MILIAN LLP
1395 Brickell Ave, Ste 700
Miami, Florida 33131
jcarey@careyrodriguez.com
dmilian@careyrodriguez.com
Tel: (305) 372-7474; Fax: (305) 372-7475

FRANK S. HEDIN*
HEDIN HALL LLP
1395 Brickell Ave, Ste 1140
Miami, Florida 33131
fhedin@hedinhall.com
Tel: (305) 357-2107; Fax: (305) 200-8801

SCOTT A. BURSOR*
BURSOR & FISHER, P.A.
701 Brickell Ave, Ste 1420
Miami, Florida 33131
scott@bursor.com
Tel: (212) 989-9113; Fax: (212) 989-9163

*Admitted *Pro Hac Vice*

Class Counsel

KATRINA CAROLL
KYLE A. SHAMBERG
CARLSON LYNCH LLP
111 West Washington St., Ste 1240
Chicago, Illinois 60602
Telephone: (312) 750-1265
kcarroll@carsonlynch.com
kshamberg@carsonlynch.com
Firm ID: 63746

Counsel for Plaintiffs

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION**

LINDABETH RIVERA, et al.
Plaintiffs,
v.
GOOGLE, LLC,
Defendant.

Case No. 2019-CH-00990

Judge: Hon. Anna M. Loftus

**AFFIDAVIT OF BRANDON SCHWARTZ REGARDING THE STATUS OF
NOTICE AND SETTLEMENT ADMINISTRATION**

I, Brandon Schwartz, hereby declare and state as follows:

1. I am the Director of Notice for Postlethwaite & Netterville, APAC (“P&N”), a full-service administration firm providing legal administration services, including the design, development, and implementation of unbiased complex legal notification programs.

2. In the *Affidavit of Brandon Schwartz on Settlement Notice Plan* (the “Notice Plan Affidavit”) filed with the Court on September 14, 2022 and submitted along with my C.V., I detailed the proposed Notice Plan to administer the claims process in the above-referenced matter (the “Action”)¹. As stated in the Notice Plan Affidavit, P&N designed the Notice Plan to give notice to the Settlement Class in the most practicable manner possible. To do so, P&N designed, and the Court approved, a multifaceted approach utilizing a combination of (1) direct email/mail notice, (2) supplemental online display, (3) supplemental social media, (4) supplemental print notice, (5) supplemental search advertising, (6) toll-free settlement hotline, and a (7) Settlement Website.

3. On April 25, 2022, the Court approved the Notice Plan, related notice forms, and appointed P&N as the Settlement Administrator in the *Order Granting Preliminary Approval of Class Action Settlement* (“Preliminary Approval Order”). Preliminary Approval Order ¶ 7-8.

4. In the Order, the Court “directs that the Settlement Administrator cause a copy of the Summary Notice be sent to all members of the Settlement Class who have been identified by Defendant through its records via e-mail no later than the Notice Date. If any Summary Notice that has been emailed is returned as undeliverable and has not been successfully delivered to another email address believed to be associated with the same person, the Settlement Administrator shall attempt one (1) other email execution (where feasible). If unsuccessful, the Settlement Administrator will send the Summary Notice by United States mail, postage prepaid, to the extent a current physical mailing address can be identified by the Class Administrator using publicly available resources or proprietary databases. Prior to the dissemination of any Notice,

¹ All capitalized terms not otherwise defined in this document shall have the meaning ascribed to them in the Settlement Agreement.

the Settlement Administrator shall cause copies of the Settlement Agreement, Long Form Notice, Summary Notice, and Claim Form, in forms available for download, to be posted on a website developed for the Settlement ('Settlement Website'). The Settlement Website shall also include a toll-free telephone number, email address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly." *Id.* ¶ 9.

5. Upon entry of the Preliminary Approval Order, P&N began to implement the Notice Plan in accordance with its requirements. This Affidavit details the current status of the Notice Plan and Settlement Administration. P&N will provide a supplemental Affidavit to the Court regarding the status of the Notice Plan upon completion of the claims period (the Claim Deadline is September 24, 2022) and prior to the final fairness hearing.

NOTICE PLAN SUMMARY

Settlement Website

6. On May 27, 2022, a neutral informational Settlement Website, www.GoogleBIPASettlement.com, was created to provide Settlement Class Members access to the Claim Form, Notices (both online and mail in versions), Settlement Agreement, and other relevant documents. The Settlement Website also includes relevant dates, answers to frequently asked questions, instructions for how Settlement Class Members may opt-out (request exclusion) from or object to the Settlement, contact information for the Settlement Administrator, and provided Settlement Class Members with the ability to submit (i) a claim using the online claim form and instructions, or (ii) a request for exclusion online prior to the deadline of August 10, 2022. The Settlement Website also provided the date of the Final Hearing and its Zoom meeting credentials on its landing page.

7. As of September 9, 2022, the Settlement Website has received 12,349,709 page views from 3,030,439 unique visitors.

Dedicated Toll-Free Hotline

8. On May 27, 2022, a toll-free hotline, 1-833-927-3418, was established for Settlement Class Members to call and obtain essential information regarding the Settlement and responses to frequently asked questions. The automated phone system is available 24 hours a day, 7 days a week.

9. As of September 9, 2022, there have been 2,480 calls to the hotline, totaling 8,204 minutes.

Direct Notice

10. On or about May 4, 2022, P&N received a document from Google, LLC that included email addresses for potential Settlement Class Members. The Notice Plan provided, and the Order directed, that individual notice be sent via Email Notice and a Postcard Notice be mailed to all undeliverable email addresses.

11. P&N followed standard email best practices, including utilizing “unsubscribe” links and the Settlement Administrator contact information in the Email Notice. Prior to sending, P&N performed an email hygiene and verification process designed to protect the integrity of the email campaign and maximize deliverability. Steps included deduplication, syntax validation, misspelled domain detection and correction, domain validation, and risk validation. The final email list included 5,833,705 email addresses for potential Settlement Class Members.

12. Beginning on May 27, 2022, P&N caused Email Notice to be sent to the 5,833,705 email addresses for potential Settlement Class Members that passed the hygiene and verification process. Ultimately, the Email Notice was successfully delivered to 5,748,803 email addresses, or 98.5% deliverability. A sample copy of the Email Notice sent is attached as **Exhibit A**.

13. In the instance where an email was returned undeliverable, P&N mailed a Postcard Notice by United States Postal Service (“USPS”). After a reverse lookup and processing the mailing addresses through the NCOA database maintained by the USPS to help ensure address information is up-to-date and accurately formatted for mailing, in addition to certifying the mailing addresses via the Coding Accuracy Support System (CASS) to ensure the quality of the

zip code and verified through Delivery Point Validation (DPV) to verify the accuracy of the addresses, a total of 31,766 Postcard Notices were mailed. A sample copy of the Postcard Notice that was mailed is attached as **Exhibit B**.

14. A summary of the direct notice dissemination statistics is included in the table below:

Settlement Notice Dissemination Statistics		
Description	Volume	Percentage of Potential Class Members (%)
Potential Class Member Email Addresses	5,833,705	100.00%
Email Notices		
Total Email Notices Sent	5,833,705	100.0%
Total Email Notices Delivered	5,748,803	98.5%
Total Email Notices Bounced/Undeliverable	84,902	1.5%
Mail Notice		
Total Postcard Notices Mailed	31,766	0.5%
Total Postcard Notices Returned as Undeliverable	3,241	0.1%

Notice Reach Statistics		
Description	Volume	Percentage of Potential Class Members (%)
Potential Class Member Email Addresses	5,833,705	100.00%
Received Email Notice	5,748,803	98.5%
Received Postcard Notice	28,525	0.5%
Received Direct Notice	5,777,328	99.0%

15. Commencing on September 2, 2022 through September 14, 2022, P&N transmitted 5,575,000 reminder emails to all email addresses to which the initial Email Notice was successfully delivered and that had not yet submitted a claim. A sample copy of the reminder email is attached hereto as **Exhibit C**.

16. A copy of the Long Form Notice (English version) available on the Settlement Website is attached hereto as **Exhibit D**. The Settlement Website also makes available a Spanish

version of the Long Form Notice, and a copy of the Summary Notice disseminated by direct notice and publication notice as described above.

Publication Notice

17. The Notice Plan includes an approximate one-eighth page version of the Summary Notice (“Print Notice”) to be published in not less than three widely circulated newspapers in Illinois. The Print Notice was placed in seven publications and appeared three times in non-consecutive days. Additionally, the Notice appeared in the online version of each publication in substantially similar form to the Print Notice or in the form of a banner notice, depending on each publication’s specifications and guidelines.

18. A summary of the Print Notice campaign is as follows:

<i>Newspaper</i>	<i>Distribution</i>	<i>Circulation</i>	<i>Run Dates</i>
<i>Chicago Tribune</i>	Chicago, IL	283,590	June 8, June 15, and June 22, 2022
<i>The Journal Star</i>	Peoria, IL	25,097	
<i>News-Gazette</i>	Champaign/Urbana, IL	24,000	
<i>Rockford Register Star</i>	Rockford, IL	14,979	
<i>The State Journal</i>	Springfield, IL	14,000	
<i>The Herald-Whig</i>	Quincy, IL	11,528	
<i>The Southern Illinoisan</i>	Carbondale, IL	5,000	

19. A copy of the Print Notice as it appeared in each publication is attached hereto as **Exhibit E**.

Digital Banner Notice

20. After the Notice Date, P&N caused digital banner notices to run across the Google Display Network, Facebook, and Instagram. The digital notices targeted individuals by demography, behavior, geography, contextual, remarketing, interest groups, look-alike, and customer match targeting, among others, and allowed viewers to identify themselves as potential Settlement Class Members and click through to the Settlement Website. In total, 88,189,836 banner impressions were generated. Screenshots of the digital banner notices are attached hereto as **Exhibit F**.

Search Advertising

21. After the Notice Date, P&N caused search-based advertising notice to be placed on Google.com. Keywords such as “Google Class Action Lawsuit”, “Google BIPA”, “Google Photos”, and “Google Photos Lawsuit” were used to generate a short descriptive notice below the search field which allowed Settlement Class Members to click through to the Settlement Website. In total, 11,273 search-based impressions were generated. Screenshots of the search-based notices are attached as **Exhibit G**.

Settlement P.O. Box

22. P&N maintains a designated P.O. Box for the administration of the Settlement: Rivera, et al. v. Google, LLC, P.O. Box 5529, Baton Rouge, LA 70821. P&N monitors the Settlement P.O. Box for Settlement-related mail such as objections, exclusion requests, and inquiries about the Settlement. P&N promptly handles all mail received at the Settlement P.O. Box. As of September 9, 2022, P&N has received 412 pieces of administrative mail through the P.O. Box.

Qualified Settlement Fund

23. On June 6, 2022, Google deposited the entire amount of the Settlement Fund (\$100 million) into the Qualified Settlement Fund (“QSF”), established by P&N, pursuant to the terms and conditions of the Settlement. As of August 31, 2022, the interest earned on the fund equals to \$241,433.56.

Claim Form Submissions

24. The deadline for Settlement Class Members to submit a Claim Form is September 24, 2022. P&N has employed all reasonable efforts to administer the Claims efficiently and avoid unnecessary fees and expenses. Moreover, P&N has exercised its usual and customary industry standard steps to prevent fraud and abuse and has taken reasonable steps to prevent fraud and abuse in the Claim Process. These efforts include safeguards to ensure that claims that had indications of automation were submitted by real persons, such as Internet Protocol Address location validation as well as email, physical address, and digital payment verifications. As of

September 9, 2022, P&N has received 418,676 claim submissions that it has deemed to be valid. Using this claims number, total Administration Expenses in the amount of \$726,768, \$25,000 in court approved Service Payments, and \$40 million as the attorneys' fee and expense award, P&N estimates that the Settlement Payment to each valid claim will be approximately \$142. P&N shall continue to analyze claims that have already been received as well as any additional timely claims received or postmarked by September 24, 2022. Such efforts may yield some fluctuation in the total number of valid claims made by the September 24, 2022 Claims Deadline and the number of submitted claims ultimately deemed fraudulent or otherwise invalid, which may in turn reduce or increase the estimated payment amount per valid claim; based on P&N's experience in similar circumstances during its administration of other settlements, any such change in the per-claimant payment amount is not anticipated to be substantial.

Notice and Administration Expenses

25. As of September 9, 2022, P&N has invoiced \$506,754.50 for its services. I estimate that P&N will incur an additional \$220,014 in charges through the conclusion of this matter. P&N originally estimated a total notice and administration fee of \$365,363, based on the assumption of a total of 205,000 claims. The new estimated total amount takes into account the higher number of valid claims submitted by Class Members (*see* paragraph 24). The substantially higher number of valid claims results in additional costs related to (i) class member communications; (ii) review and analysis of invalid and/or fraudulent claims (including requests for additional information from claimants with suspicious or deficient claims); and (iii) distribution of funds (via physical check or digital payment).

Objections and Exclusions

26. Pursuant to the Court's Preliminary Approval Order, "[a]ny Settlement Class Member may comment in support of, or in opposition to, the Settlement Agreement at his or her own expense. Any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be valid and entertained by the Court at the Final Approval Hearing only if, on or before the Objection and Exclusion Deadline of August 10, 2022 (i.e. seventy-five (75)

days after the Notice Date), the person making an objection: (i) files his/her objection with the Clerk of Court; (ii) files copies of such papers he/she proposes to submit at the Final Approval Hearing with the Clerk of Court; and (iii) sends copies of such papers via United States mail, hand delivery, or overnight delivery to Class Counsel and Defendant's Counsel. A copy of the objection must also be mailed to the Settlement Administrator at the address that the Settlement Administrator will establish to receive requests for exclusion or objections, Claim Forms, and any other communication relating to this Settlement.” To date, P&N is aware of only one mailing that can be considered an objection: an envelope postmarked August 10, 2022, from Sarada Mohapatra, which includes a document “Objection to Settlement,” and which is attached hereto as **Exhibit H**.

27. Pursuant to the Court’s Preliminary Approval Order, “[a] member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked, or submitted electronically via the Settlement Website, or submitted to an e-mail address established by the Administrator for the purpose of receiving exclusion requests, on or before the Objection and Exclusion Deadline of August 10, 2022 (i.e. seventy-five (75) days after the Notice Date). In order to exercise the right to be excluded via postal mail, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his/her name, address, and telephone number; the name and number of this case; a statement that he/she wishes to be excluded from the Settlement Class; and a handwritten signature. A request to be excluded that is sent to an email address other than that designated in the Class Notice, or that is not electronically submitted or postmarked within the time specified, shall be invalid and the person serving such a request shall be considered a member of the Settlement Class and shall be bound as Settlement Class Members by the Agreement, if approved. The request for exclusion must be personally signed by the person requesting exclusion. So-called ‘mass’ or ‘class’ exclusion requests shall not be allowed.” To date, 108 requests for exclusion have been received by P&N, 97 of which contain information sufficient to be valid. A list of all 97 individuals who have submitted valid Request for Exclusion is attached hereto as **Exhibit I**.

Conclusion

28. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, and by case law pertaining to the recognized notice standards under relevant Illinois law and Federal Rules of Civil Procedure, Rule 23 (“FRCP 23”). This framework directs that the notice plan be optimized to reach the class and, in a settlement notice situation such as this, that the notice or notice plan itself not limit knowledge of legal rights—nor the ability to exercise other options—to class members in any way. All of these requirements were met in this case.

29. In my opinion, the above-described Notice Plan was consistent with other effective class action notice programs.

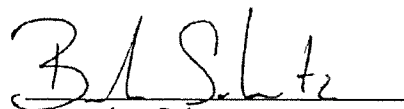
30. It is my opinion, based on my expertise and experience and that of my team, that the methods of notice dissemination implemented by this Settlement, and the Court’s Preliminary Approval Order, provided effective notice of the Settlement, provided the best notice that is practicable, adhered to FRCP 23, followed the guidance set forth in the Manual for Complex Litigation 4th Ed. and FJC guidance, and met the requirements of due process, including its “desire to actually inform” requirement.

31. The Notice Plan schedule afforded enough time to provide full and proper notice to Class Members before the opt-out and objection deadlines.

32. P&N will provide a supplemental declaration to the Court prior to the Final Approval Hearing, which will provide updated settlement administration statistics.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 14th day of September 2022 in Portland, Oregon.


Brandon Schwartz

[ORIGINAL EXHIBITS
OMITTED]

Hearing Date: 12/19/2022 9:30 AM - 9:35 AM
Location: <<CourtRoomNumber>>
Judge: Calendar, 15

FILED
12/12/2022 9:19 AM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2019CH00990
Calendar, 15
20629162

FILED DATE: 12/12/2022 9:19 AM 2019CH00990

EXHIBIT 5

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Rivera, et al. v. Google LLC, Case No. 2019-CH-00990 (Cir. Ct. Cook Cnty.)

IF, AT ANY TIME BETWEEN MAY 1, 2015 AND APRIL 25, 2022, YOU APPEARED IN A PHOTOGRAPH IN GOOGLE PHOTOS WHILE YOU WERE AN ILLINOIS RESIDENT, YOU MAY BE ENTITLED TO GET A PAYMENT FROM A CLASS ACTION SETTLEMENT.

An Illinois State Court has authorized this Notice. This is not a solicitation from a lawyer. Please read this Notice carefully and completely.

THIS NOTICE OF A CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.

- A Settlement has been reached in a class action lawsuit against Google LLC (“Defendant” or “Google”), which alleges that Google violated Illinois law by collecting and storing biometric data of individuals residing in Illinois who appear in photos in the photo sharing and storage service known as Google Photos (“Google Photos”) without proper notice and consent.
- Google denies all allegations against it, denies that it collected, captured, or stored biometric data without proper notice and consent, denies that it violated Illinois law or any other law, denies that it bears any liability whatsoever, and denies that anyone has sustained any damages or injuries due to these allegations.
- The Court has not decided who is right or wrong. Instead, both sides have agreed to a Settlement to resolve the dispute without further litigation risk and expense. For more information, please visit www.GoogleBIPASettlement.com or call toll-free 1-833-927-3418.
- You are a Class Member and are affected by this Settlement if at any time between May 1, 2015 and April 25, 2022, you appeared in a photograph in Google Photos while you were an Illinois resident.
- The One Hundred Million Dollar (\$100,000,000) Settlement Fund that Google has agreed to pay will be divided equally (i.e. *pro rata*), among all Class Members who file a valid claim, after Court-approved deductions from the Settlement Fund for taxes on interest accrued from the Settlement Fund, notice and settlement administration expenses, attorneys’ fees and expenses awarded by the Court, and Court-approved service payments to the Class Representatives. While Class Counsel estimate, based on their experience in prior similar matters, that the amount of each valid claim will be between approximately \$200.00 and \$400.00, the actual cash amount an individual will receive could be less than or greater than that estimated amount, and will depend on the final amount of the Court-approved deductions from the Settlement Fund and the total number of valid claims submitted by Class Members before the Claims Deadline of **September 24, 2022**.
- Your legal rights will be affected whether you act or do not act. Please read this entire Notice carefully.

**This Settlement affects your legal rights even if you do nothing.
Questions? Go to www.GoogleBIPASettlement.com or call 1-833-927-3418**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

<p>SUBMIT A CLAIM FORM:</p> <p>DEADLINE: SEPTEMBER 24, 2022</p>	<p>The only way to get a payment is if you submit a Claim Form. If you submit a Claim Form, you will give up the right to sue Google or any Released Parties in a separate lawsuit about the claims released by the Settlement, including the claims made in this case. You must submit a Claim Form by September 24, 2022. For more information see Section 10 below.</p>
<p>EXCLUDE YOURSELF FROM THIS SETTLEMENT</p> <p>DEADLINE: AUGUST 10, 2022</p>	<p>You may exclude yourself from (or “opt-out” of) the Settlement. If you do so, you will not receive any payment, but you will keep any rights to pursue your own lawsuit against Google or any of the Released Parties (described below) for the claims made in this case and released by this Settlement.</p> <p>To exclude yourself, you must submit a request to be excluded by August 10, 2022. For more information see Section 17 below.</p>
<p>OBJECT TO OR COMMENT ON THE SETTLEMENT</p> <p>DEADLINE: AUGUST 10, 2022</p>	<p>You may object to the Settlement by: (i) filing an objection with the Clerk of Court; (ii) filing all copies of papers in support of said objection that you propose to submit at the Final Approval Hearing with the Clerk of Court; and (iii) sending copies of such papers via United States mail, hand delivery, or overnight delivery to Class Counsel and Defendant’s Counsel. A copy of the objection must also be mailed to the Settlement Administrator. If you object to the Settlement and the Settlement is nonetheless approved, you will give up the right to sue Google or any Released Parties in a separate lawsuit about the claims made in this case and released by the Settlement.</p> <p>If you choose to object, you must do so by August 10, 2022. For more information see Section 20 below.</p>
<p>GO TO THE “FINAL APPROVAL” HEARING</p> <p>DATE: SEPTEMBER 28, 2022</p>	<p>You may attend the Final Approval Hearing where the Court may hear arguments concerning the approval of the Settlement. This hearing may be held remotely at the Court’s discretion. If you wish to speak at the Final Approval Hearing, you must make a request to do so in your written objection and identify any witnesses you may call to testify at the Final Approval Hearing, as well as all exhibits you intend to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection. You are <u>not</u> required to attend the Final Approval Hearing. For more information see Section 22 below.</p>
<p>DO NOTHING</p>	<p>You will not receive a payment, and you will give up the right to sue Google or any Released Parties in a separate lawsuit about the claims made in this case and released by the Settlement.</p>

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. No Settlement benefits or payments will be provided unless the Court approves the Settlement, and it becomes final.

***IMPORTANT NOTE:** The dates and deadlines may be changed without further notice, so please check the Settlement Website, www.GoogleBIPASettlement.com, or the Court’s website or records to confirm that the dates have not been changed.

Questions? Go to www.GoogleBIPASettlement.com or call 1-833-927-3418.
This Settlement affects your legal rights even if you do nothing.

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Questions? Go to www.GoogleBIPASettlement.com or call 1-833-927-3418.
This Settlement affects your legal rights even if you do nothing.

BASIC INFORMATION

1. Why did I get this Notice?

The Court authorized this Notice because you have a right to know about the proposed Settlement of the claims against Google in this class action lawsuit, and about your options, before the Court decides whether to approve the Settlement. If the Court approves the Settlement and after any appeals are resolved, the Settlement Administrator will make the payments that the Settlement allows. If the Court approves the Settlement and after any appeals are resolved, you will be bound by the Judgment and terms of the Settlement, unless you timely exclude yourself from (or “opt out” of) the Settlement.

This Notice explains the Action, the Settlement, and your legal rights and options, and the deadlines for you to exercise your rights. To obtain more information about the Settlement, and to access key documents including the Settlement Agreement (which defines certain capitalized terms used in this Notice and is available at www.GoogleBIPASettlement.com), see Section 26 below.

2. Why is this a class action?

In a class action, one or more people called the “Class Representatives” sue on behalf of all other people who have similar claims. Together all of these other people are called a “Class” or “Class Members.” One court resolves the issues for all Class Members, except for those Class Members who exclude themselves from the Class, as explained in Section 17 below.

3. What is this lawsuit about?

This class action case is called *Rivera, et al. v. Google LLC*, Case No. 2019-CH-00990 (Cir. Ct. Cook Cnty.) (the case is referred to in this notice as the “Action”). The Honorable Anna M. Loftus of the Circuit Court of Cook County, Illinois is presiding over the Action.

In addition to the Action, some of the Plaintiffs brought the same allegations as those alleged in the Action, against Google, in other lawsuits, including: *Rivera v. Google Inc.*, No. 1:16-cv-02714, pending in the United States District Court for the Northern District of Illinois; *Marquez v. Google LLC*, No. 2021-CH-01460, pending in the Circuit Court of Cook County, Illinois; and *Molander v. Google, LLC*, No. 20-cv-00918, pending in the United States District Court for the Northern District of California (together these cases are referred to in this Notice as the “Related Actions”). This Settlement resolves the Action and the Related Actions.

The people who filed this lawsuit are called the “Plaintiffs” or “Class Representatives” and the company they sued, Google LLC, is called the “Defendant.” The Class Representatives in the Action are Michael Azzano, Nicholas Marquez, Brandon Molander, Lindabeth Rivera, and Joseph Weiss.

The Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”), prohibits private companies from collecting or obtaining a person’s biometric identifiers and/or biometric

Questions? Go to www.GoogleBIPASettlement.com or call 1-833-927-3418.

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information (collectively, “biometrics”), such as a scan of face geometry, without first providing such individual with certain written disclosures and obtaining written consent. BIPA also requires that private companies that possess biometrics develop a publicly available retention schedule.

The Plaintiffs claim that Google violated BIPA by obtaining, collecting, and storing, without adequate prior notice and consent, Illinois residents’ biometrics, which Google allegedly used to group photographs of similar faces that have been uploaded by the same Google Photos user, a feature called Face Grouping. Google denies all claims made in the action and any wrongdoing whatsoever, including that it collected or stored biometrics without proper notice and consent, and that it violated Illinois law or any other law. By entering into the Settlement, Google is not admitting that it did anything wrong.

The issuance of this Notice is not an expression of the Court’s opinion on the merit or the lack of merit of any of Plaintiffs’ claims or Google’s defenses in the Action. The Court has not decided who is right or wrong. Instead, both sides have agreed to a settlement to avoid the risk and cost of further litigation.

For information about what has happened in the lawsuit to date, you can access the Settlement Agreement and other case documents at www.GoogleBIPASettlement.com. Please also see Section 26 below for additional information about accessing case documents.

4. Why is there a Settlement?

The Plaintiffs and Google do not agree about the claims made in this Action. The Action has not gone to trial and the Court has not decided in favor of the Plaintiffs or Google. Instead, the Plaintiffs and Google have agreed to settle the Action. That way, both sides avoid the cost and risks of trial, and Class Members will get Settlement benefits now rather than years from now, if at all. The Plaintiffs and the attorneys for the Class (“Class Counsel”) believe the Settlement is best for all Class Members because of the risks and uncertainty associated with continued litigation and the nature of the defenses raised by Google.

WHO IS INCLUDED IN THE SETTLEMENT?

5. How do I know if I am part of the Settlement?

The Court has decided that you are a Class Member in this Settlement if, at any time between May 1, 2015 and April 25, 2022, you appeared in a photograph in Google Photos while you were an Illinois resident.

If you fit this description, you may submit a Claim Form.

6. Are there exceptions to being included in the Settlement?

Yes, the Settlement does not include: (1) any Judge, Magistrate, or mediator presiding over this Action and Related Actions and members of their families, (2) Defendant, Defendant’s subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its

Questions? Go to www.GoogleBIPASettlement.com or call 1-833-927-3418.
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parents have a controlling interest, (3) Class Counsel, and (4) the legal representatives, successors or assigns of any such excluded persons.

7. What if I am still not sure whether I am part of the Settlement?

If you are still not sure whether you are a Class Member, you may go to the Settlement Website at www.GoogleBIPASettlement.com, email the Settlement Administrator at info@GoogleBIPASettlement.com, or call the Settlement Administrator's toll-free number at 1-833-927-3418.

THE SETTLEMENT BENEFITS

8. What does the Settlement provide to Class Members?

The Settlement provides monetary payments to Class Members who submit a valid Claim Form on or before **September 24, 2022** (see Section 10 below on how to submit a Claim Form). Without admitting liability, Google has also agreed to make certain changes to its policies and practices that will benefit the Settlement Class, the details of which you can review in the Settlement Agreement at Section 3, available at www.GoogleBIPASettlement.com.

If the Court approves the Settlement, Google will pay One Hundred Million Dollars (\$100,000,000) to create a Settlement Fund. The money remaining in the Settlement Fund after (i) adding accrued interest and (ii) paying settlement administration and notice costs, any taxes owed as a result of interest accrued on the Settlement Fund, the award of attorneys' fees and expenses to Class Counsel by the Court ("Fee and Expense Award"), and any Service Payments to the Class Representatives ordered by the Court, is called the "Net Settlement Fund." The Net Settlement Fund will be distributed to Class Members who submit a valid Claim Form on or before **September 24, 2022**.

9. How much will my payment be?

If you are a member of the Class, you may submit a Claim Form to receive a *pro rata* portion of the Net Settlement Fund. The amount paid to each Class Member who submits a valid Claim, however, will depend on (i) the total number of valid claims submitted, (ii) the total costs of administering the Settlement and providing notice to the Class Members, (iii) the amount of accrued interest and taxes owed as a result, (iv) the amount of any Fee and Expense Award, and (v) the total amount of any Service Payments to Plaintiffs approved by the Court. No one knows in advance how much each valid claim payment will be until the deadline for submitting claims passes and the Court awards the Fee and Expense Award and Service Payments. Each Class Member who submits a valid claim will receive an equal proportionate share of the Net Settlement Fund. Class Counsel estimate, based on their experience in prior similar matters, that the amount of each valid claim will be between approximately \$200.00 and \$400.00; however, the actual cash amount an individual will receive could be less than or greater than that estimated amount.

Questions? Go to www.GoogleBIPASettlement.com or call 1-833-927-3418.
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10. How can I get a payment?

To make a claim and receive a payment, you must complete and submit a Claim Form online at www.GoogleBIPASettlement.com by September 24, 2022, or by mail postmarked by September 24, 2022.

Read the instructions on the Claim Form carefully.

A Claim can be filed quickly and easily at www.GoogleBIPASettlement.com, but if you wish to mail in the Claim Form, you may download a copy at www.GoogleBIPASettlement.com or call toll-free 1-833-927-3418 and request a Claim Form be sent to you. If you plan to mail in a Claim Form, then please type or legibly print all requested information in blue or black ink. Mail your completed Claim Form by U.S. Mail to the following address:

Rivera, et al. v. Google LLC Settlement
c/o Settlement Administrator
P.O. Box 5229
Baton Rouge, LA 70821

If you have any questions regarding the process to submit your Claim Form, you may obtain assistance by calling toll-free 1-833-927-3418, emailing the Settlement Administrator at info@GoogleBIPASettlement.com, or by writing to the Settlement Administrator at the above address.

We encourage you to submit your claim electronically. Not only is submitting online easier and more secure, but it is completely free and takes only minutes.

You will be able to select the option of receiving your payment by check or electronically through Zelle, PayPal, Venmo, digital MasterCard or direct deposit. Please note that all information provided on the Claim Form shall be kept confidential and will not be used for any other purpose other than for this Settlement.

11. When will I get my payment if I submit an Approved Claim?

Based on your selection on the Claim Form, you should receive a payment from the Settlement Administrator within 90 days after the Settlement has been finally approved and/or after any appeal process is complete, whichever occurs later. The hearing to consider final approval of the Settlement is scheduled for **September 28, 2022, at 10:30 a.m.** Even if the Court approves the Settlement, there may be appeals. It is always uncertain whether and when appeals can be resolved, and resolving them can take time. Please be patient and check www.GoogleBIPASettlement.com for updates. No benefits will be provided until the Court has approved the Settlement and any appeals have been resolved.

12. What happens if my contact information changes after I submit a claim?

Questions? Go to www.GoogleBIPASettlement.com or call 1-833-927-3418.
This Settlement affects your legal rights even if you do nothing.

If you change your mailing address or email address after you submit a Claim Form, it is your responsibility to inform the Settlement Administrator of your updated information. You may notify the Settlement Administrator of any changes using the Contact Information Update form on the Settlement Website, by emailing info@GoogleBIPASettlement.com, or by writing to:

Rivera, et al. v. Google LLC Settlement
c/o Google BIPA Settlement Administrator
P.O. Box 5229
Baton Rouge, LA 70821

13. Will the Plaintiffs receive any compensation for their efforts in bringing this Action?

The Plaintiffs will request a Service Payment of up to \$5,000 (each) for their services as Class Representatives and their efforts in bringing the Action. The Court will make the final decision as to the amount to be paid to the Plaintiffs. The application filed with the Court requesting the Service Payments will be made available on the Settlement Website at www.GoogleBIPASettlement.com at least fourteen (14) days before August 10, 2022, the deadline for you to comment or object to the Settlement.

REMAINING IN THE SETTLEMENT

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

Unless you exclude yourself, you are choosing to remain in the Class. If the Settlement is approved and becomes final, all of the Court's orders will apply to you and legally bind you. You will not be able to sue, continue to sue, or be part of any other lawsuit against Google (and any of the Released Parties as this term is defined in Section 1.32 of the Settlement Agreement) that asserts any (i) Released Claims, or (ii) any claims based on any of the business practices Google adopts pursuant to the Settlement Agreement.

The specific rights you are giving up are called "Released Claims". The Released Claims are described in sections 1.31-1.33 and 11.1-11.3 of the Settlement Agreement (available at www.GoogleBIPASettlement.com) and in Exhibit A attached hereto. Specifically, if you are a Class Member, and you do not exclude yourself from the Settlement, and the Settlement becomes final, you will be releasing Google and the other Released Parties from any liability regarding any and all Released Claims. In this case, you will give up your right to be part of any other lawsuit against Google and any of the Released Parties regarding the claims released by the Settlement Agreement. The Released Parties are described in Section 1.32 of the Settlement Agreement and in Exhibit A attached hereto.

Questions? Go to www.GoogleBIPASettlement.com or call 1-833-927-3418.
This Settlement affects your legal rights even if you do nothing.

THE LAWYERS REPRESENTING YOU

15. Do I have a lawyer in this case?

Yes, the Court has appointed Robert Ahdoot and Tina Wolfson of Ahdoot & Wolfson, PC, John C. Carey and David P. Milian of Carey Rodriguez Milian, LLP, Scott A. Bursor of Bursor & Fisher, P.A., and Frank S. Hedin of Hedin Hall LLP as Class Counsel to represent you and the Class for the purposes of this Settlement. You may contact Class Counsel via email at ClassCounsel@GoogleBIPASettlement.com or by leaving a message at 1-833-927-3418.

You do not need to hire a lawyer because Class Counsel is working on your behalf.

You may, however, hire your own lawyer at your own cost and expense if you want someone other than Class Counsel to represent you in this Action. Also, if you wish to pursue your own lawsuit separate from this one, or if you exclude yourself from the Settlement, Class Counsel will no longer represent you and you will need to hire your own lawyer.

16. How will the lawyers be paid?

Pursuant to the Settlement Agreement, Class Counsel will file a motion asking the Court to award them attorneys' fees not to exceed 40% of the Settlement Fund, plus reasonable costs and expenses incurred by Class Counsel. The Court will make the final decision as to the amounts to be paid to Class Counsel. Any amount awarded will be deducted from the Settlement Fund before making payments to Class Members. You will not have to pay any fees or expenses.

Class Counsel's application for attorneys' fees, costs, and expenses, and application for Service Payments will be made available on the Settlement Website at www.GoogleBIPASettlement.com at least fourteen (14) days before the deadline for you to comment or object to the Settlement.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you are a Class Member, do not want the monetary benefits the Settlement offers, and want to keep any right you may have to sue or continue to sue Google on your own at your own expense based on the claims raised in this Action or released by the Released Claims (see Section 14 above), then you must take steps to get out of the Settlement. This is called excluding yourself from – or “opting out” of – the Settlement.

17. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must submit a request in writing to exclude yourself from the Settlement. The request must (i) include your name, address, and telephone number; (ii) identify the case name and number, *Rivera, et al. v. Google LLC*, Case No. 2019-CH-00990 (Cir. Ct. Cook Cnty.); (iii) contain a statement that you wish to be excluded from the Settlement (i.e. a statement to the effect that “I hereby request to be excluded from the proposed Settlement Class in *Rivera, et al. v. Google LLC*, Case No. 2019-CH-00990”); and (iv) be physically hand-signed by you.

Questions? Go to www.GoogleBIPASettlement.com or call 1-833-927-3418.
This Settlement affects your legal rights even if you do nothing.

You must either mail your request to be excluded from the Settlement Class to the post office box address below, submit (upload) your request to be excluded through the link on the Settlement Website, or email your request for exclusion to the following email address established for the purpose of accepting exclusions: *Exclusions@GoogleBIPASettlement.com*. To be valid, your request for exclusion must be received by the Settlement Administrator electronically, or if mailed to the address below, **postmarked no later than August 10, 2022**:

Rivera, et al. v. Google LLC Settlement
c/o Google BIPA Settlement Administrator
P.O. Box 5229
Baton Rouge, LA 70821

You cannot exclude yourself by telephone. And you cannot exclude any other Class Member. Requests made on behalf of more than one Class Member are not allowed.

18. If I exclude myself, can I still get any of the Settlement benefits?

No. If you exclude yourself, you are telling the Court that you do not want to be part of the Settlement. You can only receive the monetary benefits provided by the Settlement (as described in this notice) if you do not exclude yourself from the Settlement.

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

No. Unless you exclude yourself, you give up any right to sue Google or any of the Released Parties for the claims made in this case and released by the Settlement (see Section 14 above). You must exclude yourself from this Action to start or continue with your own lawsuit or be part of any other lawsuit against Google or any of the Released Parties. If you have a pending lawsuit, speak to your lawyer in that case immediately.

OBJECT TO OR COMMENT ON THE SETTLEMENT

20. How do I tell the Court that I do not like the Settlement?

If you are a Class Member and have not excluded yourself from the Settlement, you can tell the Court that you do not agree with all or any part of the Settlement. You can give reasons why you think the Court should not approve the Settlement. To object, on or before **August 10, 2022**, you must: (i) file an objection with the Clerk of Court at the address below; (ii) file all copies of papers in support of said objection that you propose to submit at the Final Approval Hearing with the Clerk of Court; and (iii) send copies of such papers via United States mail, hand delivery, or overnight delivery to Class Counsel and Defendant's Counsel at the addresses set forth below. A copy of the objection must also be mailed to the Settlement Administrator.

Your objection must (i) include your full name, current address, and telephone number, as well as the name, address and telephone number of all attorneys representing you (if any); (ii) include the case caption, *Rivera, et al. v. Google LLC*, Case No. 2019-CH-00990; (iii) provide proof that you

Questions? Go to www.GoogleBIPASettlement.com or call 1-833-927-3418.
This Settlement affects your legal rights even if you do nothing.

are in the Settlement Class; (iv) set forth a statement of the legal and factual basis for your objection, including any supporting materials (i.e. all the reasons you are objecting to the Settlement); and (v) include your signature. If you are represented by counsel, you must provide the name and telephone number of your counsel in addition to the information set forth in (i)-(v) above. If you intend to appear at the Final Approval Hearing, either with or without counsel, you must state your intention in the written objection, along with the names of any witnesses you may call to testify and all exhibits you intend to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection. If you do not timely make your objection, you will be deemed to have waived all objections.

Clerk of the Circuit Court of Cook County – Chancery Division Richard J. Daley Center, 8th Floor 50 West Washington Street Chicago, Illinois 60602	Class Counsel c/o Google BIPA Settlement Administrator P.O. Box 5229 Baton Rouge, Louisiana 70821 <i>ClassCounsel@GoogleBIPASettlement.com</i>	Counsel for Google c/o Google BIPA Settlement Administrator P.O. Box 5229 Baton Rouge, Louisiana 70821 <i>Defense@GoogleBIPASettlement.com</i>
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21. What is the difference between objecting and requesting exclusion?

Objecting is simply telling the Court you do not like something about the Settlement while remaining in the Settlement Class and being subject to the Settlement. You can object only if you stay in the Settlement Class (that is, do not exclude yourself). Requesting exclusion is telling the Court you do not want to be part of the Settlement Class or the Settlement. If you exclude yourself, you cannot object to the Settlement because it no longer affects you.

THE FINAL APPROVAL HEARING

22. When and where will the Court decide whether to approve the Settlement?

The Court has preliminarily approved the Settlement and will hold a hearing to decide whether to give final approval to the Settlement on **September 28, 2022, at 10:30 a.m.** before the Honorable Anna M. Loftus in Room 2410 at the Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602. This hearing is referred to as the Final Approval Hearing. This hearing may be held remotely (by video conference only) at the Court's discretion. Check the Settlement Website for updates. If this is the case, instructions on how to join the video conference for the Final Approval Hearing will be posted at www.GoogleBIPASettlement.com prior to the hearing.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and decide whether to approve: the Settlement, Class Counsel's application for attorneys' fees and expenses, and the Service Payments to the Class Representatives. If there are valid objections, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing. The Court will then issue decisions on these issues; we do not know how long those decisions will take.

Please note the date and time of the Final Approval Hearing are subject to change by Court Order. Any changes will be posted at the Settlement Website, www.GoogleBIPASettlement.com.

**Questions? Go to www.GoogleBIPASettlement.com or call 1-833-927-3418.
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23. Do I have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you submit your written objection by **August 10, 2022**, in accordance with the instructions in this Notice (see Section 20 above) the Court will consider it. You may also pay your lawyer to attend, but it is not necessary.

24. May I speak at the Final Approval Hearing?

Yes. If you wish to, you may attend and speak at the Final Approval Hearing, whether or not you intend to object to the Settlement. If you, or your attorney, wish to appear and speak at the Final Approval Hearing, you must do the following prior to **August 10, 2022**: (1) mail or hand-deliver to the Court a “Notice of Intention to Appear” in the Action to the address set forth in Section 20, above; (2) provide copies of any exhibits or documents that you intend to present or use at the hearing; (3) provide a list of all witnesses that you intend to call to give evidence at the hearing; (4) take all other actions or make additional submissions as may be ordered by the Court; and (5) mail or hand-deliver any notice and any exhibits, lists or documents, to Class Counsel and Counsel for Google at the addresses set forth in Section 20, above.

Your Notice of Intention to Appear must be received at the addresses set forth in Section 20 no later than fourteen (14) days prior to the Final Approval Hearing. Please note that if you do not file a Notice of Intention to Appear, you may still appear at the Final Approval Hearing and request to address the Court.

IF YOU DO NOTHING

25. What happens if I do nothing at all?

If you are a Class Member and do nothing, you will remain a member of the Settlement Class and be bound by the Settlement. Also, as a Class Member, if you do not submit a Claim Form, you will not receive a Settlement Payment. But, unless you exclude yourself, you will not be able to sue, or continue to sue, Google or any of the Released Parties – as part of any other lawsuit – about the Released Claims, including the same legal claims that are being resolved by this Settlement.

GETTING MORE INFORMATION

26. How do I get more information?

This Notice summarizes the proposed Settlement. Complete details are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at www.GoogleBIPASettlement.com, by calling 1-833-927-3418 or by writing to *Rivera, et al. v. Google LLC* Settlement, c/o Google BIPA Settlement Administrator, P.O. Box 5229, Baton Rouge, LA 70821. In the event of any conflict between this Notice and the Settlement Agreement, the Settlement Agreement shall be binding. Publicly filed documents can also be obtained by visiting the office of the Clerk of the Circuit Court of Cook County – Chancery Division, Richard J. Daley Center, 50 West Washington Street,

Questions? Go to www.GoogleBIPASettlement.com or call 1-833-927-3418.

This Settlement affects your legal rights even if you do nothing.

Chicago, Illinois 60602, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

If you have questions, you may contact Class Counsel at:

Ahdoot & Wolfson, PC
c/o Google BIPA Settlement Administrator
P.O. Box 5229
Baton Rouge, LA 70821
ClassCounsel@GoogleBIPASettlement.com

Bursor & Fisher, P.A.
c/o Google BIPA Settlement Administrator
P.O. Box 5229
Baton Rouge, LA 70821
ClassCounsel@GoogleBIPASettlement.com

Carey Rodriguez Milian, LLP
c/o Google BIPA Settlement Administrator
P.O. Box 5229
Baton Rouge, LA 70821
ClassCounsel@GoogleBIPASettlement.com

Hedin Hall LLP
c/o Google BIPA Settlement Administrator
P.O. Box 5229
Baton Rouge, LA 70821
ClassCounsel@GoogleBIPASettlement.com

**PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE.
THE COURT CANNOT ANSWER ANY QUESTIONS.**

Questions? Go to www.GoogleBIPASettlement.com or call 1-833-927-3418.
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EXHIBIT A

1.31 “Released Claims” means any and all claims, liabilities, rights, demands, suits, matters, obligations, damages (including consequential damages), losses or costs, liquidated damages, statutory damages, attorneys’ fees and costs, actions or causes of action, of every kind and description, whether known or unknown (including “Unknown Claims” as defined below), fixed or contingent, accrued or not accrued, matured or not yet matured, asserted or unasserted, suspected or unsuspected, including without limitation those related to unknown and unsuspected injuries as well as unknown and unsuspected consequences of known or suspected injuries, that the Releasing Parties now own or hold, or have owned or held at any time prior to the Effective Date of this Agreement, arising from or related to Plaintiffs’ allegations or the alleged collection, capture, receipt, storage, possession, dissemination, transfer, use, sale, lease, trade, or profit from biometric information, biometric identifiers, or any data derived from images of faces in photographs, by or for Google, including all claims arising from or relating to the subject matter of the Google Photos BIPA Cases, and all claims that were brought or could have been brought in the Google Photos BIPA Cases.

1.32 “Released Parties” means Defendant and its direct and indirect corporate parents, subsidiaries, affiliates, principals, investors, owners, members, controlling shareholders, trustees, estates, heirs, executors, administrators, partners, and joint venturers, along with the officers, directors, shareholders, employees, attorneys, representatives, agents, contractors, insurers, successors, predecessors, and assigns of such persons or entities.

1.33 “Releasing Parties” means Plaintiffs and the Settlement Class Members and their respective present or past heirs, executors, estates, administrators, trustees, 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.

11.1 The obligations incurred pursuant to this Agreement shall be a full and final disposition of the Google Photos BIPA Cases and any and all Released Claims, as against all Released Parties.

11.2 Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and each of them.

11.3 Upon the Effective Date, the Releasing Parties covenant and agree that they, and each of them, will forever refrain from asserting, instituting, maintaining, prosecuting, continuing to maintain or prosecute, or threatening or attempting to assert, institute, maintain, or prosecute the Released Claims, in whole or in part, against the Released Parties.

**Questions? Go to www.GoogleBIPASettlement.com or call 1-833-927-3418.
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Hearing Date: 12/19/2022 9:30 AM - 9:35 AM
Location: <<CourtRoomNumber>>
Judge: Calendar, 15

FILED
12/12/2022 9:19 AM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2019CH00990
Calendar, 15
20629162

FILED DATE: 12/12/2022 9:19 AM 2019CH00990

EXHIBIT 6



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

<p>LINDABETH RIVERA, et al. Plaintiffs, v. GOOGLE LLC, Defendant.</p>	<p>Case No. 2019-CH-00990 Calendar 15 Hon. Anna M. Loftus</p>
<p>MICHAEL AZZANO, et al. Plaintiffs, v. GOOGLE LLC, Defendant.</p>	<p>Case No. 2019-CH-11153</p>
<p>NICHOLAS MARQUEZ, et al. Plaintiffs, v. GOOGLE LLC, Defendant.</p>	<p>Case No. 2021-CH-01460</p>

**ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT,
AWARDING ATTORNEYS' FEES AND SERVICE PAYMENTS
AND ENTERING FINAL JUDGMENT**

This matter coming before the Court on September 28, 2022, on the Motion for Entry of Final Judgment and Final Approval of Settlement (the "Motion"), the Court having reviewed and considered the Motion, the Class Action Settlement Agreement ("Settlement Agreement") between Plaintiffs Lindabeth Rivera, Joseph Weiss, Michael Azzano, Brandon Molander, and

Nicholas Marquez (“Plaintiffs”), individually and on behalf of the Settlement Class^[1], by and through Class Counsel, and Defendant Google LLC (“Defendant” or “Google”), including all exhibits and attachments to the Motion, the Settlement Agreement, and the Motion for Attorneys’ Fees and Expenses and for Service Payments, and having conducted the Final Approval Hearing, and being cognizant of all other prior proceedings in this Action,

IT IS HEREBY ORDERED as follows:

1. This Court has jurisdiction over the subject matter of this Action and over all claims raised therein and all parties thereto, including the Class.
2. Pursuant to 735 ILCS 5/2-806, the Court grants final approval of the Settlement Agreement and finds that the Settlement is fair to the Class and was the result of arms’ length negotiations between the Class, through Class Counsel, and Defendant’s Counsel. The Court concludes that the Settlement Agreement is fair, reasonable, and adequate and in the best interest of the Settlement Class.

FINAL CERTIFICATION OF SETTLEMENT CLASS

3. Pursuant to Illinois Code of Civil Procedure 735 ILCS 5/2-801, the Court hereby certifies the following Settlement Class:

All Illinois residents who appeared in a photograph in Google Photos at any time between May 1, 2015 and the date of Preliminary Approval. Excluded from the Class are: (a) any judge, magistrate, or mediator presiding over the Google Photos BIPA Cases and members of their families; (b) Defendant, Defendant’s subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest; (c) Class Counsel; and (d) the legal representatives, successors or assigns of any such excluded persons.

^[1] Capitalized terms used in this Order that are not otherwise defined herein have the meaning assigned to them in the Settlement Agreement.

4. The Court finds that the Settlement Class satisfies the requirements of the Illinois Code of Civil Procedure 735 ILCS 5/2-801: the Settlement Class is sufficiently numerous; there are questions of law or fact common to the Settlement Class; Plaintiffs' claims are typical of those of Settlement Class Members; and Plaintiffs' and their counsel have and will continue to fairly and adequately protect the interests of the Settlement Class.

5. The Court hereby appoints Michael Azzano, Nicholas Marquez, Brandon Molander, Lindabeth Rivera, and Joseph Weiss as the representatives of the Class, and appoints Robert Ahdoot and Tina Wolfson of Ahdoot & Wolfson, PC, John C. Carey and David P. Milian of Carey Rodriguez Milian, LLP, Scott Bursor of Bursor & Fisher, P.A., and Frank S. Hedin of Hedin Hall LLP as Class Counsel.

NOTICE AND ADMINISTRATION

6. Pursuant to this Court's Order granting preliminary approval of the Settlement, Postlethwaite & Netterville, APAC ("P&N") served as Settlement Administrator. This Court finds that the Settlement Administrator performed all duties thus far required as set forth in the Settlement Agreement.

7. The Court finds that the Settlement Administrator has complied with the approved notice process as confirmed by its Declaration filed with the Court. The Court further finds that the Notice plan set forth in the Settlement as executed by the Settlement Administrator satisfied the requirements of Due Process and 735 ILCS 5/2-803. The Notice plan was reasonably calculated and constituted the best notice practicable to apprise Settlement Class Members of the nature of this litigation, the scope of the Settlement Class, the terms of the Settlement, the right of Settlement Class Members to object to the Settlement or exclude themselves from the Settlement Class and

the process for doing so, and of the Final Approval Hearing. Accordingly, the Court finds and concludes that the Settlement Class Members have been provided the best notice practicable under the circumstances, and that the Notice plan was clearly designed to advise the Settlement Class Members of their rights.

EXCLUSIONS AND OBJECTIONS

8. The Settlement Administrator has certified, and the Court hereby finds, that no timely or otherwise valid objections to the Settlement Agreement or to Plaintiffs' Motion for Attorneys' Fees and Expenses and for Service Payments were submitted. Furthermore, the Settlement Administrator has certified, and this Court hereby finds, that 97 valid or timely exclusions were submitted. All persons who have not made their objections to the Settlement in the time-period and manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT

9. The Court finds that the Action satisfies the applicable prerequisites for class action treatment under the Illinois Code of Civil Procedure, 735 ILCS 5/2-801. The Court finds that the settlement of the Action, on the terms and conditions set forth in the Settlement Agreement, is in all respects fundamentally fair, reasonable, adequate, and in the best interests of the Class Members, especially in light of the benefits to the Class Members, the relative strength of Plaintiffs' claims, the defenses raised by the Defendant, the complexity, expense and probable duration of further litigation, the risk and delay inherent in possible appeals, and the risk of collecting any judgment obtained on behalf of the Class. In the Preliminary Approval Order, the

Court found that the Settlement Agreement appeared to be fair, reasonable, and adequate and fell within the appropriate range of possible approval. Essentially, the Settlement provides for each member of the Settlement Class, as that term is defined in the Settlement Agreement, to receive from the Defendant benefits described in the Settlement Agreement. The Settlement Agreement provides these benefits to the Settlement Class even though the Defendant has at all times disputed, and continue to dispute, Plaintiffs' allegations in this lawsuit, including that it captures or collects biometric identifiers or biometric information, and to deny any liability for any of the claims that have been or could have been alleged by Plaintiffs or other members of the Settlement Class.

CLASS COUNSEL'S FEES AND EXPENSES AND SERVICE PAYMENTS

10. The Court hereby awards a Service Payment of \$5,000.00 each to Plaintiffs Michael Azzano, Nicholas Marquez, Brandon Molander, Lindabeth Rivera, and Joseph Weiss in compensation for the time, effort, and risk they undertook as representatives of the Class. These awards shall be paid within the time period and manner as set forth in the Settlement Agreement.

11. The Court hereby grants Plaintiffs' Motion for Attorneys' Fees and Expenses and for Payments. Class Counsel is hereby awarded \$35,000,000.00 in reasonable attorneys' fees and costs incurred in litigating this Action, in the manner specified in the Settlement Agreement. Class Counsel's Fees and Expenses shall be paid within the time period and manner as set forth in the Settlement Agreement.

RELEASE OF CLAIMS

12. This Final Judgment hereby incorporates and gives full effect to the Release set forth in the Settlement Agreement. By virtue of this Final Judgment, all members of the Class who did not validly and timely submit Requests for Exclusion in the manner provided in the Settlement Agreement shall, by operation of this Final Judgment, have fully, finally and forever released, relinquished and discharged the Defendant and the Released Parties as set forth in Section 1.32 of the Settlement Agreement from the Released Claims as set forth in Section 1.31 of the Settlement Agreement. Furthermore, all members of the Class who did not validly and timely submit exclusions in the manner provided in the Settlement Agreement are hereby permanently barred and enjoined from (1) filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting or continuing, either directly or in any other capacity, either individually or as a class, any action or proceeding in any court, agency, arbitration, tribunal or jurisdiction, asserting any claims released pursuant to the Settlement Agreement, or seeking an award of fees and costs of any kind or nature whatsoever and pursuant to any authority or theory whatsoever, relating to or arising from the Action and/or as a result of or in addition to those provided by the Settlement Agreement; and (2) organizing Settlement Class Members who have or have not excluded themselves from the Settlement Class into a separate class for purposes of pursuing as a purported class action any lawsuit or arbitration or other proceeding (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action) based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation and/or the Released Claims, except that Settlement Class Members are not precluded from participating in any investigation or suit initiated by a state or federal agency. Any Person who knowingly violates such injunction shall pay the attorneys' fees and costs

incurred by Defendant and/or any other Released Persons and Class Counsel as a result of the violation.

RESIDUAL PAYMENT TO NON-PROFIT ORGANIZATIONS

13. Pursuant to paragraph 3.5 of the Settlement Agreement, and the Parties' selection, the Residual (as defined therein) shall be paid to the following non-profit organization(s) (if more than one organization is listed the Residual shall be divided equally among the listed recipients):

(1) Greater Chicago Legal Clinic

(2) Chicago Volunteer Legal Services

AMENDMENTS AND MODIFICATIONS

14. Class Counsel and Defendant are hereby authorized, without further approval from the Court, to agree to and adopt such amendments and modifications of the Settlement and its implementing documents (including all Exhibits to the Settlement Agreement) that they deem appropriate, provided that such amendments or modifications (1) shall be consistent in all material respects with this Final Judgment, and (2) do not limit the rights of Settlement Class Members.

PRECLUSIVE EFFECT

15. The Settlement Agreement and this Final Judgment are binding on and shall have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings encompassed by the Release maintained by or on behalf of Plaintiffs and the Settlement Class Members, and their respective present or part heirs, executors, estates, administrators, trustees,

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.

INCORPORATION OF SETTLEMENT AGREEMENT INTO FINAL JUDGMENT

16. The provisions of the Settlement Agreement and the relief provided to the Settlement Class therein are hereby fully incorporated into this Final Judgment.

ENTRY OF FINAL JUDGMENT

17. Finding that there is no just reason for delay, the Court orders that this Order for Final Approval of Class Action Settlement, Awarding Attorneys' Fees and Expenses, Service Payments and Entry of Final Judgment shall constitute a final judgment. The Clerk of the Court is directed to enter this Order on the docket forthwith. The above-captioned action is hereby dismissed in its entirety *with prejudice*. Without affecting the finality of the Judgment hereby entered, the Court reserves jurisdiction over the implementation of the Settlement Agreement, including enforcement and administration of the Settlement Agreement and this Final Judgment.

IT IS SO ORDERED.

Judge Anna M. Loftus
ENTERED
SEP 28 2022
1st
Anna M. Loftus
Judge Anna M. Loftus, No. 2102

Hearing Date: No hearing scheduled
Location: <<CourtRoomNumber>>
Judge: Calendar, 15

FILED
12/12/2022 9:08 AM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2019CH00990
Calendar, 15
20628607

Appearance and Jury Demand *

(12/01/20) CCG 0009

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Chancery DEPARTMENT/ DISTRICT

Lindabeth Rivera, et al.
Plaintiff
v.
Google LLC
Defendant

Case No. 2019-CH-00990
Claimed \$:
Return Date: Time:
Court Date: Room No.:

Address of Court District for Filing

APPEARANCE AND JURY DEMAND *

- General Appearance (checked) 0900 - Fee Paid 0904 - Fee Waived
Jury Demand * 0908 - Trial Lawyers Appearance - No Fee
1900 - Appearance and Jury Demand/Fee Paid Twelve-person Jury
1904 - Appearance and Jury Demand/No Fee Paid Six-person Jury

The undersigned enters the appearance of: Plaintiff (checked) Defendant

Litigant's Name: Jodi White Jones

Signature: /s/

- Initial Counsel of Record (checked) Pro Se (Self-represented) 2810 Rule 707 Out-of-State Counsel (pro hac vice)
Additional Appearance Substitute Appearance

Atty. No.: 62075 Pro Se 99500

Name: J. Eli Wade-Scott

Atty. for (if applicable):

Intervenor-Plaintiff

Address: 350 N LaSalle Street, Suite 1400

City: Chicago

State: IL Zip: 60654 Phone: (312) 242-0859

Primary Email: ewadescott@edelson.com

* Strike demand for trial by jury if not applicable.

I certify that a copy of the within instrument was served on all parties who have appeared and have not heretofore been found by the Court to be in default for failure to plead.

/s/ J. Eli Wade-Scott
Attorney for Plaintiff (checked) Defendant

Iris Y. Martinez, Clerk of the Circuit Court of Cook County, Illinois

cookcountyclerkofcourt.org

FILED DATE: 12/12/2022 9:08 AM 2019CH00990