

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

ALEX PRELIPCEANU, individually and )  
on behalf of similarly situated individuals, )  
)  
*Plaintiff,* )  
)  
v. )  
)  
JUMIO CORPORATION, a Delaware )  
corporation. )  
)  
*Defendant.* )  
)  
\_\_\_\_\_ )

No. 2018-CH-15883

Hon. Michael T. Mullen

**PLAINTIFF’S MOTION & MEMORANDUM OF LAW IN SUPPORT OF  
APPROVAL OF ATTORNEYS’ FEES, EXPENSES, & INCENTIVE AWARD**

Plaintiff, Alex Prelipceanu, by and through his attorneys, and pursuant to 735 ILCS 5/2-801 and this Court’s December 23, 2019 Preliminary Approval Order, hereby moves for an award of attorneys’ fees and expenses for Class Counsel, as well as an incentive award for Plaintiff as the Class Representative in connection with the class action settlement reached with Defendant, Jumio Corporation (“Jumio”) (“Defendant”). Defendant does not object to the relief sought herein. In support of this Motion, Plaintiff submits the following memorandum of law.

Dated: February 5, 2020

Respectfully submitted,

ALEX PRELIPCEANU, individually and on  
behalf of the Settlement Class

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## I. INTRODUCTION

The Class Action Settlement<sup>1</sup> that Class Counsel have achieved in this case is an exceptional result for Settlement Class Members. It establishes a non-reversionary Settlement Fund of \$7,000,000 which provides each Settlement Class Member who files a valid, timely claim with a pro rata share of the Settlement Fund in cash for having their biometrics collected by Defendant in alleged violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, et seq. (the “BIPA”). In addition to the substantial financial benefit to the Settlement Class Members, the Settlement also includes terms that provide significant non-monetary prospective relief designed to eliminate the allegedly unlawful biometric collection and use practices at issue in this case.

The robust notice plan – which includes direct notice by U.S. Mail to all Settlement Class Members, internet notice, publication notice in newspapers, and the creation of the Settlement Website – commenced on January 27, 2020. As of the filing of this Motion, thousands of claims have already been submitted, with more than seven weeks remaining before the Claims Deadline on March 22, 2020. With this Motion, Class Counsel request a fee of 40% of the total Settlement Fund obtained for the Settlement Class, amounting to \$2,800,000, plus litigation expenses. As explained in detail below, Class Counsel’s requested fee award is justified given the exceptional monetary and non-monetary relief provided under the Settlement; is consistent with Illinois law and fee awards granted in other cases in Illinois courts; and, is also reasonable given the time and costs Class Counsel have committed and will continue to dedicate to resolving this litigation for the benefit of the Settlement Class Members. Both Class Counsel and the Class Representative

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<sup>1</sup> Unless otherwise indicated, capitalized terms have the same meaning as those terms are used in the Settlement Agreement, which is attached hereto as Exhibit A.

devoted significant time and effort to the prosecution of the Settlement Class Members' claims, and their efforts have yielded an extraordinary benefit to the Class. The requested attorneys' fees and costs and Incentive Award are amply justified in light of the investment, risks, and excellent results obtained for the Settlement Class Members. Plaintiff and Class Counsel respectfully request that the Court approve attorneys' fees of \$2,800,000, plus expenses, and the agreed-upon Incentive Award of \$10,000 for Plaintiff as Class Representative.

## **II. BACKGROUND**

### **A. The Illinois Biometric Information Privacy Act ("BIPA")**

BIPA is an Illinois statute that provides individuals with a right to privacy in their biometric information. To effectuate its purpose, BIPA requires private entities which seek to use biometric identifiers (e.g., fingerprints or facial geometry) or biometric information (any information gathered from a biometric identifier which is used to identify an individual)<sup>2</sup> to:

(1) inform the person whose biometrics are to be collected in writing that biometrics will be collected or stored;

(2) inform the person whose biometrics are to be collected in writing of the specific purpose and the length of term for which such biometrics are being collected, stored and used;

(3) receive a written release from the person whose biometrics are to be collected allowing the capture and collection of their biometrics; and

(4) publish a publicly available retention schedule and guidelines for permanently destroying biometrics. 740 ILCS 14/15.

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<sup>2</sup> "Biometric identifiers" and "biometric information" are collectively referred to herein as "biometrics."

BIPA was enacted in large part to protect the privacy rights of persons in Illinois, to provide them with a means of enforcing their rights, and to regulate the practice of collecting, using and disseminating such sensitive and irreplaceable information.

**B. The Case and Procedural History**

1. *Plaintiff's Allegations*

In this case, Plaintiff alleges that Defendant utilizes biometric software that collects consumers' biometric information in the form of scans of their facial geometry for identity and/or age verification purposes. (First Amended Complaint ("FAC"), Dkt. 18, ¶ 3). Plaintiff alleges that use of such software in Illinois is subject to regulation by BIPA. (FAC, ¶ 5). Plaintiff further alleges that Defendant has failed to comply with BIPA by: (1) failing to inform individuals prior to capturing their biometrics that it will be capturing such information; (2) failing to receive a written release prior to the capture of consumers' biometrics; (3) failing to inform the person whose biometrics are being captured of the specific purpose and length of term for which such biometrics are being captured, and; (4) failing to publish a publicly available retention schedule and guidelines for permanently destroying biometrics. (FAC, ¶ 59).

2. *Procedural History and the Parties' Settlement Negotiations*

On December 21, 2018, Plaintiff filed his original Class Action Complaint against Defendant in the Circuit Court of Cook County, Illinois, captioned *Prelipceanu v. Jumio Corp.* No. 18-CH15833. Defendant thereafter hired competent and experienced defense counsel who removed this action to the U.S. District Court for the Northern District of Illinois on January 28, 2019. *See Prelipceanu v. Jumio Corp.*, No. 19-cv-00561, Dkt. 1-1 (N.D. Ill. 2019). On March 29, 2019, Defendant filed a Motion to Dismiss. (Dkts. 14-16). In response, on April 15, 2019, Plaintiff



filed his First Amended Complaint. (Dkt. 18). In response to Plaintiff's First Amended Complaint, Defendant filed its Answer and Affirmative Defenses in May 2019. (Dkt. 20).

In light of potentially significant discovery expenses, uncertainty of the state of the ever-evolving law surrounding BIPA, and the possibility of incurring liability on a class-wide basis, Defendant agreed to engage in a private mediation. Plaintiff's counsel met with Defendant's counsel, as well as Defendant's corporate representative, for a full-day, highly contentious mediation with the Hon. James F. Holderman (ret.) of JAMS Chicago, former Chief Judge for the U.S. District Court for the Northern District of Illinois, who possesses significant expertise in class settlements, including BIPA settlements.

Following the full-day mediation with Judge Holderman, counsel for Plaintiff and for Defendant continued to expend significant further efforts – including numerous meetings conducted in person and telephonically – over the course of the next four months negotiating specific terms of the Settlement that was ultimately reached, including the forms of notice that were to compose the Notice Program, the scope of the release, the quality of prospective relief, and the distribution of monetary settlement benefits. On multiple occasions the Parties required further meetings with Judge Holderman to assist in resolving disputes in the negotiations as to the specific terms of the Settlement. Ultimately, and with the continued assistance of Judge Holderman, the Parties were ultimately able to reduce the Settlement Agreement and related exhibits to writing. Such a result was only possible with the extensive involvement of Judge Holderman and only after the exchange of extensive discovery – both written and oral discovery – including the exchange of thousands of documents and information regarding Defendant's biometric software and the identification of potential class members. The Parties stipulated to remand the federal lawsuit to the Circuit Court of Cook County, Chancery Division, where it was

originally filed, and on December 2, 2019, the case was remanded from federal court to this Court, where the Settlement Agreement was preliminarily approved on December 23, 2019.

### **III. THE SETTLEMENT**

#### **A. Monetary and Non-Monetary Relief to The Settlement Class Members**

Class Counsel's prosecution of this litigation has culminated in this class-wide Settlement that provides substantial monetary relief to the Settlement Class Members, as well as significant prospective relief through changes to Defendant's practice that will greatly reduce or eliminate further intrusions on the privacy of the Settlement Class Members. The Settlement establishes a \$7,000,000.00 cash Settlement Fund. (Ex. A, ¶ 3.2). Each Settlement Class Member who submits a valid, timely Claim will be entitled to a *pro rata* cash payment from the Settlement Fund to be paid from the Settlement Fund after payments for notice and administration costs, Court-approved attorneys' fees and expenses, and the Court-approved Incentive Award to the Class Representative. (*Id.*, ¶ 3.3).<sup>3</sup> The Settlement also provides significant non-monetary relief of an injunctive nature to the Settlement Class and the public. Defendant has agreed to implement material changes to its business practices in order to become compliant with BIPA. These changes will result in individuals such as Plaintiff having the opportunity to provide informed consent only after first obtaining the information required under BIPA. (*Id.*, ¶ 3.1).

#### **B. Pursuant To The Settlement Agreement's Notice Plan, Direct Notice Has Been Sent To The Class Members.**

Under the Settlement Agreement's Notice Plan, which has already gone into effect, direct notice has been provided by U.S. Mail to the putative Class Members. (*See* Declaration of Evan M. Meyers ("Meyers Decl."), attached hereto as Exhibit B, ¶ 18). Notice by Internet banner ads

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<sup>3</sup> The Settlement Fund is non-reversionary and will be fully paid out, but the total payment to each Settlement Class Member will ultimately depend on the number of valid claims submitted.

and by publication in multiple newspapers has also gone into effect. (*Id.*) In addition, the Settlement Website with the Claim Form, Long Form Notice, and all relevant case information and deadlines is online and available to the Class and the public at large. (*Id.*)

#### IV. ARGUMENT

##### A. **The Court Should Award Class Counsel’s Requested Attorneys’ Fees.**

Pursuant to the Settlement, Class Counsel seek attorneys’ fees in the amount of \$2,800,000, which amounts to 40% of the Settlement Fund, plus litigation expenses. (Ex. A, ¶ 12.1). Such a request is within the range of fees approved in other class actions and is fair and reasonable in light of the work performed by Class Counsel and the recovery secured on behalf of the Settlement Class Members. It is well settled that attorneys who, by their efforts, create a common fund for the benefit of a class are entitled to reasonable compensation for their services. *See Wendling v. S. Ill. Hosp. Servs.*, 242 Ill. 2d 261, 265 (2011) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)) (“a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”). In cases where, as here, a class action settlement results in the creation of a settlement fund, “[t]he Illinois Supreme Court has adopted the approach taken by the majority of Federal courts on the issue of attorney fees[.]” *Baksinski v. Northwestern Univ.*, 231 Ill. App. 3d 7, 13 (1st Dist. 1992) (citing *Fiorito v. Jones*, 72 Ill.2d 73 (1978)). That is, where “an equitable fund has been created, attorneys for the successful plaintiff may directly petition the court for the reasonable value of those of their services which benefited the class.” *Id.* at 14 (citing *Fiorito*, 72 Ill.2d 73).

This rule “is based on the equitable notion that those who have benefited from litigation should share in its costs.” *Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007) (citing *Skelton v. Gen. Motors Corp.*, 860 F.2d 250, 252 (7th Cir. 1988)). In deciding an appropriate fee in such

cases, “a trial judge has discretionary authority to choose a percentage[-of-the-fund] or a lodestar method[.]” *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 58 (citing *Brundidge v. Glendale Federal Bank*, F.S.B., 168 Ill. 2d 235, 243–44 (1995)). Under the percentage-of-the-fund approach, the attorneys’ fees awarded are “based upon a percentage of the amount recovered on behalf of the plaintiff class.” *Brundidge*, 168 Ill. 2d at 238. Alternatively, when applying the lodestar approach, the attorneys’ fees to be awarded are calculated by determining the total amount of hours spent by counsel in order to secure the relief obtained for the class at a reasonable hourly rate, multiplied by a “weighted” “risk multiplier” that takes into account various factors such as “the contingency nature of the proceeding, the complexity of the litigation, and the benefits that were conferred upon the class members.” *Id.* at 240. Here, Plaintiff submits that the Court should apply *the percentage-of-the-fund approach*—the approach that is typically used in the vast majority of common fund class actions.

**B. Class Counsel’s Requested Fees Are Reasonable Under The Percentage-Of-The-Fund Method Of Calculating Attorneys’ Fees.**

The vast majority of courts presiding over class action settlements in suits brought for violations of law providing for statutory damages have adopted the percentage-of-the-fund method in determining the appropriate amount of attorneys’ fees to award class counsel. *See, e.g., Willis v. iHeartMedia Inc.*, No. 2016-CH-02455, August 11, 2016 Final Judgment and Order of Dismissal (Ill. Cir. Ct. Cook Cnty.) (Atkins, J.) (granting final approval and awarding class counsel 40% of settlement fund in a TCPA class action); *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 794 (N.D. Ill. 2015) (finding that even though “in common fund cases like this one, district courts have discretion to choose either the lodestar or a percentage approach to calculating fees . . . [T]he court agrees with Class Counsel that the fee award . . . should be calculated as a percentage of the money recovered for the class”); *Sabon*, 2016 IL App (2d) 150236, at ¶ 59

(affirming trial court’s award of attorneys’ fees in TCPA suit based on a percentage-of-the-fund approach); *Sterk v. Path, Inc.*, No. 2015-CH-08609 (Cir. Ct. Cook Cnty, Ill.) (Mikva, J.) (granting final approval and awarding class counsel 35% of settlement fund in a TCPA class action); *Sawyer v. Stericycle, Inc.*, No. 2015-CH-07190 (Cir. Ct. Cook Cnty, Ill. ) (Martin, Jr., J.) (granting final approval awarding class counsel attorneys’ fees based on percentage-of-the-fund); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 500 (N.D. Ill. 2015) (“[t]he Court agrees with [plaintiff’s] counsel that the fee award in this case should be calculated based on a percentage-of-the-fund method”). Importantly, and as discussed in more detail below, nearly all, if not all, BIPA class action settlements that have received final approval in the Circuit Court of Cook County have provided for attorneys’ fee awards that were based on a percentage-of-the-fund analysis.

The use of the percentage-of-the-fund approach in common fund class settlements likely flows from, and is supported by, the fact that the percentage-of-the-fund approach promotes early resolution of the matter, as it disincentivizes protracted litigation driven solely by counsel’s efforts to increase their lodestar. *Brundidge*, 168 Ill.2d at 242. For this reason, a percentage-of-the-fund method best aligns the interests of the class and its counsel, as class counsel are encouraged to seek the greatest amount of relief possible for the class rather than simply seeking the greatest possible amount of attorney time regardless of the ultimate recovery obtained for the class.

By contrast, a lodestar approach encourages significant inefficiencies and further litigation as the parties and the court have to review the extensive billing records produced and determine the reasonableness of the time spent on any particular task and whether it actually furthered the litigation. *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 924 (1st Dist. 1995) (“Percentage analysis approach eliminates the need for additional major litigation . . . as a result of plaintiffs’ request for attorneys’ fees . . . nearly half of the 11,000 page record in this case is devoted to fee litigation.”).

Applying a percentage-of-the-fund approach is also generally more appropriate in cases like this one because it best reflects the fair market price for the legal services provided by the class counsel. *See Ryan*, 274 Ill. App. 3d at 923 (noting that “a percentage fee was the best determinant of the reasonable value of services rendered by counsel in common fund cases”) (citing *Court Awarded Attorney Fees*, Report of the Third Circuit Task Force, 108 F.R.D. 237, 255–56 (3d. Cir. 1985)); *Sutton*, 504 F.3d at 693 (directing district court on remand to consult the market for legal services so as to arrive at a reasonable percentage of the common fund recovered).

Here, the percentage-of-the-fund method would most fairly compensate Class Counsel for the significant time and resources expended in obtaining relief for the Settlement Class Members, while taking into account the magnitude of the recovery achieved for the Settlement Class Members, the substantial risk of non-payment in bringing this litigation, particularly in light of the uncertainty in the law surrounding BIPA, and the significant additional resources that will be dedicated to implementation of the Settlement. The percentage-of-the-fund approach also accurately reflects the contingent nature of the fees negotiated between Class Counsel and Plaintiff, who agreed *ex ante* that up to 40% of any settlement fund plus reimbursement of costs and expenses would represent a fair award of attorneys’ fees from a fund recovered for the class. (Meyers Decl., ¶ 20); *see also In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d at 795 (applying the percentage-of-the-fund approach and noting that class members would typically negotiate fee arrangement based on percentage method rather than lodestar). Accordingly, the Court should adopt and apply the percentage-of-the-fund approach here. Under this approach, Class Counsel’s requested attorney fees are reasonable in light of the work performed and the recovery secured for the Settlement Class Members.

1. *The requested attorneys' fees amount to 40% of the Settlement Fund—a percentage within the range found reasonable in other cases.*

The requested fee award of \$2,800,000 represents 40% of the Settlement Fund. This percentage is within the range of attorneys' fee awards that courts, including this Court, have found reasonable in other class action settlements. Importantly, four judges in the Circuit Court of Cook County have recently entered final approval in BIPA class action settlements, which included final approval of a 40% attorneys' fee award based on a percentage-of-the-fund analysis. *See Smith v. Pineapple Hospitality Co. et al.*, 18-CH-06589 (Cir. Ct. Cook County, Ill. 2020) (Moreland, J.); *McGee v. LSC Communications, Inc., et al.*, 17-CH-12818 (Cir. Ct. Cook County, Ill. 2019) (Atkins, J.); *Zhirovetskiy v. Zayo Group, LLC*, 17-CH-09323 (Cir. Ct. Cook County, Ill. 2019) (Flynn, J.); *Svagdis v. Alro Steel Corp.*, 17-CH-12566 (Cir. Ct. Cook County, Ill. 2018) (Larsen, J.); *see also Willis v. iHeartMedia Inc., See Willis*, No. 16-CH-02455 (August 11, 2016 Final Judgment and Order of Dismissal, at 5) (Atkins, J.) (awarding attorneys' fees and costs of 40% of an \$8,500,000 common fund in class settlement).

Such fee awards are consistent with established precedent. *See, e.g., Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97 C 7694, 2001 WL 1568856, at \*4 (N.D. Ill. Dec. 10, 2001) (noting that a "customary contingency fee" ranges "from 33 1/3% to 40% of the amount recovered") (citing *Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986)); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 599 (N.D. Ill. 2011) (same); *Sabon*, 2016 IL App (2d) 150263, at ¶¶ 59, 65 (affirming over objections an attorney fee award of 33% of the fund); *Sterk*, No. 2015-CH-08609 (approving attorneys' fee award in TCPA case of 35% of the fund); *Meyenburg v. Exxon Mobil Corp.*, No. 3:05-CV-15-DGW, 2006 WL 2191422, at \*2 (S.D. Ill. July 31, 2006) ("33 1/3% to 40% (plus the cost of litigation) is the standard contingent fee percentages in this legal marketplace for comparable commercial litigation"); *Herbert Newberg & Alba Conte, Newberg*

on Class Actions § 15.83 (William B. Rubenstein ed.; 5th ed.) (noting that fifty percent of the fund appears to be an approximate upper limit on fees and expenses).

2. *The requested percentage of attorneys' fees is appropriate given the significant risks involved in continued litigation.*

The attorneys' fees sought in this case are particularly reasonable in light of the risks of bringing the litigation and the relief that Class Counsel have obtained for the Settlement Class. *See Sabon, Inc.*, 2016 IL App (2d) 150236, at ¶ 59 (upholding fee award based on percentage-of-the-fund in light of the “substantial risk in prosecuting this case under a contingency fee agreement given the vigorous defense of the case and defenses asserted by [the defendant]”); *Ryan*, 274 Ill. App. 3d at 924 (noting the trial court’s fee award was reasonable given the funds recovered for the class and the contingency risk).

This Settlement was reached during a time where case law related to biometric software vendors was, at best, mixed, if not decidedly against the Class Members’ interests, with Defendant having much stronger defenses than the ordinary BIPA defendant. Specifically, Defendant argued that most (if not all) actions, took place outside Illinois, setting up a genuine threat to defeat any effort to certifying the Class. *See, e.g., Rivera v. Google Inc.*, 238 F. Supp. 3d 1088, 1104 (N.D. Ill. 2017) at 1100 (“[BIPA] is not authorized to have extraterritorial effect.”); *Monroy v. Shutterfly, Inc.*, No. 16 C 10984, 2017 WL 4099846, at \*5 (N.D. Ill. Sept. 15, 2017). Defendant’s arguments also posed constitutional challenges to BIPA under the dormant Commerce Clause, which prevents states from enacting regulations that overly burden interstate commerce. *See, e.g., Nat’l Solid Waste Mgmt. Ass’n v. Meyer*, 63 F.3d 652, 657 (7th Cir. 1995) (states cannot regulate conduct in neighboring states under the Dormant Commerce Clause); *Pike Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).



Perhaps Defendant's strongest defense was in BIPA's additional exemptions applicable to many end users (therefore giving rise to additional individualized issues that could arguably predominate). For example, Defendant was prepared to argue that § 14/15(d) of BIPA does not apply to disclosures that were necessary to complete a financial transaction – e.g., to financial institutions or to affiliates of financial institutions that are subject to Title V of the federal Gramm-Leach-Bliley Act of 1999 and the rules promulgated thereunder – which would exempt many of the biometric transactions at issue, as a common use of Defendant's NetVerify software was to complete financial transactions.

As a result, this litigation presented multiple risks to Plaintiff's ultimate success and Defendant would have strenuously defended the claims asserted had this Settlement not been reached. Indeed, in light of the Illinois Supreme Court's decision in the *Rosenbach v. Six Flags* matter, there still remains the distinct possibility that Defendant could succeed on any of its defenses to liability against Plaintiff's individual claims, which would result in Settlement Class Members recovering nothing. As a result, a settlement providing for such a significant cash benefit is a truly exceptional result.

3. *The substantial monetary and non-monetary relief obtained on behalf of the Settlement Class Members further justify the requested percentage of attorneys' fees.*

Despite the significant risks inherent in any further litigation, Class Counsel were able to obtain an excellent result for the Settlement Class Members. As stated above, the Settlement Agreement provides for the creation of a \$7,000,000.00 cash Settlement Fund, from which Settlement Class Members can submit a claim to receive an equal *pro rata* share.

In addition to the monetary compensation that Class Counsel have obtained for the Settlement Class Members, the Settlement also provides for substantial prospective relief. Under

the terms of the Settlement Agreement negotiated by Class Counsel, Defendant has agreed to implement substantial, material changes to its business practices in order to become compliant with BIPA (Ex. A, ¶ 3.1), a significant benefit vis-à-vis the privacy rights of the Settlement Class Members and the public at large.

The non-monetary relief obtained by Class Counsel in this case further justifies the reasonableness of the attorneys' fee being sought here. *See Spano v. Boeing Co.*, No. 06-cv-743, 2016 WL 3791123, at \*1 (S.D. Ill. Mar. 31, 2016) (“A court must also consider the overall benefit to the Class, including non-monetary benefits, when evaluating the fee request. . . . This is important so as to encourage attorneys to obtain meaningful affirmative relief”) (citing *Beesley v. Int’l Paper Co.*, No. 06-cv-703, 2014 U.S. Dist. LEXIS 12037, at \*5 (S.D. Ill. Jan 31, 2014)); *Manual for Complex Litigation*, Fourth, § 21.71, at 337 (2004)); *see also Hall v. Cole*, 412 U.S. 1, 5 n.7 (1973) (awarding attorneys’ fees when relief is obtained for the class “must logically extend, not only to litigation that confers a monetary benefit to others, but also litigation which corrects or prevents an abuse which would be prejudicial to the rights and interests of those others.”).

Given the significant monetary compensation obtained for the Settlement Class Members and the changes in Defendant’s biometric collection and use practices implemented as a result of the Settlement, an attorneys’ fee award of 40% of the Settlement Fund is reasonable and fair compensation—particularly, as discussed above, in light of the significant uncertainty in the relevant law, the “substantial risk in prosecuting this case under a contingency fee agreement” and the “defenses asserted by [Defendant].” *Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 59.

**C. The Court Should Also Award Class Counsel’s Requested Reimbursable Litigation Expenses.**

Class Counsel have expended \$17,103.00 in reimbursable expenses related to filing fees, mediation costs, copying, depositions, class member communication and case administration, with

the potential of more expenses yet to come. (Meyers Decl., ¶ 21.) Courts regularly award reimbursement of the expenses counsel incurred in prosecuting the litigation. *See, e.g., Kaplan v. Houlihan Smith & Co.*, No. 12 C 5134, 2014 WL 2808801, at \*4 (N.D. Ill. June 20, 2014) (awarding expenses “for which a paying client would reimburse its lawyer”); *Spicer v. Chicago Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1256 (N.D. Ill. 1993) (detailing and awarding expenses incurred during litigation). Therefore, Class Counsel request the Court approve as reasonable the incurred expenses, a request which Defendant does not oppose. Accordingly, this Court should award a total fee and expense award to Class Counsel of \$2,817,103.00.

**D. The Agreed-Upon Incentive Award For Plaintiff Is Reasonable And Should Be Approved.**

The requested \$10,000 Incentive Award is reasonable and modest compared to other incentive awards granted to class representatives in similar class actions. Because a named plaintiff is essential to any class action, “[i]ncentive awards are justified when necessary to induce individuals to become named representatives.” *Spano*, 2016 WL 3791123, at \*4 (approving incentive awards of \$25,000 and \$10,000 for class representatives) (internal citation omitted); *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 497 (1st Dist. 1992) (noting that incentive awards “are not atypical in class action cases . . . and serve to encourage the filing of class actions suits.”).

Here, Plaintiff’s efforts and participation in prosecuting this case justify the \$10,000 Incentive Award sought. Even though no award of any sort was promised to Plaintiff prior to the commencement of the litigation or at any time thereafter (Meyers Decl., ¶ 25), Plaintiff nonetheless contributed his time and effort in pursuing his own BIPA claim, as well as in serving as a representative on behalf of the Settlement Class Members—exhibiting a willingness to participate

and undertake the responsibilities and risks attendant with bringing a representative action. (*Id.*, ¶¶ 22-24).

Plaintiff participated in the initial investigation of his claim and provided documents and information to Class Counsel to aid in preparing the initial pleadings, reviewed the pleadings prior to filing, consulted with Class Counsel on numerous occasions, and provided feedback on a number of other filings including, most importantly, the Settlement Agreement. (*Id.*).

Further, agreeing to serve as the Class Representative meant that Plaintiff publicly placed his name on this suit and opened himself to “scrutiny and attention” which, in and of itself, “is certainly worthy of some type of remuneration.” *See Schulte*, 805 F. Supp. 2d at 600–01. Were it not for Plaintiff’s willingness to bring this action on a classwide basis, his efforts and contributions to the litigation by assisting Class Counsel with their investigation and filing of this suit, and his continued participation and monitoring of the case up through settlement, the substantial benefit to the Settlement Class Members afforded under the Settlement Agreement would not exist. (Meyers Decl., ¶ 24).

The \$10,000 Incentive Award requested for Plaintiff is well in line with the average incentive award granted in class actions. Indeed, numerous courts that have granted final approval in similar class action settlements have awarded similar or significantly larger incentive awards than the one sought here. *See, e.g., Zhirovetskiy*, 17-CH-09323 (Cir. Ct. Cook County, Ill. 2019) (BIPA class action where Judge Flynn approved \$10,000 incentive award to the class representative); *Seal v. RCN Telecom Services, LLC*, No. 2016-CH-07033, February 24, 2017 Final Order and Judgment, ¶ 20 (Cir. Ct. Cook Cnty., Ill.) (Atkins, J.) (awarding \$10,000 incentive award to each of two named plaintiffs); *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11-CV-4462, 2015 WL 1399367, at \*6 (N.D. Ill. Mar. 23, 2015) (awarding \$25,000 incentive award);

*Aranda v. Caribbean Cruise Line, Inc.*, No. 12 C 4069, 2017 WL 1369741, at \*10 (N.D. Ill. Apr. 10, 2017) (awarding \$10,000 to each of the class representatives); *Spano*, 2016 WL 3791123, at \*4 (approving \$10,000 incentive awards).

Compensating Plaintiff for the risks and efforts he undertook to benefit the Settlement Class Members is reasonable under the circumstances of this case, especially in light of the exceptional results obtained. As shown above, courts have regularly approved incentive awards in similar class action litigation consistent with and greater than the agreed-upon \$10,000 Incentive Award here. Moreover, no objection to the Incentive Award has been raised to date. Accordingly, an Incentive Award of \$10,000 to Plaintiff is reasonable, justified by Plaintiff's time and effort in this case, and should be approved.

#### V. CONCLUSION

For the foregoing reasons, Plaintiff and Class Counsel respectfully request that the Court enter an Order: (i) approving an award of attorneys' fees and costs of \$2,817,103.00; and (ii) approving an Incentive Award in the amount of \$10,000.00 to Plaintiff in recognition of his significant efforts on behalf of the Settlement Class Members.

Dated: February 5, 2020

Respectfully submitted,

ALEX PRELIPCEANU, individually and on behalf of the Settlement Class

By: /s/ David L. Gerbie  
*One of Plaintiff's Attorneys*

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*Counsel for Plaintiff and Class Counsel*

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that on February 5, 2020, a copy of the foregoing *Plaintiff's Motion & Memorandum of Law in Support of Approval of Attorneys' Fees, Expenses, & Incentive Award* was filed electronically with the Clerk of Court.

/s/ David L. Gerbie

FILED  
2/5/2020 7:15 PM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2018CH15883

# Exhibit A

FILED DATE: 2/5/2020 7:15 PM 2018CH15883



## SETTLEMENT AGREEMENT

This Settlement Agreement (“**Agreement**”) is entered into as of this 27 day of November, 2019, by Plaintiff Alex Prelipceanu (“**Plaintiff**”), on behalf of himself and the Settlement Class as defined below, on the one hand, and Jumio Corporation (“**Defendant**”) on the other. Plaintiff and Defendant are each referred to herein as a **Party**, and collectively, as the **Parties**.

WHEREAS, in December 2018, Plaintiff filed a class action entitled *Prelipceanu v. Jumio Corp.*, Case No. 2018-CH-15883, in the Circuit Court of Cook County, Illinois, Chancery Division before Judge Michael T. Mullen, asserting claims relating to the alleged collection of biometric information by Defendant (the “**Action**”); and

WHEREAS, Defendant has denied and continues to deny each and every allegation and all charges of wrongdoing or liability of any kind whatsoever that were or could have been asserted in the Action; and

WHEREAS, following arms-length negotiations through multiple sessions with Chief Judge James Holderman of JAMS Chicago, the Parties reached a settlement and agreed to the key terms of a settlement of all claims; and

WHEREAS, the Parties continued negotiations resulting in this Agreement, through which the Parties agree and desire to fully and finally resolve all matters pertaining to, arising from, or associated with the Action, including all claims Plaintiff and Settlement Class Members have or may have had against Defendant and related persons and entities, as set forth herein; and

WHEREAS, while Plaintiff believes the claims in the Action possess 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 Plaintiff’s and the Settlement Class Members’ claims in order to resolve all controversy between them and to avoid the uncertainty, risk, expense, and burdens of protracted litigation that would be involved in prosecuting and defending the 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 Court of a Final Order and Judgment approving the settlement and directing the implementation of the terms and conditions of this Agreement, the Action shall be settled and compromised upon the terms and conditions set forth herein.

### 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 “Administrative Expenses”** shall mean expenses associated with the Settlement Administrator, including but not limited to costs in providing notice, communicating with

Settlement Class Members, establishing the Settlement Website, and disbursement of payments to the Settlement Class Members.

**1.2 “Approved Claims”** shall mean complete and timely claims submitted by Settlement Class Members that have been approved for payment by the Settlement Administrator.

**1.3 “Biometrics”** shall mean information of individuals in Illinois that constitutes a biometric identifier or biometric information under BIPA. The term Biometrics includes only data that are covered by BIPA, and does not include any other data.

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

**1.5 “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.

**1.6 “Claims Deadline”** shall mean the date by which all Claim Forms must be postmarked (if mailed) or submitted electronically via the Settlement Website or via Electronic Mail to be considered timely, and which shall be a date approximately 90 (ninety) Days after entry of the Preliminary Approval Order. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order, the Notice, and the Claim Form.

**1.7 “Class,” “Class Member,” “Settlement Class” and “Settlement Class Member”** shall mean each member of the settlement class, as defined in Section 2.2 of this Agreement, who does not properly execute and submit a timely request for exclusion.

**1.8 “Class Counsel”** shall mean Myles McGuire, Evan M. Meyers, David L. Gerbie and Andrew T. Heldut of McGuire Law P.C.

**1.9 “Class Representative” or “Plaintiff”** shall mean Plaintiff Alex Prelipceanu.

**1.10 “Court”** shall mean Judge Michael T. Mullen of the Circuit Court of Cook County, Illinois, Chancery Division, or any other judge who shall have jurisdiction over the pending Action.

**1.11 “Customer”** means a business or other entity that licenses, purchases or resells, either directly or indirectly, the Netverify service from Defendant and/or provides such Netverify service, either directly or indirectly, to individuals in Illinois such as the Settlement Class Members.

**1.12 “Day” or “Days”** means calendar days.

**1.13 “Fee Award”** means the amount of attorneys’ fees and reimbursement of costs and expenses awarded by the Court to Class Counsel.

**1.14 “Final Approval Hearing”** means the hearing to be conducted by the Court in connection with the final determination that the Agreement is fair, reasonable, and adequate and in the best interests of the Class as a whole, and which shall be on a date approximately 90 (ninety) Days after entry of the Preliminary Approval Order, or such other date approved by the Court.

**1.15 “Final Order and Judgment”** means an order that is entered by the Court and in a form that is mutually agreeable to the Parties and as set forth in Section 13 of this Agreement, and that 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.

**1.16 “Incentive Award”** shall have the meaning ascribed to it as set forth in Section 12.4 of this Agreement.

**1.17 “Defendant Counsel” or “Counsel for Defendant”** shall mean Susan Fahringer, Debra R. Bernard, and Nicola Menaldo of Perkins Coie LLP.

**1.18 “Netverify”** means the digital identity verification and related services provided by Defendant, including but not limited to products licensed to customers as Authentication, BAM Checkout, Document Verification, Fastfill, Identity Verification, ID Verification and Screening, and any similar service Defendant offers in the future.

**1.19 “Notice”** means the notice of this proposed settlement, which is to be provided substantially in the manner set forth in this Agreement and Exhibits 2 and 3, and is consistent with the requirements of due process.

**1.20 “Notice Database”** means the database containing potential Settlement Class Members’ information, to be provided by Defendant pursuant to Section 5.2 of this Agreement.

**1.21 “Objection/Exclusion Deadline”** means the date by which a written objection to this Settlement Agreement submitted by a person within the Settlement Class must be filed with the Court, as set forth in Section 9, and the date by which a request for exclusion submitted by a person within the Settlement Class must be postmarked/submitted, as set forth in Section 8. The Objection/Exclusion Deadline shall be designated as a date approximately 65 (sixty-five) days after entry of the Preliminary Approval Order, or such other date as ordered by the Court, and shall be expressly set forth in the Preliminary Approval Order and in the Notice.

**1.22 “Preliminary Approval Order”** means the Court’s Order granting preliminary approval of this Agreement, 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.

**1.24 “Release”** shall mean the Release set forth in Section 11 of this Agreement.

**1.25 “Released Parties”** means Defendant and all of its owners, directors, officers, employees, Customers, agents, parents, subsidiaries, contractors, insurers, reinsurers, and affiliates.

**1.26 “Releasing Parties”** means the Settlement Class Members and their respective heirs, administrators, devisees, predecessors, successors, attorneys, representatives, shareholders, partners, directors, officers, owners, affiliates, and assignees, as well as the Settlement Class Members’ respective subrogees and insurers. For clarity and to avoid ambiguity, Releasing Parties does not include any of the Released Parties and it is expressly agreed that the Released Parties do not release, relinquish or in any way waive any claims by or through this Agreement.

**1.27 “Settled Claims”** means any and all claims, liabilities, rights, demands, suits, matters, obligations, damages, including consequential damages, losses or costs, liquidated damages, statutory damages, punitive damages, attorneys’ fees and costs, actions or causes of action, of every kind and description, that the Plaintiff and Settlement Class Members, had, have, or may have, against all Released Parties with respect to Defendant’s collection, capture, receipt, purchase, storage, dissemination, transfer, use, sale, lease, trade, or profit from biometric information, biometric identifiers, or any data derived from or relating to the images of faces in photographs or videos, including all claims arising from or relating to the subject matter of the Action and all claims that were brought or could have been brought in the Action by the Plaintiff and/or the Settlement Class Members.

**1.28 “Settlement Administrator”** shall mean KCC, LLC, the third-party entity that is jointly selected by the Parties to administer the settlement, as set forth in Section 5.

**1.29 “Settlement Date”** means the date on which the Court enters the Final Order and Judgment.

**1.30 “Settlement Fund”** means the settlement fund in the amount of Seven Million Dollars (\$7,000,000.00).

**1.31 “Settlement Website”** means a website established and administered by the Settlement Administrator, as set forth in Section 6.1(c)(iv).

**1.32 “Valid Claim Form”** means a timely and complete Claim Form as set forth in Section 7.4.

## **2. SETTLEMENT PURPOSES ONLY**

**2.1** For the purposes of this settlement only, the Parties stipulate and agree that: (1) the Class shall be certified in accordance with the definition contained in Section 2.2, below; (2) Plaintiff shall represent the Class for settlement purposes and shall be the class representative; and (3) Plaintiff’s Counsel shall be appointed as Class Counsel.

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

All individuals in Illinois whose Biometrics or photos were collected, captured, purchased, received through trade, otherwise obtained or in the possession of Jumio and/or any of its parents, subsidiaries, or agents, or their technology, at any time between December 21, 2013 and [entry of the Preliminary Approval Order].

**2.3** Excluded from the Class are: (1) Defendant and any entity in which Defendant has a controlling interest, and their respective legal representatives, officers, directors, employees, assigns and successors; (2) the judge to whom this case is assigned and any member of the judge's staff and immediate family; and (3) any person who, in accordance with the terms of this Agreement, properly executes and submits a timely request for exclusion from the Class.

**2.4** Defendant does not consent to certification of the Class for any purpose other than to effectuate this settlement. If 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, any certification of any Class will be vacated and the Parties will be returned to their positions with respect to the Action as if the Agreement had not been entered into. In the event that the Final Order and Judgment is not entered or if for any other reason final approval of the settlement does not occur, is successfully objected to, or successfully challenged on appeal: (a) any Court orders preliminarily or finally approving the certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in this Agreement, that Defendant did not oppose the certification of a Class under this Agreement, or that the Court preliminarily approved the certification of a Class, shall not be used or cited thereafter by any person or entity, including in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class. 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 Plaintiff in the Action 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 this Action or in any other action.

**2.5** Plaintiff and Class Counsel shall use best efforts to obtain agreement to the terms of this Agreement from all affected parties. To the extent Plaintiff and Class Counsel are unable to obtain such agreement, Plaintiff and Class Counsel will cooperate with Defendant in assuring that duplicative litigation does not interfere with the benefit of this Agreement to the Class and to the Released Parties.

**2.6** Defendant has provided Counsel for Plaintiff documents and information describing in detail the operation of Jumio's technology and information with respect to Class size. Counsel for Plaintiff have also deposed Jumio regarding multiple topics pursuant to Rule 30(b)(6). This information is to be used solely for purposes of the Agreement and may not be used for any purpose in the event the Agreement is terminated or if the Court does not enter the Final Order

and Judgment.

### 3. RELIEF

**3.1 Prospective Relief.** Defendant agrees to use all commercially reasonable means to comply with BIPA by implementing the following prospective relief, which shall be implemented within a reasonable time not to exceed three (3) months from the date of entry of the Final Approval Order:

- a. Defendant agrees to obtain through commercially reasonable methods BIPA-compliant consent of individuals in Illinois to collect, capture, or obtain their Biometrics. Such methods may consist of undertaking commercially reasonable efforts to cause Defendant's Customers that are subject to BIPA to obtain such consent.
- b. Defendant agrees not to sell, lease, disclose, disseminate or trade the Biometrics of any individual in Illinois to any third-party except as permitted under BIPA.
- c. Defendant agrees to store, transmit, and protect from disclosure Biometrics, using reasonable security measures that are consistent with BIPA and at least as protective as the manner in which Defendant stores, transmits, and protects other confidential and sensitive information.
- d. Defendant agrees to require in its standard terms and conditions with Customers that are subject to BIPA serving individuals in Illinois that Defendant's products may be used only in compliance with all applicable laws and regulations.
- e. Defendant agrees to develop a publicly-available policy establishing a retention schedule and a procedure for permanently destroying Biometrics of individuals in Illinois.
- f. Defendant may seek the Court's approval to modify these commitments to conform to applicable law.

### 3.2 Establishment of Settlement Fund.

a. Defendant agrees to and shall cause itself and/or its insurer to deposit in an interest-bearing bank account established by Defendant the total sum of \$7,000,000.00 (Seven Million Dollars). The first \$500,000.00 of the Settlement Fund shall be paid within 14 (fourteen) Days following entry of the Preliminary Approval Order and receipt from the Settlement Administrator of detailed wire instructions and a completed W-9 form, and the remaining \$6,500,000.00 shall be paid within 30 (thirty) Days of the Settlement Date, with funding occurring prior to the Settlement Date as necessary to pay for Administrative Expenses. The Settlement Fund shall be used to pay (i) Approved Claims; (ii) costs of administration of the

Agreement to the Settlement Administrator, including without limitation payment of Administrative Expenses; (iii) the Fee Award; and (iv) an Incentive Award. The Settlement Fund represents the total extent of Defendant's monetary obligations under the Settlement Agreement, and Defendant and its insurer shall have no obligation to make any further payments into the Settlement Fund and shall have no financial responsibility or obligation relating to the settlement beyond the Settlement Fund. Under no circumstances will Defendant or its insurer have any liability for taxes or tax expenses under this Agreement.

b. The Settlement Administrator shall maintain control over the Settlement Fund and shall be responsible for all disbursements.

c. If the Final Order and Judgment as defined in this Agreement is not entered, the Settlement Fund will belong to Defendant's insurer, less any administrative expenses incurred to the date of the Final Approval Hearing. Within 30 Days of the Court's action indicating that the Final Order and Judgment as defined in the Agreement will not be entered, the Settlement Administrator shall transfer to Defendant's insurer the Settlement Fund less administrative expenses incurred to the date of the Final Approval Hearing.

**3.3 Distribution of Settlement Fund.** Each Settlement Class Member may submit a Claim Form. Timely submission of a Valid Claim Form shall entitle the Class Member to receive a cash payment from the Settlement Fund equal to the Class Member's *pro rata* share of the Settlement Fund after Administrative Expenses, the Fee Award, and an Incentive Award have been deducted from the Settlement Fund. Every Settlement Class Member who timely submits a Valid Claim Form shall receive the same benefit, including the same amount of cash from the Settlement Fund, as every other Class Member who timely submits a Valid Claim Form.

#### **4. SUBMISSION FOR PRELIMINARY APPROVAL ORDER**

**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 the Agreement if the Court does not approve the material aspects of the Agreement.

**4.2** Plaintiff, 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 Plaintiff as the class representative, 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.

**4.3.** The Parties shall request that the Final Approval Hearing be scheduled approximately ninety (90) Days after entry of the Preliminary Approval Order and that the Court approve the settlement of the Action as set forth herein.

**4.4.** At least fourteen (14) Days before the Final Approval Hearing, or by another date if directed by the Court, Plaintiff shall move for (i) final approval of the Settlement; (ii) final

appointment of the Class Representative and Class Counsel; and (iii) final certification of the Settlement Class, including for the entry of a Final Approval Order, and file a memorandum in support of the motion for final approval.

## **5. CLAIMS ADMINISTRATION PROCESS**

**5.1 Third-Party Settlement Administrator.** The Settlement Administrator shall be responsible for all matters relating to the administration of this Agreement as set forth herein. Those responsibilities include, but are not limited to, giving Notice to Settlement Class Members, establishing and maintaining the Settlement Website and a toll-free telephone number for inquiries about the Agreement, fielding inquiries about the Agreement, processing all Claim Forms, determining which Claim Forms are Valid Claim Forms, acting as a liaison between Settlement Class Members and the Parties regarding claims information, approving claims, rejecting any Claim Form if not properly completed and timely submitted or where there is evidence of fraud, processing and approving requests for exclusion, directing the mailing of settlement payments to Settlement Class Members, and any other tasks reasonably required to effectuate the foregoing.

The Settlement Administrator shall provide weekly updates on the status of claims and requests for exclusion to counsel for all Parties and will provide additional updates as reasonably requested by any Party. Class Counsel shall be responsible for supervising the Settlement Administrator and will use best efforts to ensure that the Settlement Administrator acts in accordance with this Agreement and any orders of the Court.

If any of the terms of this Agreement relating to the Settlement Administrator's services would unreasonably hinder or delay such processes or make them costlier, the Settlement Administrator shall so advise the Parties, and the Parties shall accommodate the Settlement Administrator, to the extent allowed by the terms herein and to the extent necessary to carry out the intent of this Agreement.

**5.2 Notice Database.** To facilitate the notice and claims administration process, Defendant will provide to the Settlement Administrator, in an electronically searchable and readable format, a Notice Database that includes reasonably available contact information, including names and mailing addresses, for all known Settlement Class Members, to the extent Defendant possesses such information. Defendant shall provide the Notice Database to the Settlement Administrator as soon as practicable and no later than twenty-one (21) Days after the entry of the Preliminary Approval Order.

**5.3 Class Member Information Solely for Purposes of Notice.** Any information relating to Settlement Class Members provided to the Settlement Administrator pursuant to this Agreement shall be provided solely for the purpose of providing Notice to Settlement Class Members and allowing them to recover under this Agreement; shall be kept in strict confidence by the Parties, their counsel, and the Settlement Administrator; shall not be disclosed to any third party; shall be destroyed after all distributions to Settlement Class Members have been made; and shall not be used for any other purpose.



## 6. NOTICES

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

- a. Timing of Class Notice. Notice shall be provided as set forth in this Agreement within Thirty-Five (35) Days following entry of the Preliminary Approval Order.
- b. Content of Notice. The Notice shall be substantially in the form of Exhibits 2 and 3 attached hereto. The Notice shall be designed to inform Settlement Class Members, prior to the Final Approval Hearing, that there is a pending settlement and how they may (a) obtain a copy of the Claim Form and file a claim; (b) protect their rights regarding the settlement; (c) request exclusion from the Settlement Class and the proposed settlement, if desired; (d) object to any aspect of the proposed settlement, if desired; and (e) participate in the Final Approval Hearing, if desired. The Notice shall provide instructions as to how Settlement Class Members may submit Claims Forms and become eligible for a *pro rata* cash payment from the Settlement Fund. The Notice shall make clear that the 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.
- c. Form of Notice. The Notice shall be presented in multiple forms and presented through multiple media, as set forth below.
  - i. Notice by Mail. The Settlement Administrator shall mail via U.S. Mail Notice of the settlement (substantially in the form of Exhibit 3) to all Settlement Class Members as to whom physical addresses are available. The Settlement Administrator shall use its best efforts to determine the last known physical address of every Class Member, as set forth in the Notice Database, by taking at least the following steps: (i) the Settlement Administrator shall check each address supplied in the Notice Database against the United States Post Office National Change of Address Database, (ii) the Settlement Administrator shall update addresses based on any forwarding information received from the United States Post Office, and (iii) the Settlement Administrator shall update addresses based on requests received from persons in the Settlement Class. The Settlement Administrator shall promptly re-mail the Notices to the updated addresses provided under scenarios (ii) and (iii) above. All costs of address confirmation and data trace searches shall be considered Settlement Administration Costs and deducted from the Settlement Fund.
  - ii. Notice by Internet Banner. Defendant shall place a “banner” on a page on Defendant’s website, with a hyperlink to the Settlement Website, commencing no later than fourteen (14) Days after entry of the Preliminary Approval Order and continuing until the Settlement Date. In addition, the Settlement Administrator shall design and conduct an internet advertisement publication notice program, which must be approved by the Parties and shall be limited to site visitors located in Illinois. This internet advertisement publication notice shall commence no later

than thirty-five (35) Days after entry of the Preliminary Approval Order and shall continue through the Claims Deadline.

- iii. Notice by Publication. The Settlement Administrator shall arrange for the publication of the Publication Notice in the online and offline versions of three widely-circulated newspapers in the state of Illinois to be displayed for at least three non-consecutive days (not in the same week), beginning no later than fourteen (14) Days after the Preliminary Approval Order is entered. Such publication notice shall use the same font and imagery as Defendant's website.
- iv. Settlement Website. The Settlement Administrator shall create and maintain a Settlement Website that contains information about the Settlement, including an electronic copy of the Notice by Mail (substantially in the form of Exhibit 3), the Settlement Agreement, and all material Court filings related to the Settlement. Settlement Class Members shall be able to submit Claim Forms via the Settlement Website. The URL of the Settlement Website shall be subject to approval by both Parties and shall be reasonably reflective of the nature of the Action (such as JumioBIPASettlement.com or such other URL as the Parties may subsequently agree).

## **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, via Electronic Mail, 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, and contact telephone number, as well as an optional email address;
- b. An affirmation that the person is a member of the Settlement Class; and
- c. 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 (b) each Settlement Class Member who timely submits a Valid Claim Form will be entitled to receive a cash payment in an equal sum to be determined on a *pro rata* basis from the Settlement Fund, following deduction of all applicable expenses, including administration and notice costs and attorneys' fees, and that as a result the amount received by each Class Member will depend on the number of valid claimants.

**7.4** Every Claim Form that is timely submitted as required by subsection 7.1 and that is fully completed with the information required by paragraph 7.2 shall be considered a Valid Claim Form. Any Claim Form that lacks the requisite information shall be deemed to be incomplete and 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 (i) to inform the Settlement Class Member of any error(s) and/or omission(s) in the Claim Form and (ii) 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** A Settlement Class Member is not entitled to any compensation from the Settlement Fund if he or she submits a Claim Form after the Claims Deadline, and/or if the Claim Form contains false information or remains incomplete after the Settlement Class Member was given an opportunity to cure any error(s) and/or omission(s).

**7.6** Within twenty-one (21) Days after the Claims Deadline, the Settlement Administrator shall process all Claim Forms submitted by Settlement Class Members and shall determine which Claim Forms are Valid Claim Forms and initially approved and which are initially rejected. The Settlement Administrator may accept or reject any Claim Form submitted and may consider any Claim Form a Valid Claim Form in its sole discretion and may request additional information from the person submitting the Claim Form prior to making this determination. The Settlement Administrator shall employ reasonable procedures to screen Claim Forms for abuse and/or fraud and shall deny Claim Forms that are materially incomplete and/or where there is evidence of abuse and/or fraud.

**7.7** Within twenty-one (21) Days after the Claims Deadline, the Settlement Administrator shall submit to Counsel for the Parties a report listing all initially approved Claims (“**Initially Approved Claims List**”) and shall include an electronic PDF copy of all such initially approved Claim Forms. Within twenty-one (21) Days after the Claims Deadline, the Settlement Administrator shall also submit to the Parties a report listing all initially rejected claims (“**Initially Rejected Claims List**”) and shall include an electronic PDF copy of all such initially rejected Claim Forms.

**7.8** Counsel for the Parties shall have fourteen (14) Days after the date they receive the Initially Approved Claims List and related Claim Forms to audit and challenge any initially approved claims. Within fourteen (14) Days after Counsel for the Parties receive the Initially Approved Claims List and related Claim Forms, they shall serve opposing counsel via email with a notice of claim challenges identifying by claim number any initially approved claim they wish to challenge and the reasons for the challenge.

**7.9** Counsel for the Parties may challenge any claim initially rejected by the Settlement Administrator. Counsel for the Parties shall have fourteen (14) Days after the date they receive the Initially Rejected Claims List and related Claim Forms to audit and challenge any initially rejected claims. Within fourteen (14) Days after Counsel for the Parties receive the Initially Rejected Claims List and related Claim Forms, they shall serve opposing counsel via email with

a Notice of Claim Challenges identifying by claim number any initially rejected claim they wish to challenge and the reasons for the challenge.

**7.10** 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. The date all claims are finalized without any further dispute shall be referred to as the “**Claims Finalization Date.**” If neither Class Counsel nor Counsel for Defendant challenges the initial claims determination reached by the Settlement Administrator, then the Claims Finalization Date shall be the date both Class Counsel and Defendant’s Counsel inform each other that the Parties do not have any objection to the claims determination made by the Settlement Administrator or the time for informing each other of such challenges has lapsed.

**7.11** Within seven (7) Days of the Claims Finalization Date, the Settlement Administrator shall provide Counsel for the Parties a spreadsheet setting forth the claim number, claimant name, claimant address, and the total amount to be paid to each claimant, which shall be an equal amount for each Approved Claim (the “**Final Claims List**”). Within ten (10) Days after the Claims Finalization Date, the Settlement Administrator shall send a check by First Class U.S. Mail to each Settlement Class Member on the Final Claims List.

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

**7.13** In the event that checks sent to Settlement Class Members are not cashed within one hundred fifty (150) Days after their date of issuance, those checks will become null and void. Provided that the amount of the uncashed checks after the expiration date, less any funds necessary for settlement administration, would allow a further distribution to the qualifying claimants equal to or greater than \$1.00 per qualifying claimant, such amount will be redistributed in equal amounts to the Settlement Class Members who submitted Valid Claim Forms and cashed their checks. In the event that those redistributed checks are not cashed within ninety (90) days of their date of issuance, those checks will become null and void. The amount of the null and void checks will be paid through *cy pres* to one or more recipients selected by the Parties and approved by the Court.

## **8. CLASS MEMBERS’ RIGHTS TO INCLUSION/EXCLUSION**

**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 request postmarked, or submitted electronically via the Settlement Website, on or before the Objection/Exclusion Deadline. In order to exercise the right to be excluded, 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

signature. A request to be excluded that is sent to an 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.

**8.3** 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.

**8.4** Within seven (7) Days after the Objection/Exclusion Deadline, the Settlement Administrator shall provide to the Parties a list of all persons who opted out by validly requesting exclusion. In the event that the number of persons who opted out exceeds 100, 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 notifying Class Counsel of its election no later than twenty-one (21) Days after Defendant’s receipt of the list of persons who requested exclusion.

## **9. OBJECTIONS**

**9.1** The Notices shall advise Settlement Class Members of their rights, including the right to be excluded from or object to the Settlement Agreement and its terms. The Notices shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline, the person making an objection shall: (i) file his/her objection with the Clerk of Court; (ii) file copies of such papers he/she proposes to submit at the Final Approval Hearing with the Clerk of the Court; and (iii) send copies of such papers via United States mail, hand delivery, or overnight delivery to both 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: (i) his/her full name, address and current telephone number; (ii) the case name and number of this Action; (iii) the Defendant’s Customer to whom, or website at which, he/she provided his/her Biometrics; (iv) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (v) the identification of any other objections he/she has filed, or has had filed on his/her behalf, in any other class action cases in the last four years; and (vi) the objector’s signature. If represented by counsel, the objecting Settlement Class Member’s counsel shall identify all objections it has filed to other class action cases in the last five years. If the objecting Settlement Class Member intends to

appear at the Final Approval Hearing, either with or without counsel, he/she must state as much 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 pursuant to this Agreement shall not be permitted to object to the approval of the Settlement Agreement at the Final Approval Hearing and shall be foreclosed from seeking any review of the settlement or the terms of the Agreement by appeal or other means.

**9.4** Settlement Class Members cannot both object to and exclude themselves from this Settlement Agreement. Any Settlement Class Members who attempts to both object to and exclude themselves from this Settlement Agreement will be deemed to have excluded themselves and will forfeit the right to object to this Settlement Agreement or any of its terms. If a Settlement Class Member returns both a Claim Form and a written request for exclusion, the request for exclusion shall deemed void and of no force and effect, and the Claim Form shall be processed under the terms of this Settlement Agreement.

## **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 Settled Claims. Upon entry of the Final Order and Judgment, each member of the Settlement Class 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 counsel for Defendant, Class Counsel shall provide this information to the Settlement Class Member.

**10.2** Upon entry of Final Order and Judgment, the Action shall be dismissed with prejudice. Settlement Class Members may not commence or actively prosecute actions on any Settled Claims against Defendant once the Final Order and Judgment is entered.

**10.3** The Court will retain exclusive and continuing jurisdiction over the action and all Parties to interpret and enforce the terms, conditions, and obligations of this Agreement.

## **11. RELEASES**

**11.1** Upon entry and by operation of the Final Order and Judgment, and regardless of whether any Class Member executes and delivers a written release, each and every Releasing Party releases and forever discharges each and every Released Party from any and all Settled Claims.

**11.2** By operation of the Final Order and Judgment, the Releasing Parties expressly waive the provisions of California Civil Code § 1542 (and all other similar provisions of law) to the full

extent that these provisions may be applicable to this Release. California Civil Code § 1542 provides:

**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.**

By operation of the Final Order and Judgment, the Releasing Parties shall be deemed to assume the risk that facts additional, different, or contrary to the facts which each believes or understands to exist, may now exist or may be discovered after the Release set forth in this Agreement becomes effective, and the Releasing Parties shall, by operation of the Final Order and Judgment, be deemed to have agreed that any such additional, different or contrary facts shall in no way limit, waive or reduce the foregoing Release, which shall remain in full force and effect.

## **12. CLASS COUNSEL FEES, COSTS AND EXPENSES**

**12.1** At least twenty-one (21) days prior to the Objection/Exclusion Deadline, Class Counsel may move the Court for an award of attorneys' fees in an amount \$2,800,000.00 (Two-Million Eight-Hundred Thousand Dollars), exclusive of costs and expenses. Defendant agrees not to oppose an application for attorneys' fees, costs and expenses by Class Counsel in such an amount. Class Counsel, in turn, agrees not to seek from the Court or to accept attorneys' fees in excess of such amount.

**12.2** The Court's consideration of the Fee Award shall be conducted separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement Agreement, and any award made by the Court with respect to Class Counsel's attorneys' fees or expenses, or any proceedings incident thereto, including any appeal thereof, shall not operate to terminate or cancel this Agreement or be deemed material thereto.

**12.3** Class Counsel shall provide the Settlement Administrator with a completed W-9 before the payment of the Fee Award is due. Within seven (7) Days after the Settlement Date, the Settlement Administrator shall pay to Class Counsel from the Settlement Fund the amount awarded by the Court in the Fee Award. Any payment of the Fee Award shall be paid by electronic wire transfer to an account designated by Class Counsel.

**12.4** Prior to or at the same time as Plaintiff seeks Final Approval of the Settlement, Class Counsel shall move the Court for an Incentive Award for the Class Representative in an amount not to exceed \$10,000.00 (Ten Thousand Dollars), and Defendant agrees that it will not oppose such a request. The Incentive Award shall be paid solely from the Settlement Fund by check written by the Settlement Administrator within seven (7) Days of the Settlement Date.

### **13. FINAL ORDER AND JUDGMENT**

**13.1** The Parties shall jointly seek entry of Final Order and Judgment that is mutually agreeable to the Parties and is as described in this Section 13. The dismissal orders, motions or stipulation to implement this Section shall, among other things, provide for a dismissal with prejudice and waiver of any rights of appeal.

**13.2** The Final Order and Judgment shall:

- a. Give final approval of this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of 735 ILCS 5/2-801 and directing its consummation according to its terms; and
- b. Dismiss, with prejudice, all claims of the Settlement Class against Defendant in the Action, without costs and fees except as explicitly provided for in this Agreement; and
- c. Reserve continuing and exclusive jurisdiction over this Agreement, the Action, the Parties, and the Settlement Class Members for the purposes of administering, consummating, supervising, construing and enforcing the Agreement and the Settlement Fund; and
- d. Approve the Releases provided in Section 10 of this Agreement; and
- e. Order that as of the Settlement Date the Settled Claims will be released as to the Released Parties; and
- f. 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. TERMINATION OF THE AGREEMENT**

The performance of this Agreement is expressly contingent upon entry of the Final Order and Judgment. If the Court does not issue the Final Order and Judgment as set forth in this Agreement following conclusion of the Final Approval Hearing, or if Defendant terminates the Agreement as provided in subsection 8.4, 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.

### **15. CONFIDENTIALITY**

No Party shall initiate any publicity relating to or make any public comment regarding this settlement until the Court has issued the Preliminary Approval Order. Defendant may, however, disclose information about the settlement to its Customers prior to such time.



## **16. MISCELLANEOUS PROVISIONS**

**16.1** 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.

**16.2** 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.

**16.3** The Parties may agree, subject to approval of the Court where required, to reasonable extensions of time to carry out the provisions of this Agreement.

**16.4** 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.

**16.5** This Agreement has been negotiated at arms' 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.

**16.6** 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 basic terms and intent of this Agreement.

**16.7** 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.

**16.8** 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.

**16.9** This Agreement will be construed in accordance with the laws of the state of Illinois.

**16.10** If any provision, paragraph, section, subsection, or other portion of this Agreement is found to be void (except for Sections 3 & 11), all of the remaining provisions of this Agreement shall remain in full force and effect.

**16.11** 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.

**16.12** 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.

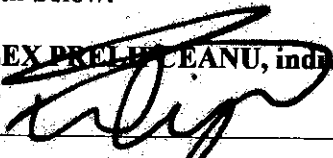
**16.13** This Agreement may be executed by the Parties in one or more counterparts exchanged

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.


**[Remainder of Page Intentionally Left Blank]**

The undersigned have caused this Settlement Agreement to be executed as of the dates set forth below:

ALEX PRELUPCEANU, individually and on behalf of the Settlement Class

  
Date: 11/27/19

MCGUIRE LAW, P.C., as Class Counsel

By:   
Print Name: David Gerbie  
Date: 11/27/2019

JUMIO CORPORATION

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

PERKINS COIE, LLP, as Defendant's Counsel

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

The undersigned have caused this Settlement Agreement to be executed as of the dates set forth below:

**ALEX PRELIPCEANU, individually and on behalf of the Settlement Class**

\_\_\_\_\_

Date: \_\_\_\_\_

**MCGUIRE LAW, P.C., as Class Counsel**

By:

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**JUMIO CORPORATION**

By: 

Print Name: Michael Duignan

Date: November 27, 2019

**PERKINS COIE, LLP, as Defendant's Counsel**

By: 

Print Name: Susan Fahringer

Date: November 27, 2019

# EXHIBIT 1

**PRELIPCEANU V. JUMIO CORP. CLASS ACTION SETTLEMENT**

**CLAIM FORM**

**TO RECEIVE A CASH PAYMENT, YOU MUST COMPLETE THIS CLAIM FORM AND SUBMIT IT BY XXX XX, 2020.**

IMPORTANT NOTE: You must complete and submit this Claim Form by XXX XX, 2020 in order to receive the settlement benefits. To complete this Claim Form, read the instructions below in Step 1; provide the requested information in Step 2; sign the certification in Step 3; and submit the claim form using one of the methods stated in Step 4.

Each Settlement Class Member is entitled to submit only one Claim Form. There can be only one claim for any given Settlement Class Member. If your claim is approved, you will receive a check representing a *pro rata* share of the Settlement Fund (the actual cash amount an individual will receive will depend on the number of valid claims submitted).

**STEP 1 – DIRECTIONS**

In the spaces below, print your (i) name, (ii) address, (iii) telephone number, and (iv) your optional email address. Remember that you are only eligible for a claim if you are an individual in Illinois whose Biometrics or photos were collected, captured, purchased, received through trade, otherwise obtained or in the possession of Jumio and/or any of its parents, subsidiaries, or agents, or their technology, at any time between December 21, 2013 and [entry of the Preliminary Approval Order]

**STEP 2 – CLAIMANT INFORMATION**

**Name:** \_\_\_\_\_  
(First) (Middle Initial) (Last)

**Address:** \_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City) (State) (Zip Code)

**Telephone number:** (\_\_\_\_) \_\_\_\_ - \_\_\_\_

**Email address (optional):**

**STEP 3 – CERTIFICATION**

**I understand that Jumio’s records indicate that I may have used a Jumio service in Illinois between December 21, 2013 and [Preliminary Approval]. I affirm that:**

**I am an individual in Illinois whose Biometrics or photos were collected, captured, purchased, received through trade, otherwise obtained or in the possession of Jumio and/or any of its parents, subsidiaries, or agents, or their technology, at any time between December 21, 2013 and [entry of the Preliminary Approval Order].**

***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. 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**

**STEP 4 – METHODS OF SUBMISSION**

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

1. Online by visiting [www.Website.com](http://www.Website.com) and completing an online Claim Form no later than midnight, U.S. Eastern Standard Time, on XXX XX, 2020; OR
2. By emailing the completed Claim Form to \_\_\_\_\_ no later than midnight, U.S. Eastern Time, on [Date]; OR
3. By mailing via U.S. Mail a completed and signed claim form to the Settlement Administrator, postmarked no later than XXX XX, 2020, and addressed to:

XXXXXXX

XXXXXXX

# **EXHIBIT 2**



## **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

*Prelipceanu v. Jumio Corp.*, Case No. 2018-CH-15883, (Cir. Ct. Cook Cnty.)

For more information, visit [Website], or call \_\_\_\_\_  
Para una notificación en Español, visite [Website], o llame a \_\_\_\_\_.

**PLEASE READ THIS NOTICE CAREFULLY. YOU MAY BE ENTITLED TO A CASH PAYMENT FROM A CLASS ACTION SETTLEMENT IF YOU ARE AN INDIVIDUAL IN ILLINOIS WHOSE BIOMETRICS OR PHOTOS WERE COLLECTED, CAPTURED, PURCHASED, RECEIVED THROUGH TRADE, OTHERWISE OBTAINED OR IN THE POSSESSION OF JUMIO AND/OR ANY OF ITS PARENTS, SUBSIDIARIES, OR AGENTS, OR THEIR TECHNOLOGY, AT ANY TIME BETWEEN DECEMBER 21, 2013 AND [ENTRY OF THE PRELIMINARY APPROVAL ORDER.]**

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

### **WHY DID I GET THIS NOTICE?**

This is a court-authorized notice of a proposed settlement in a class action lawsuit. The case is *Prelipceanu v. Jumio Corp.*, Case No. 2018-CH-15883, filed in the Circuit Court of Cook County, Illinois, before the Honorable Michael T. Mullen. The Settlement would resolve a lawsuit brought on behalf of persons who allege Jumio captured scans of their face geometry through its NetVerify identity verification service without first providing customers with legally-required written disclosures and obtaining written consent. Jumio vigorously denies that it violated the law, and affirmatively states that it complied with Illinois law in all respects.

If you received this notice by mail, you have been identified as an individual who, between December 21, 2013, and [the date of Preliminary Approval], may have used Jumio services through a Jumio Customer and may qualify to receive cash compensation. Jumio Customers use Jumio services, including to verify individuals' identity online by matching individuals' photos with their photo ID. If you were in Illinois when you used Jumio's services, you may be part of the Settlement Class. All individuals in Illinois whose Biometrics or photos were collected, captured, purchased, received through trade, otherwise obtained or in the possession of Jumio and/or any of its parents, subsidiaries, or agents, or their technology, at any time between December 21, 2013 and [entry of the Preliminary Approval Order] are part of the Settlement Class. The settlement covers all members of the Settlement Class who do not opt out, as further explained below. The Court has granted preliminary approval of the Settlement and has conditionally certified the Settlement Class for purposes of settlement only. This notice explains the nature of the class action lawsuit, the terms of the Settlement, and the legal rights and obligations of the Settlement Class Members. Please read the instructions and explanations below so that you can better understand your legal rights. This Notice is only a summary of the proposed Settlement of this lawsuit. More details are in the Settlement Agreement, which sets forth the rights and obligations of the parties, and which, along with other documents, can be obtained at [Website], as well as from the Settlement Administrator or from Class Counsel.

By order of: Hon. [Judge] [Court], Illinois

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**QUESTIONS? CALL TOLL FREE 1-999-999-9999**

## WHAT IS THIS LAWSUIT ABOUT?

The Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”), prohibits private companies from collecting, capturing, receiving through trade, or otherwise obtaining a person’s biometric identifiers and/or biometric information, 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 entities that possess biometrics publish a publicly-available retention schedule. This lawsuit alleges that Jumio violated BIPA by collecting or capturing the scans of face geometry of consumers through its NetVerify service without first providing the required disclosures or obtaining the required consent. Jumio offers NetVerify as an identity and/or age verification service that other companies (Jumio’s Customers) can use on their own websites. NetVerify operates by examining the faces in photo identification and/or selfies uploaded to the service to verify the individual’s identity or age. Jumio vigorously disputes the claims in the lawsuit and denies that it violated BIPA.

## WHY IS THIS A CLASS ACTION?

A class action is a lawsuit in which an individual called a “Class Representative” brings a single lawsuit on behalf of other people who have similar claims. All of these people together are a “Class” or “Class Members.” Once a Class is certified, a class action Settlement finally approved by the Court resolves the issues for all Settlement Class Members, except for those who choose to exclude themselves from the Settlement Class.

## WHY IS THERE A SETTLEMENT?

To resolve this matter without the expense, delay, and uncertainties of litigation, the Parties have reached a Settlement that resolves all claims by individuals in Illinois whose Biometrics or photos were collected, captured, purchased, received through trade, otherwise obtained or in the possession of Jumio and/or any of its parents, subsidiaries, or agents, or their technology between December 21, 2013 and [the date of preliminary approval]. The Settlement requires Jumio to pay money to the Settlement Class, as well as to pay settlement administration expenses, attorneys’ fees and costs to Class Counsel, and an incentive award to the Class Representative, if approved by the Court. The Settlement is not an admission of wrongdoing by Jumio, and does not imply that there has been, or would be, any finding that Jumio violated the law.

The Court has already preliminarily approved the Settlement. Nevertheless, because the settlement of a class action determines the rights of all members of the class, the Court overseeing this lawsuit must give final approval to the Settlement before it can be effective. The Court has conditionally certified the Settlement Class for settlement purposes only, so that members of the Settlement Class can be given this notice and the opportunity to exclude themselves from the Settlement Class, to voice their support or opposition to final approval of the Settlement, or to submit a Claim Form to receive the relief offered by the Settlement. If the Court does not give final approval to the Settlement, or if it is terminated by the Parties, the Settlement will be void, and the lawsuit will proceed as if there had been no settlement and no certification of the Settlement Class.

## WHO IS IN THE SETTLEMENT CLASS?

You are a member of the Settlement Class if you are an individual in Illinois and your Biometrics or photos were collected, captured, purchased, received through trade, otherwise obtained or in the possession of Jumio and/or its parents, subsidiaries, agents or technology between December 21, 2013 and [Preliminary Approval]. If you received this notice by mail, you may fit this description, and you may submit a claim for cash. If you did not receive this notice by mail, but believe you fit this description, you may also submit a claim for cash.

By order of: Hon. [Judge] [Court], Illinois

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**QUESTIONS? CALL TOLL FREE 1-999-999-9999**

## WHAT ARE MY OPTIONS?

### (1) Accept the Settlement.

To accept the Settlement, you must submit a Claim Form by \_\_\_\_\_, 2020. You may obtain a Claim Form at [Website], by emailing [Claims administrator], or by calling the Settlement Administrator at [phone number]. You may submit your Claim Form online at the same website or to the Settlement Administrator by U.S. Mail at [address]. If the Settlement is approved and your claim is deemed valid, a check will be mailed to you. The actual cash amount an individual will receive is dependent on the number of valid claims submitted. *Submitting a valid and timely Claim Form is the only way to receive the benefits offered by this Settlement.*

### (2) Exclude yourself.

You may exclude yourself from the Settlement. If you do so, you will not receive any cash payment. You will not release any claims you may have against Jumio and the Released Parties (as that term is defined in the Settlement Agreement) and are free to pursue whatever legal rights you may have at your own risk and expense. To exclude yourself from the Settlement, you must mail a signed letter to the Settlement Administrator at [address], postmarked by \_\_\_\_\_, 2020. You may also exclude yourself online at [Website]. The exclusion letter must be signed by you and must state that you exclude yourself from this Settlement and must include the name and case number of this litigation, as well as your full name, address, telephone number, and a statement that you wish to be excluded.

### (3) Object to the Settlement.

If you wish to object to the Settlement, you must submit your objection in writing to the Clerk of the Court of the Circuit Court of Cook County, Illinois, Richard J. Daley Center, 50 West Washington Street, Courtroom \_\_\_, Chicago, Illinois 60602. The objection must be received by the Court no later than \_\_\_\_\_, 2020. You must also send a copy of your objection to the attorneys for all Parties to the lawsuit, including Class Counsel (Evan M. Meyers, MCGUIRE LAW, P.C., 55 West Wacker Drive, 9th Floor, Chicago, Illinois 60601), as well as the attorneys representing the Defendant (Susan Fahringer, PERKINS COIE, LLP, 1201 Third Ave. Suite 4900, Seattle, WA 98101), postmarked no later than \_\_\_\_\_, 2020. Any objection to the proposed Settlement must include your (i) full name, mailing address, and contact telephone number as well as an optional email address; (ii) the name and number of this case; (iii) a declaration that you are a member of the Settlement Class (i.e., that (a) you are an individual in Illinois (b) your Biometrics or photos were collected, captured, purchased, received through trade, otherwise obtained or in the possession of Jumio and/or any of its parents, subsidiaries, agents, or technology, at any time between December 21, 2013 and [date the Preliminary Approval Order is entered]); (iv) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (v) the identification of any other objections you have filed, or have had filed on your behalf, in any other class action cases in the last four years; and (vi) your signature. If you hire an attorney in connection with making an objection, that attorney must also file with the court a notice of appearance by the objection deadline of \_\_\_\_\_, 2020. If you do hire your own attorney, you will be solely responsible for payment of any fees and expenses the attorney incurs on your behalf. If you exclude yourself from the Settlement, you cannot file an objection.

You may appear at the Final Approval Hearing, which will be held on \_\_\_\_\_, 2020 at \_\_\_ a.m./p.m., in Courtroom \_\_\_ of the Circuit Court of Cook County, Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602, in person or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement, the request for attorneys' fees and expenses, and/or the request for an incentive award to the Class Representative are required to indicate in their written objection their intention to appear

By order of: Hon. [Judge] [Court], Illinois

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**QUESTIONS? CALL TOLL FREE 1-999-999-9999**

at the hearing on their own behalf or through counsel and to identify the names of any witnesses they intend to call to testify at the Final Approval Hearing, as well as any exhibits they intend to introduce at the Final Approval Hearing.

**(4) Do Nothing.**

If you do nothing, you will receive no money from the Settlement Fund, but you will still be bound by all orders and judgments of the court. Unless you exclude yourself from the Settlement, you will not be able to file or continue a lawsuit against the Jumio, Jumio's Customers, or other Released Parties regarding any of the Settled Claims. ***Submitting a valid and timely Claim Form is the only way to receive the benefits offered by this Settlement.***

To submit a Claim Form, or for information on how to request exclusion from the class or file an objection, please visit the Settlement website, [Website], email [claims administrator], or call (XXX) XXX-XXXX.

**WHAT DOES THE SETTLEMENT PROVIDE?**

**Cash Payments.** Jumio has agreed to create a Settlement Fund with a value of \$7,000,000.00 for the Class Members. All Settlement Class Members are entitled to submit a Claim Form in order to receive a payment out of the Settlement Fund. If the Settlement is approved, each Settlement Class Member who submits a timely, valid Claim Form will be entitled to a cash payment out of the Settlement Fund. The exact amount of each Class Member's cash payment is unknown at this time and will depend on the total number of valid Claim Forms submitted. The Settlement Administrator will issue a check to each Class Member who submits a valid Claim Form following the final approval of the Settlement. All checks issued to Settlement Class Members will expire and become void 150 days after they are issued. Additionally, the attorneys who brought this lawsuit (listed below) will ask the Court to award them attorneys' fees, costs and expenses for their time, expense and effort in investigating the facts, litigating the case and negotiating the Settlement. The Class Representative also will apply to the Court for a payment for his time, effort, and service in this matter.

**WHAT RIGHTS AM I GIVING UP IN THIS SETTLEMENT?**

Unless you exclude yourself from this Settlement, you will be considered a member of the Settlement Class, which means you give up your right to file or continue a lawsuit against Jumio, and all of its owners, directors, officers, employees, Customers, agents, parents, subsidiaries, contractors, insurers, reinsurers, and affiliates relating to all Jumio's collection, capture, receipt, purchase, storage, dissemination, transfer, use, sale, lease, trade, or profit from biometric information, biometric identifiers, or any data derived from or relating to the images of faces in photographs or videos including all claims arising from or relating to the subject matter of the Action and all claims that were brought or could have been brought in the Action. Giving up your legal claims is called a release. The precise terms of the release are in the Settlement Agreement, which is available upon request and can be viewed at [Website]. Unless you formally exclude yourself from this Settlement, you will release your claims whether or not you submit a Claim Form and receive payment. If you have any questions, you can talk for free to the attorneys identified below who have been appointed by the Court to represent the Settlement Class, or you are welcome to talk to any other lawyer of your choosing at your own expense.

**WHEN WILL I RECEIVE THE CASH PAYMENT?**

The Parties cannot predict exactly when (or whether) the Court will give final approval to the Settlement, so please be patient. However, if the Court finally approves the Settlement, you will receive the cash payment as soon as possible after the court order becomes final, which should occur within approximately 60 days after the Settlement has been finally approved. If there is an appeal of the Settlement, payment may be delayed. Updated information about the case is available at [Website], or you can call the Settlement Administrator at [phone number], or contact Class Counsel at

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the information provided below.

### **WHEN WILL THE COURT RULE ON THE SETTLEMENT?**

The Court has already given preliminary approval to the Settlement. A final hearing on the Settlement, called a Final Approval Hearing, will be held to determine the fairness of the Settlement. At the Final Approval Hearing, the Court will also consider whether to finalize the certification of the Class for settlement purposes, hear any proper objections and arguments to the Settlement, as well as any requests for an award of attorneys' fees, costs, and expenses and a Class Representative incentive award that may be sought by Class Counsel. The Court will hold the Final Approval Hearing on \_\_\_\_\_, 2020 at \_\_\_\_ a.m./p.m. in Courtroom \_\_\_\_ at the Richard J. Daley Center, 50 West Washington Street, Courtroom \_\_\_\_\_, Chicago, Illinois 60602.

If the Settlement is given final approval, the Court will not make any determination as to the merits of the claims against Defendants or their defenses to those claims. Instead, the Settlement's terms will take effect and the lawsuit will be dismissed on the merits with prejudice. Both sides have agreed to the Settlement in order to achieve an early and certain resolution to the lawsuit, in a manner that provides specific and valuable benefits to the members of the Settlement Class.

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

### **WHO REPRESENTS THE CLASS?**

The Court has approved the following attorneys to represent the Settlement Class. They are called "Class Counsel." You will not be charged for these lawyers. If you want to be represented by your own lawyer instead, you may hire one at your own expense.

Myles McGuire Evan M. Meyers David L. Gerbie MCGUIRE LAW, P.C. 55 W. Wacker Drive, 9 <sup>th</sup> Floor Chicago, IL 60601 <a href="mailto:mmcguire@mcgpc.com">mmcguire@mcgpc.com</a> <a href="mailto:emeyers@mcgpc.com">emeyers@mcgpc.com</a> <a href="mailto:dgerbie@mcgpc.com">dgerbie@mcgpc.com</a> Tel: 312-893-7002
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### **WHERE CAN I GET ADDITIONAL INFORMATION?**

This Notice is only a summary of the proposed Settlement of this lawsuit. More details are in the Settlement Agreement, which sets forth the rights and obligations of the parties, and which, along with other documents, can be obtained at [Website], as well as from the Settlement Administrator or from Class Counsel. If you have any questions, you can also call the Settlement Administrator at [phone number] or Class Counsel at the numbers or email addresses

By order of: Hon. [Judge] [Court], Illinois

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**QUESTIONS? CALL TOLL FREE 1-999-999-9999**

set forth above. In addition to the documents available on the case website, all pleadings and documents filed in court may be reviewed or copied in the Office of the Clerk. Please do not call the Judge or the Clerk of the Court about this case. They will not be able to give you advice on your options.

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# **EXHIBIT 3**

**YOU MAY BE ENTITLED TO A CASH PAYMENT FROM A CLASS ACTION SETTLEMENT IF YOU ARE AN INDIVIDUAL IN ILLINOIS AND YOUR BIOMETRICS WERE COLLECTED, CAPTURED, PURCHASED, RECEIVED THROUGH TRADE, OTHERWISE OBTAINED OR IN THE POSSESSION OF JUMIO AND/OR ANY OF ITS PARENTS, SUBSIDIARIES, AGENTS OR TECHNOLOGY AT ANY TIME BETWEEN DECEMBER 21, 2013 AND [PRELIM APPROVAL].**

A proposed settlement has been reached in a class action lawsuit against Jumio Corp. regarding its use of facial recognition technology to perform identity verification through its NetVerify service from December 21, 2013, to [Preliminary Approval], allegedly in violation of the law. The case is *Preliceanu v. Jumio Corp.*, Case No. 2018CH15883, currently pending in the Circuit Court of Cook County, Illinois, Chancery Division. The proposed Settlement is not an admission of wrongdoing by Jumio and Jumio vigorously denies that it violated the law. The Court has not decided who is right or wrong. Rather, to save the time, expense, and distraction of litigation, the parties have agreed to settle the lawsuit.

**Who Can File a Claim?** Any individual in Illinois whose Biometrics or photos were collected, captured, purchased, received through trade, otherwise obtained or in the possession of Jumio and/or its parents, subsidiaries, agents or technology at any time between December 21, 2013 and [Preliminary Approval] may be eligible to receive benefits from this Settlement.

All individuals in Illinois whose Biometrics or photos were collected, captured, purchased, received through trade, otherwise obtained or in the possession of Jumio and/or any of its parents, subsidiaries, or agents, or their technology, at any time between December 21, 2013 and entry of the Preliminary Approval Order.

**What Does The Settlement Provide?** Jumio has agreed to create a settlement fund in the amount of \$7,000,000 to pay valid claims, settlement administration expenses, attorneys' fees, costs and expenses, and a Class Representative incentive award. Each Class Member who submits a timely, valid Claim Form may receive a *pro rata* share of the Settlement Fund (the actual cash amount an individual will receive is dependent on the number of valid claims submitted). To receive benefits from the Settlement, you must submit a Claim Form by **XXX XX, 2020**. Class Members can file a Claim Form online at [Website], or visit the website and download a Claim Form and submit it by email or by mail. Visit the website below or call for more information on filing your claim. Without admitting liability, Jumio has also agreed to certain changes to its biometric collection practices, as explained in the detailed notice and Settlement Agreement at the website listed below.

**Your Rights May Be Affected.** If you do not want to be legally bound by the Settlement, you must exclude yourself by **XXX, XX, 2020**. If you do not exclude yourself, you may object to it by **XXX, XX, 2020**. The detailed notice, available at the settlement website listed below or through the Settlement Administrator, explains how to exclude yourself or object. The Court will hold a hearing on **XXX, XX, 2020**, to consider whether to approve the Settlement, Class Counsel's request for attorneys' fees, costs and expenses, and an incentive award for the Class Representative. You can appear at the hearing, but you do not have to. If you want, you can hire your own attorney, at your own expense, to appear or speak for you at the hearing. *Visit the settlement website, [Website], or contact the Settlement Administrator at \_\_\_\_\_, for details about options and deadlines.*

***For more information and for a Claim Form, visit [Website]  
or call 1-999-999-9999.***



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DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2018CH15883

# Exhibit B

FILED DATE: 2/5/2020 7:15 PM 2018CH15883

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

ALEX PRELIPCEANU, individually and )  
on behalf of similarly situated individuals, )

*Plaintiff,* )

v. )

JUMIO CORPORATION, a Delaware )  
corporation, )

*Defendant.* )

Case No. 2018-CH-15883

Hon. Michael T. Mullen

**DECLARATION OF EVAN M. MEYERS IN SUPPORT OF PLAINTIFF’S MOTION  
FOR APPROVAL OF ATTORNEYS’ FEES, EXPENSES, AND INCENTIVE AWARD**

I, Evan M. Meyers, hereby aver, pursuant to 735 ILCS 5/1-109, that I am fully competent to make this Declaration, that I have personal knowledge of all matters set forth herein unless otherwise indicated, and that I would testify to all such matters if called as a witness in this matter.

1. I am an adult over the age of 18 and a resident of the state of Illinois. I am licensed to practice law in the state of Illinois, and I am fully competent to make this Declaration and make this Declaration in support of Plaintiff’s Motion for Approval of Attorneys’ Fees, Expenses, and Incentive Award.

2. I am a partner at McGuire Law, P.C. and I, along with my colleagues Myles McGuire, David L. Gerbie, and Andrew T. Heldut, have been appointed as Class Counsel, representing Plaintiff and the Settlement Class in this matter.

3. McGuire Law, P.C. is a law firm based in Chicago, Illinois that focuses on class action litigation, representing clients in both state and federal trial and appellate courts throughout the country.

4. I and the other attorneys of McGuire Law have regularly engaged in complex litigation on behalf of consumers and have extensive experience in class action lawsuits similar in size and complexity to the instant case, including dozens of BIPA class actions. The attorneys of McGuire Law have been appointed class counsel in many complex consumer class actions in state and federal courts across the country, including numerous cases in the Circuit Court of Cook County and including multiple BIPA cases. *See, e.g., McFerren et al., v. AT&T Mobility, LLC* (Sup. Ct. Fulton County, Ga. 2008); *Gray et al. v. Mobile Messenger Americas, Inc. et al.* (S.D. Fla. 2008); *Gresham et al. v. Keppler & Associates, LLC et al.* (Sup. Ct. Los Angeles County, Cal. 2008); *Sims et al. v. Cellco Partnership et al.* (N.D. Cal. 2009); *Van Dyke et al. v. Media Breakaway, LLC et al.* (S.D. Fla. 2009); *Paluzzi, et al. v. mBlox, Inc., et al.* (Cir. Ct. Cook County, Ill. 2009); *Valdez et al. v. Sprint Nextel Corporation* (N.D. Cal. 2009); *Ryan et al. v. Snackable Media, LLC* (Cir. Ct. Cook County, Ill. 2011); *Parone et al. v. m-Qube, Inc. et al.* (Cir. Ct. Cook County, Ill. 2010); *Williams et al. v. Motricity, Inc. et al.* (Cir. Ct. Cook County, Ill. 2011); *Walker et al. v. OpenMarket, Inc. et al.* (Cir. Ct. Cook County, Ill. 2011); *Schulken et al. v. Washington Mutual Bank, et al.* (N.D. Cal. 2011); *In re Citibank HELOC Reduction Litigation* (N.D. Cal 2012); *Rojas v. Career Education Corp.* (N.D. Ill. 2012); *Murray et al. v. Bill Me Later, Inc.* (N.D. Ill. 2014); *Gomez et al v. Campbell-Ewald Co.* (C.D. Cal. 2014); *Manouchehri, et al. v. Styles for Less, Inc., et al.* (S.D. Cal. 2016); *Valladares et al. v. Blackboard, Inc. et al.* (Cir. Ct. Cook County, Ill. 2016); *Hooker et al v. Sirius XM Radio, Inc.* (E.D. Va. 2017); *Flahive et al v. Inventurus Knowledge Solutions, Inc.* (Cir. Ct. Cook County, Ill. 2017); *Serrano et al. v. A&M (2015) LLC*

(N.D. Ill. 2017); *Vergara et. al. v. Uber Technologies, Inc.* (N.D. Ill. 2018); *Zepeda v. International Hotels Group, Inc. et. al.* (Cir. Ct. Cook County, Ill 2018); *Kovach et al v. Compass Bank* (Cir. Ct. Jefferson County, AL 2018); *Svagdis v. Alro Steel Corp.* (Cir. Ct. Cook County, Ill. 2018); *Zhirovetskiy v. Zayo Group, LLC* (Cir. Ct. Cook County, Ill. 2019); *Marshall v. LifeTime Fitness, Inc.* (Cir. Ct. Cook County, Ill. 2019); *McGee v. LSC Communications, Inc., et al.* (Cir. Ct. Cook County, Ill. 2019); *Prather et al. v. Wells Fargo Bank, N.A.* (N.D. Ill. 2019); *Nelson et al v. Nissan North America, Inc.*, (M.D. Tenn. 2019); *Smith v. Pineapple Hospitality Co. et al.* (Cir. Ct. Cook County, Ill. 2020).

5. The attorneys of McGuire Law have intimate knowledge of the law in the fields of technology and privacy. Recognized as pioneers in the field of consumer class actions involving the TCPA, as well as claims brought under the BIPA, McGuire Law attorneys have served as counsel of record for groundbreaking rulings involving technology at the state and federal district and appellate court levels, including most recently at the U.S. Supreme Court. *See, e.g., Shen v. Distributive Networks, Inc.* (N.D. Ill. 2007); *Weinstein et al. v. The Timberland Co. et al.* (N.D. Ill. 2008); *Satterfield et al. v. Simon & Schuster, Inc.* (9th Cir. 2009); *Espinal et al. v. Burger King Corporation et al.* (S.D. Fla. 2010); *Abbas et al. v. Selling Source, LLC* (N.D. Ill. 2010); *Damasco et al. v. Clearwire Corp.* (7th Cir. 2011); *Ellison et al. v. Steven Madden, Ltd.* (C.D. Cal. 2013); *Robles et al. v. Lucky Brand Dungarees, Inc. et al.* (N.D. Cal. 2013); *In re Jiffy Lube Spam Text Litigation* (S.D. Cal. 2013); *Lee, et al. v. Stonebridge Life Ins. Co. et al.* (N.D. Cal. 2013); *Elikman et al. v. Sirius XM Radio, Inc.* (N.D. Ill. 2015); *Campbell-Ewald Co. v. Gomez et al.*, 136 S. Ct. 663 (2016); *Bolds v. Arro Corp., et al.* (Cir. Ct. Cook County, Ill. 2019); *Rogers v. BNSF Railway Co.* (N.D. Ill. 2019).

6. The McGuire Law firm has successfully prosecuted claims on behalf of our clients in both state and federal trial and appellate courts throughout the country, including claims involving allegations of consumer fraud; unfair competition; invasion of privacy; data breach; false advertising; breach of contract; and various statutory violations, including BIPA and TCPA violations.

7. I received my B.A. from the University of Michigan and graduated from the University of Illinois College of Law in 2002. In addition to my class action experience, which includes being appointed class counsel in numerous BIPA cases, I have extensive experience in complex commercial litigation and have regularly litigated cases in state and federal trial and appellate courts across the nation, including in the Circuit Court of Cook County, the U.S. District Court for the Northern District of Illinois, the Ninth Circuit Court of Appeals, the Judicial Panel on Multidistrict Litigation, and the U.S. Supreme Court, where I recently served as co-lead counsel in a case of seminal importance to class action jurisprudence nationwide. *See Campbell-Ewald Co. v. Jose Gomez*, 136 S. Ct. 663 (2016).

8. Myles McGuire is the Managing Partner of McGuire Law. Mr. McGuire has been recognized as a leader in class actions and technology law by his peers and courts around the country and has been appointed lead counsel in numerous state and federal class actions. Mr. McGuire has successfully prosecuted claims on behalf of his clients in numerous trial and appellate courts at both the state and federal levels throughout the country involving consumer fraud, unfair competition, invasion of privacy, false advertising and breach of contract, among others. Mr. McGuire is a graduate of Marquette University and Marquette University Law School and is admitted to practice in the Illinois Supreme Court, Wisconsin Supreme Court, and the U.S. Supreme Court, where he was co-lead counsel in the *Campbell-Ewald Co. v. Gomez* matter. Prior

to founding McGuire Law, P.C. in 2013, Mr. McGuire was a managing member of Edelson McGuire, LLC.

9. My colleague, David L. Gerbie, also has experience in litigating class action cases in state and federal courts; has been significantly involved, if not the primary lead attorney, in numerous class action suits in state and federal courts across the country; and has been appointed as class counsel in multiple BIPA class actions in the Circuit Court of Cook County. Mr. Gerbie received his B.A. from Northern Illinois University and graduated from the University of Wisconsin Law School.

10. My colleague, Andrew T. Heldut, is an associate at McGuire Law with experience litigating class action cases in state and federal courts, and has been significantly involved in numerous class action suits across the country, including many BIPA class actions in the Circuit Court of Cook County and in the Northern District of Illinois. Mr. Heldut received his B.A. from the University of Strathclyde (U.K.) and received his JD from the John Marshall Law School.

**Class Counsel's Contribution to the Case**

11. From the outset of this litigation, the attorneys and support staff of McGuire Law, P.C. anticipated spending hundreds of hours litigating the claims in this matter with no guarantee of success. Class Counsel understood that prosecution of this case would require that other work be foregone, that there was significant uncertainty surrounding the applicable legal and factual issues, and that there would be significant opposition from a defendant with substantial resources.

12. McGuire Law, P.C. assumed a significant risk of non-payment in prosecuting this litigation given the novelty of legal issues involved, the scope of Defendant's biometric program, and the vigorous and nuanced legal defenses that Defendant and its skilled counsel raised or were prepared to raise had this case proceeded further.

13. Throughout the litigation, Defendant and its counsel indicated that they planned to present a strong defense, challenging Plaintiff's claim on the merits and his ability to represent a class of those whose biometric information were collected by Defendant. Had this case not settled, Defendant undoubtedly would have proceeded with motion practice in an effort to dismiss the suit in its entirety, particularly given Defendant's defenses, and Defendant would have also aggressively contested class certification. Given the financial resources at its disposal, any final decisions favorable to Plaintiff would have also likely been appealed by Defendant.

14. Class Counsel were able to obtain the substantial benefit provided to the Settlement Class Members through the Settlement, despite the significant risks and defenses raised by Defendant, only as a result of their efforts in investigating, and conducting discovery into, Defendant's biometric capture, collection and use practices, including issues relating to Defendant's technology and issues relating to class size and identification. Additionally, Class Counsel played a central role in the careful and extended negotiations that resulted in the final Settlement Agreement, including the drafting and preparation of the Settlement Agreement, all related exhibits, and the Motion for Preliminary Approval.

15. The work that the attorneys and staff of McGuire Law, P.C. have committed to this case has been substantial. Among other things, the attorneys of McGuire Law have:

- a. Investigated Plaintiff's claims;
- b. Drafted and filed the Class Action Complaint and an Amended Complaint;
- c. Reviewed and analyzed records and information provided by Defendant through both informal and formal discovery, which included the drafting of document requests and interrogatories and conducting a deposition;
- d. Attended multiple in-person court hearings;

- e. Coordinated settlement proceedings and negotiations;
- f. Drafted a comprehensive mediation statement and attended a full-day mediation session with the Hon. James F. Holderman (Ret.) of JAMS;
- g. Engaged in months of continued communication and contentious negotiations relating to the contours of the settlement, including the benefits to the class members and the significant prospective relief.
- h. Prepared settlement-related papers and engaged in substantial negotiations with Defendant's counsel relating to same, including exchanging drafts of the Settlement Agreement, the claim form, and all class notice documents;
- i. Successfully moved for preliminary approval of the Settlement; and
- j. Oversaw the implementation of the Settlement, including multiple telephone and email communications with the Settlement Administrator about class notice, the settlement website, and claim submission.

16. In addition to the above efforts taken by Class Counsel to secure the Settlement reached here for the Settlement Class Members, pursuant to the terms of the Settlement and this Court's Preliminary Approval Order, McGuire Law has also been primarily responsible for effectuating notice to Class Members and responding to Class Member inquiries.

17. The Settlement Administrator, KCC, LLC, was provided by Defendant with mailing addresses for all potential class members, and the Settlement Administrator has informed me that Direct Notice of this Settlement has been sent out to all such mailing addresses. The Settlement Administrator has advised me that, as of the date of this Declaration, the Internet Banner is currently running online through Google's advertisement network, and the Settlement Website is active; thousands of Claim Forms have already been received; and there have been no



objections to date. Each Settlement Class Member who files a timely, valid claim will be entitled to an equal *pro rata* share of the Settlement Fund, which, given the size of the Settlement Fund, may amount to hundreds of dollars each.

18. Based on my experience in other class action settlements, I anticipate that our firm will expend significant additional time and resources over the pendency of this action relating to briefing and filing a motion for final approval of the Settlement, attending the final approval hearing, responding to Class Members' inquiries regarding the Settlement and advising them how to proceed, responding to any objectors, reviewing submitted claims rejected by Defendant and/or the Settlement Administrator, and remaining involved with the Settlement through implementation.

19. Prior to the initiation of this litigation, Plaintiff Prelipceanu executed a fee agreement with my firm that was contingent in nature. Mr. Prelipceanu agreed ex ante that up to 40% of any settlement fund, plus reimbursement of all costs and expenses, would represent a fair award of attorneys' fees from a fund recovered on behalf of himself and a class.

20. McGuire Law, P.C. has incurred **\$17,103.00** in expenses related to this litigation, which includes costs for filing fees, mediation fees, large copying jobs and case administration. Every effort was made to keep these expenses at a minimum. Being responsible for advancing all expenses, Class Counsel had a strong incentive not to expend any funds unnecessarily.

***Class Representative's Contribution to the Case***

21. Plaintiff Alex Prelipceanu has been heavily involved in this litigation, has willingly contributed his own time and efforts toward this litigation, and is deserving of the proposed Incentive Award. Mr. Prelipceanu was instrumental in assisting Class Counsel's investigation at the outset of this case and has remained fully involved in its prosecution. Moreover, Mr.

Prelipceanu had his biometrics captured and used by Defendant on numerous occasions but chose to proceed with his claims on behalf of a class, despite having financial incentive to pursue his claims on an individual basis, and has succeeded in obtaining non-monetary, as well as financial relief, on behalf of the class.

22. Mr. Prelipceanu was consistently available to consult with Class Counsel in person, over the phone, and by email and did so on numerous occasions. Mr. Prelipceanu also reviewed pleadings and settlement documents, produced documents and information, and committed multiple hours of time for the benefit of the class.

23. Were it not for Mr. Prelipceanu's efforts and contributions to the litigation by assisting Class Counsel with their investigation and filing of this suit and his monitoring of the case throughout its litigation, the substantial benefit to the class afforded under this Settlement Agreement would not have resulted.

24. Mr. Prelipceanu has not received any payments in this matter, was never promised any payments, and was not promised that he would receive an award of any kind in this litigation. Rather, the requested Incentive Award seeks only to compensate Mr. Prelipceanu for his time, effort, and contributions to this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 5, 2020 in Chicago, Illinois.

/s/ Evan M. Meyers  
Evan M. Meyers, Esq.