

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

CHARLENE FIGUEROA and JERMAINE
BURTON, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

KRONOS INCORPORATED,

Defendant.

Case No. 1:19-cv-01306

Honorable Gary S. Feinerman

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

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I. INTRODUCTION

Plaintiffs Charlene Figueroa and Jermaine Burton brought this class action against Kronos Incorporated, the provider of a cloud-based timekeeping system with an attached finger scanner used by many employers of hourly workers in many locations across Illinois. Plaintiffs alleged that Kronos violated the Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*, by collecting and storing their and other Illinois workers’ fingerprints without their consent, and by failing to create and abide by a publicly-available retention and deletion policy for biometric data. After years of contentious litigation that included substantial motion practice and extensive written and oral fact discovery, the Parties reached a Settlement, which the Court preliminarily approved on February 18, 2022. (Dkt. 358.) The Settlement provides substantial monetary relief, distributed equitably through a simple claims process, following a comprehensive direct notice program that resulted in an outstanding claims rate. Now that notice to the Settlement Class is completed and not a single individual objected and only one person requested to be excluded, Plaintiffs request that this Court grant final approval to this exceptional Settlement.¹

In terms of monetary relief, the Settlement creates a \$15,276,227.00 non-reversionary Settlement Fund for the 81,910 class members to be split *pro rata* among those who filed Approved Claims. Unsurprisingly, given the comprehensive notice that directly reached 95.4% of the class and outstanding relief available, the Settlement has seen an excellent participation rate: 21,933 Approved Claims have been submitted, for a claims rate of 26.78%. As a result, those Class Members are expected to receive payments of approximately \$445 each. Although part of a growing trend of increased participation in class settlements, this far exceeds historical

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

claims rates in consumer class actions, which rarely see rates in the double digits. The Settlement further provides non-monetary benefits: if Kronos continues to host finger-scan data, it will be required to notify its employer-customers that they need to establish and comply with a retention and deletion schedule in line with BIPA and obtain an informed written release from their employees permitting the employer-customer and Kronos to collect, store, use, and/or disclose their finger-scan data. Finally, the Settlement explicitly preserves Plaintiffs' and the Settlement Class's claims against their employers (i.e., Kronos' customers), meaning the Settlement Class can pursue separate BIPA claims for additional monetary relief for their employer's collection of their finger-scan data.

For these reasons, and as detailed below, this Settlement is exceptional. The factors to be considered under Rule 23 when determining whether to grant final approval to a class settlement weigh strongly in favor of approving this one. Thus, the Court may appropriately grant final approval.

II. BACKGROUND

Though Plaintiffs have detailed the case background in their preliminary approval motion and motion for attorneys' fees (dkt. 342, 374), it is set forth in brief below for ease of reference.

A. Nature of the Litigation

BIPA was passed after the bankruptcy of a company called Pay By Touch, which had partnered with gas stations and grocery stores in Illinois to install checkout terminals that used fingerprint scanners linked to bank accounts to make purchases. (Compl., dkt. 1-1 ¶¶ 12–13.) When Pay By Touch's parent company declared bankruptcy at the end of 2007, it began shopping its database of Illinois consumers' fingerprints as an asset to its creditors. (*Id.* ¶ 13.) This decision was met with public backlash, and while a bankruptcy court ultimately ordered the

destruction of the database, the Illinois legislature recognized the “very serious need” to protect Illinois citizens’ biometric data. *See* Illinois House Transcript, 2008 Reg. Sess. No. 276.

Therefore, in 2008, the Illinois legislature unanimously passed BIPA, which makes it unlawful for any private entity to collect and store consumers’ biometric data unless it first (i) obtains their informed written consent, (ii) provides details related to the data’s purpose and storage, and (iii) establishes and complies with a publicly-available retention and destruction policy. *See id.*; 740 ILCS 14/15(a), (b). If a company fails to comply with BIPA’s provisions, the statute provides for a civil private right of action allowing consumers to recover \$1,000 for negligent violations or \$5,000 for willful violations, plus costs and reasonable attorneys’ fees. 740 ILCS 14/20.

B. The Claims

The Court provided an accurate (and concise) summary of the claims and conduct at issue in its ruling on Kronos’ motion to dismiss:

Kronos is a provider of human resource management software and services. Doc. 1-1 at ¶ 1. As part of its business, Kronos provides timekeeping systems to thousands of employers in Illinois. *Ibid.* Those systems include biometric-based time clocks, which require employees to use their biometric information to punch in and out of work. *Id.* at ¶ 2.

When beginning work for an employer that uses a Kronos biometric timekeeping device, an employee must have her fingerprint or palm print scanned to enroll in the Kronos database. *Id.* at ¶ 25. Kronos does not inform those employees that it is collecting, storing, or using their biometric data. *Id.* at ¶¶ 26-27. Nor does Kronos inform them of the purposes for collecting their data or to whom the data is or will be disclosed. *Ibid.* Kronos does not maintain retention schedules or guidelines for permanently destroying the data. *Id.* at ¶¶ 28, 32. Kronos has not destroyed biometric data when the initial purpose for obtaining it has been satisfied or within three years of an employee’s last interaction with her employer. *Id.* at ¶ 32. Employees are not told whether and to whom Kronos discloses their data or what would happen to the data in the event of a Kronos merger or bankruptcy. *Id.* at ¶ 33.

(Dkt. 128 at 2.) Based on the substantial discovery they obtained in this case, Plaintiffs still believe these allegations to be accurate. Kronos, for its part, has denied any violation of BIPA. (See Def.'s Am. Ans., dkt. 278.)

C. Procedural History

Plaintiffs originally filed this case on January 18, 2019, against Kronos in the Circuit Court of Cook County, Illinois. Kronos removed this case and another substantively identical case led by a different plaintiff to this Court. (Dkt. 1.) Plaintiffs then moved to consolidate the cases and for their counsel—Edelson PC and Stephan Zouras LLP—to be appointed interim class counsel, which the Court granted. (Dkts. 37, 55.)

On April 15, 2019, Kronos moved to dismiss and to strike the Complaint's class allegations, which the Court denied after full briefing. (Dkts. 29, 30, 32, 33, 50, 51, 62, 63, 128.) In its order, the Court requested supplemental briefing on whether Plaintiffs had standing to bring their claims under 740 ILCS 14/15(a) in federal court, which the Parties submitted. The Court then severed Plaintiffs' 15(a) retention claims and remanded them to state court but allowed the 15(b) collection claims to proceed in this Court. (Dkt. 150.) After the Seventh Circuit's decision in *Fox v. Dakkota Integrated Systems, LLC*, 980 F.3d 1146 (7th Cir. 2020), Kronos re-removed the remanded portion of the case, which was then re-consolidated. (Dkt. 179.)

On May 12, 2020, Kronos answered the Complaint (dkt. 136), and the Parties began written discovery shortly thereafter. Throughout discovery, the Parties sought the Court's intervention on several discovery disputes, including the proper scope of Kronos's production of class-related discovery (dkts. 155, 166), whether Kronos could seek discovery about unnamed putative class members (dkts. 173, 179, 234), and whether Kronos was entitled to discovery in

support of its equitable and implied consent defenses (i.e., whether or not Plaintiffs provided something less than informed written consent to collect their biometric data) (dkts. 259, 261).

Given the last-described discovery dispute, Plaintiffs moved to strike Kronos' equitable and implied consent defenses, (dkt. 267), which the Court granted without prejudice (dkt. 276). Kronos then amended its answer and those defenses, (dkt. 278), and Plaintiffs again moved to strike them (dkt. 285). The Court denied Plaintiffs' motion this time around but reserved ruling on the merits of Kronos' defenses. (Dkt. 307.) While the Parties briefed the motions to strike, Kronos also moved stay the case pending the Seventh Circuit's ruling in *Cothron v. White Castle System, Inc.*, No. 20-3202 (7th Cir.) and the Illinois Appellate Court's decision in *Tims v. Black Horse Carriers, Inc.*, 2021 IL App (1st) 200563. (Dkt. 279.) The Court denied the motion on April 29, 2021. (Dkt. 288.)

Throughout discovery, Kronos ultimately produced over 120,000 pages of documents and ESI to Plaintiffs, and Plaintiffs deposed seven Kronos employees. Plaintiffs also sat for their own depositions. Nearing the end of fact discovery, the Parties agreed in July 2021 that a mediation would be productive, and they participated in a full-day mediation with Judge James F. Holderman (Ret.) of JAMS on August 31, 2021. Though the Parties made significant progress during the mediation, they did not reach a deal and returned to litigation. However, they continued to work toward settlement, including by exchanging a number of drafts of a binding Memorandum of Understanding and engaging in several telephone and Zoom conferences beginning in mid-September 2021 and through mid-October 2021. After dozens of emails, phone calls, and numerous rounds of edits on the draft, the Parties executed a binding Memorandum of Understanding on October 20, 2021. After additional negotiations, the final Settlement Agreement was executed by the Parties on January 20, 2022. Plaintiffs then promptly moved for

preliminary approval of the settlement (dkt. 342), which the Court granted on February 18, 2022 (dkt. 358). Most recently, Class Counsel moved for attorney’s fees, expenses, and Plaintiffs’ incentive awards on November 22, 2022 (dkt. 374), which was promptly posted on the Settlement Website. (*See* Declaration of Paul Ferruzzi (“Ferruzzi Decl.”), attached as Exhibit 2, at ¶ 8.)

III. TERMS OF THE SETTLEMENT AGREEMENT

The terms of the Settlement are set forth in the Stipulation of Class Action Settlement, (Ex.1), and are briefly summarized here:

A. Class Definition: In the Preliminary Approval Order, the Court certified for settlement purposes a Settlement Class of “[a]ll persons who used a Kronos brand time clock with a finger sensor attachment for timekeeping purposes in Illinois and whose finger-scan data was hosted by Kronos between January 18, 2014, and [March 20, 2022].”² (Dkt. 358 ¶ 3.) There are 80,910 members of the Settlement Class.³ (*See* Ferruzzi Decl. ¶ 6.)

B. Monetary Relief: Kronos has established a non-reversionary Settlement Fund of \$15,276,227.00 for the benefit of the Settlement Class. Each Class Member who submitted an

² Excluded from the Settlement Class are: (1) any Judge or Magistrate presiding over this action and members of their families, (2) Defendant, Defendant’s subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, (3) persons who properly execute and file a timely request for exclusion from the Settlement Class, (4) the legal representatives, successors, heirs, or assigns of any such excluded persons, (5) individuals who only scanned at (i) a State or local government agency; (ii) a banking institution subject to Title V of the federal Gramm-Leach Bliley Act of 1999; or (iii) a court of Illinois, a clerk of the court, or any judge or justice thereof, and (6) persons who were members of the settlement class in the *Diaz v. Greencore, Inc.*, 2017-CH-13198 (Cir. Ct. Cook Cnty.) and *Dixon v. Washington Jane Smith Home*, No. 17-cv-8033 (N.D. Ill.) settlements. (*Id.*)

³ On October 28, 2022, the Settlement Administrator mistakenly informed Class Counsel that the final class list included 84,193 individuals, 81,910 of which had an available mailing address or email address. (Ferruzzi Decl. ¶ 6.) Plaintiffs reported those figures in their motion for attorneys’ fees, expenses, and incentive awards. (Dkt. 374.) However, the correct total class size is 81,910 individuals, 80,349 of which had an available mailing address or email address. (Ferruzzi Decl. ¶ 6.)

Approved Claim will be entitled to a *pro rata* portion after payment of notice costs, administrative expenses, and any attorneys' fees and incentive awards approved by the Court. (Agreement §§ 1.15, 1.35, 1.36, 2.1(a).) Should the Court approve Plaintiffs' requested attorneys' fees and incentive awards, and given the remarkable 26.78% claims rate, each Class Member who submitted an Approved Claim can expect to receive a Settlement Payment for approximately \$445. Any uncashed checks or electronic payments unable to be processed within 120 days of issuance will first be redistributed to Class Members who cashed their first checks or successfully received their first electronic payments, if feasible and in the interests of the Settlement Class. (Dkt. 358 ¶ 24.) If redistribution is not feasible or if residual funds remain in the Settlement Fund after redistribution, such funds will, subject to Court approval, be provided as *cy pres* to Legal Aid Chicago (earmarked for workers' rights representation) and the American Civil Liberties Union of Illinois (earmarked to support its Government Accountability and Personal Privacy efforts, which advocates to protect Illinoisans' privacy rights) or any other appropriate entity agreed upon by the Parties and approved by the Court. (Agreement § 2.1(f).)

C. Prospective Relief: Kronos has also agreed to implement prospective measures related to the finger-scan time clocks it provides to Illinois Kronos Cloud Customers and has agreed to implement them by the Effective Date. (*Id.* § 2.2.) Specifically, Kronos will notify its Illinois customers who send finger-scan data to its cloud platform that they are required to: (1) establish a retention and destruction schedule that complies with BIPA and follow that schedule with timely data deletion; (2) notify the subjects of collection, in writing, that finger-sensor data, which may be considered biometric information under BIPA, is being collected, stored, used, and disclosed by the Illinois Kronos Cloud Customer and/or Kronos; (3) notify the subjects of collection in writing of the purposes and length of term that finger-sensor data is being collected,

stored, used and disclosed; and (4) obtain a written release to the collection, storage, use, and disclosure by the Illinois Kronos Cloud Customer and by Kronos. (*Id.*)

D. Payment of Settlement Notice and Administrative Costs: Defendant has agreed to pay from the Settlement Fund all expenses incurred by the Settlement Administrator in providing notice, administering the Settlement, creating and maintaining the Settlement Website, receiving and processing Claim Forms, dispersing Settlement Payments, related tax expenses, fees of the escrow agent, and any other related expenses. (*Id.* § 1.30.)

E. Attorneys' Fees and Incentive Awards: Defendant has agreed to pay reasonable attorneys' fees in an amount determined by the Court, to be paid from the Settlement Fund. (*Id.* § 8.1.) Plaintiffs' counsel voluntarily agreed to limit their request to 33% of the Settlement Fund, (*id.*), which they made by a separate motion on November 22, 2022. (Dkt. 374.) Defendant has also agreed to pay Plaintiffs incentive awards from the Settlement Fund in the amount of \$7,500 each, subject to Court approval, in recognition of their efforts in serving as Class Representatives. (Agreement § 8.2; *see* dkt. 374, at 25-26.)

F. Release: In exchange for the relief described above, the Class Members will release Kronos and related entities from any and all past and present claims or causes of action related to BIPA, including, but not limited to, any claims arising out of BIPA, tort or privacy claims, or any other federal, state, or local statute, regulation, or common law, arising out of or related to the alleged possession, collection, capture, purchase, receipt through trade, obtaining, sale, lease, trade, profit from, disclosure, re-disclosure, dissemination, storage, transmittal, and/or protection from disclosure of alleged biometric information or biometric identifiers. (Agreement §§ 1.26, 1.27, 3.1.) The release specifically *excludes* Kronos's customers, such as the Illinois employers where Class Members used finger-scan time clocks. (*Id.* § 1.27.)

IV. THE CLASS NOTICE FULLY SATISFIED DUE PROCESS

Prior to granting final approval to this Settlement, the Court must consider whether the class members received “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B); *accord Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 595 (N.D. Ill. 2011) (“*Schulte I*”). The “best notice practicable” does not necessarily require receipt of actual notice by all class members in order to comport with both Rule 23 and the requirements of due process. In general, a notice plan that reaches at least 70% of class members is considered reasonable. *See* Federal Judicial Center, *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide* at 3 (2010), available at www.fjc.gov/sites/default/files/2012/NotCheck.pdf.

Here, before sending notice, the Parties worked to compile the names, addresses, and emails addresses of the Settlement Class members (“Contact Information”) from Kronos’ customers, following the detailed procedures set forth in the Settlement Agreement. (Agreement § 7.2.) First, Kronos reached out to all of its Illinois Kronos Cloud Customers, asking them to voluntarily provide Contact Information for their current and former employees who are members of the Settlement Class. (*Id.*) While some Illinois Kronos Cloud Customers produced Contact Information, 18 refused or failed to respond. As a result, Class Counsel issued subpoenas to each of those customers and, when six again failed to produce Contact Information, Class Counsel moved to compel their compliance, which the Court granted. (Dkts. 360, 363, 365.) Those six customers ultimately complied with the subpoenas. In the end, the final Class List contains the names of 81,910 unique individuals and includes a mailing address and/or email address for 80,349 of them, or 98%. (Ferruzzi Decl. ¶ 6.) While the 81,910 class size is smaller

than Kronos' original estimate of 171,643, it is based on real data received from all of Kronos' Illinois Kronos Cloud Customers.

The Court-approved Notice plan called for (1) direct notice via email and First-Class U.S. Mail to all persons in the Settlement Class for whom a valid email address and/or mailing address was available, (2) the creation of a detailed Settlement Website, and (3) reminder notices via email. (Dkt. 358, ¶¶ 9-11; Agreement § 4.1.) For direct notice, the Settlement Administrator first updated the U.S. Mail addresses on the Class List through the National Change of Address database to ensure the most up-to-date addresses as possible. (Ferruzzi Decl. ¶ 5.) On September 7, 2022, the Settlement Administrator sent the Court-approved direct notice via U.S. Mail to all 80,041 addresses on the Class List, and also via email to all 46,760 email addresses on the Class List. (*Id.* ¶¶ 11, 14.) Ultimately, direct notice was successfully delivered to 78,904 mailing addresses and 37,895 email addresses, and at least one form of direct notice successfully reached 95.4% of the Settlement Class. (*Id.* ¶¶ 11-15.)

The Settlement Administrator also sent two rounds of reminder notices via email to class members who, at each point, had not yet submitted a claim. (*Id.* ¶ 16.) The first reminder notices were sent on November 17, 2022 (i.e., 19 days prior to the Claims Deadline) to 35,573 Settlement Class members, and the second reminder notices were sent on November 29, 2022 (i.e., 7 days prior to the Claims Deadline) to 34,673 Settlement Class members. (*Id.*)

Both the direct notices and reminder notices directed class members to the Settlement Website, www.KronosBIPASettlement.com, which has been and continues to be available 24/7 and features the "long form" notice and important court filings (including Plaintiffs' Motion and Memorandum of Law for Attorneys' Fees, Expenses, and Incentive Awards), important deadlines, instructions on how to appear at the Final Approval Hearing telephonically, and

answers to frequently asked questions. (*Id.* ¶ 8; Agreement § 4.1(c)(iii).)

Overall, the Notice program was highly successful, as direct Notice reached over 95.4% of the class, those notices were supplemented with two rounds of reminder notices, and (as further discussed below) the Parties ultimately achieved an outstanding claims rate of 26.78%. This greatly exceeds what is required for due process.

V. CERTIFICATION OF THE SETTLEMENT CLASS SHOULD BE CONFIRMED FOR PURPOSES OF FINAL APPROVAL

At preliminary approval, the Court certified the Settlement Class for settlement purposes under Rule 23, finding that it is sufficiently numerous, that common questions predominate, that Plaintiffs' claims are typical of the Settlement Class's claims, that Plaintiffs and Class Counsel will adequately represent the Settlement Class, and that a class action is a superior method for fairly and efficiently adjudicating this matter. (Dkt. 358, ¶¶ 3-4.) Since nothing has changed since then—other than the Parties securing Contact Information for 98% of the Settlement Class members—the Court should confirm certification of the Settlement Class for purposes of entering a Final Approval Order.

VI. THE SETTLEMENT WARRANTS FINAL APPROVAL

When analyzing class action settlements, “the law quite rightly requires more than a judicial rubber stamp[.]” *Redman v. RadioShack Corp.*, 768 F.3d 622, 629 (7th Cir. 2014). To that end, the Seventh Circuit has established “the district judge as a fiduciary of the class, who is subject therefore to the high duty of care that the law requires of fiduciaries.” *Pearson v. NBTY, Inc.*, 772 F.3d 778, 780 (7th Cir. 2014) (internal quotations omitted).

Federal Rule of Civil Procedure 23(e) governs court approval of class action settlements and mandates that “claims, issues, or defenses of a certified class . . . may be settled . . . only with the court's approval . . . after a hearing and only on finding that it is fair, reasonable, and

adequate[.]” Fed. R. Civ. P. 23(e); *Uhl v. Thoroughbred Tech. & Telecommunications, Inc.*, 309 F.3d 978, 986 (7th Cir. 2002). Rule 23(e)(2) sets out that a court must consider whether (1) the class representative and class counsel have adequately represented the class; (2) the settlement was negotiated at arm’s length; (3) the settlement treats class members equitably relative to each other; and (4) the relief provided for the class is adequate. Fed. R. Civ. P. 23(e)(2) (eff. Dec. 1, 2018); *see, e.g., Snyder v. Ocwen Loan Servicing, LLC*, No. 14 c 8461, 2019 WL 2103379, at *4 (N.D. Ill. May 14, 2019).

As the Advisory Committee for the 2018 amendments to Rule 23 recognized that “each circuit has developed its own vocabulary for expressing these concerns[.]” the Court should also take into account the factors set out by the Seventh Circuit. Fed. R. Civ. P. 23(e), Advisory Committee’s Note to 2018 Amendment. These factors are: “(1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to the settlement; (5) the opinion of competent counsel; and (6) stage of the proceedings and the amount of discovery completed.” *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863 (7th Cir. 2014) (internal quotations omitted); *accord Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006). Courts in the Seventh Circuit continue to analyze these factors in tandem with the Rule 23(e)(2) factors to ensure that a settlement is fair, reasonable, and adequate. *See, e.g., In re NCAA Student-Athlete Concussion Injury Litig.*, 332 F.R.D. 202, 217 (N.D. Ill. 2019).

The following discussion of the factors set out in Rule 23(e)(2) and their corresponding factors set out by the Seventh Circuit demonstrates that the Settlement is fair, reasonable, adequate, and deserving of final approval.

A. Plaintiffs and Class Counsel have Adequately Represented the Class.

The first Rule 23(e)(2) factor, whether the class representative and class counsel have adequately represented the class, focuses on class counsel's and the class representative's performance as it relates to the "conduct of the litigation and of the negotiations leading up to the proposed settlement." Fed. R. Civ. P. 23(e), Advisory Committee's Note to 2018 Amendment. This factor is generally satisfied where the named plaintiff participated in the case diligently, and class counsel fought vigorously in the litigation. *Snyder v. Ocwen Loan Servicing, LLC*, No. 14 c 8461, 2018 WL 4659274, at *4 (N.D. Ill. Sept. 28, 2018); *see also Chambers v. Together Credit Union*, No. 19-CV-00842-SPM, 2021 WL 1948453, at *2 (S.D. Ill. May 14, 2021) (finding this factor satisfied when class counsel vigorously litigated the case "both through motion practice on the legal merits and through discovery of facts and potential damages"). In considering this factor, courts are to examine whether the plaintiff and class counsel had adequate information to negotiate a class-wide settlement, taking into account the nature and amount of discovery completed. *See Snyder*, 2018 WL 4659274 at *4. This inquiry is coextensive with the Seventh Circuit's direction to consider the "stage of the proceedings and the amount of discovery completed." *Wong*, 773 F.3d at 863 (internal quotations omitted).

The knowledge and negotiating position, participation, and conduct of Ms. Figueroa, Mr. Burton, and Class Counsel have not changed since this Court granted preliminary approval. (Dkt. 358.) Plaintiffs' interests have remained aligned with the Settlement Class through the Notice process and preparation for final approval. Without Plaintiffs stepping up to represent the class and taking on these tasks as the lead plaintiffs, including responding to written discovery, sitting for their depositions, reviewing the pleadings and Settlement Agreement, and otherwise staying involved in nearly every aspect of the case, the relief secured for the Settlement Class wouldn't

have been possible. Given their efforts and aligned interest with the class, there can be no doubt that Ms. Figueroa and Mr. Burton have only acted in the best interest of the Settlement Class and have adequately represented them.

Likewise, Class Counsel worked vigorously to protect the interests of the class and ensure that the class was represented beyond the simple “adequate” measure. First, the immense amount of investigation and discovery undertaken by Class Counsel ensured that they had adequate information to assess the strength of the case and engage in settlement discussions. For example, Class Counsel engaged in extensive formal written discovery, including by obtaining over 120,000 pages of documents and ESI from Kronos and deposing seven of Kronos’ personnel. Each of those deponents provided crucial testimony about the marketing, functionality, or deployment of the time clocks at issue in this case. Class Counsel also engaged in extensive motion practice with Kronos, which included defeating Kronos’ motion to dismiss and motion to strike class allegations, briefing several discovery motions, moving to strike two of Kronos’ affirmative defenses, and defeating Kronos’ motion to stay. Finally, after a settlement was reached, Class Counsel issued subpoenas to 18 of Kronos’ customers, seeking Contact Information for the Settlement Class, to ensure that as many of them would receive direct notice of the Settlement as possible, and successfully moved to compel six of those customers to answer their subpoenas.

After nearly four years of investigation and discovery, the facts underlying Plaintiffs’ allegations in this case, though by no means their legal import, are now substantially undisputed: Kronos (1) provided a cloud-based timeclock system with a finger scanner attached to customers across Illinois and (2) hosted the finger-scan data of 81,910 of those customers’ workers through Kronos’ WorkForce software, (3) without first seeking their written consent to do so or making

the disclosures mandated by BIPA. Therefore, the Settlement unequivocally meets the Rule 23(e)(2)(C) requirement.

B. The Settlement Is the Product of Arm’s-Length, Non-Collusive Negotiations.

The second factor in Rule 23(e)(2) requires the court to consider whether the proposed settlement is the result of arm’s-length negotiations. *See Wong*, 773 F.3d at 864. The record here demonstrates nothing but good-faith, non-collusive bargaining between the Parties. After over two years of active litigation, the Parties agreed in July 2021 that it was an appropriate time to explore meaningful settlement discussions. (*See* dkt. 313.) After exchanging several demands and counteroffers, the Parties agreed to mediate with Judge James F. Holderman (Ret.) of JAMS Chicago on August 31, 2021. Since the Parties were unable to reach a deal during their full-day mediation, they went back to litigating, with Plaintiffs taking their seventh deposition of a Kronos employee on September 22, 2021. However, the Parties continued to discuss settlement, and after several more rounds of demands and counteroffers, numerous calls between counsel, and on the eve of another Kronos deposition, the Parties finally reached an agreement on the principal terms of a class settlement on October 20, 2021. The Parties spent the next three months drafting and negotiating the outstanding terms of the final settlement agreement, which required submitting a dispute about the form of notice and the claim form to Magistrate Judge Gilbert for a binding determination. After Judge Gilbert resolved these issues, the Parties finalized and executed the Settlement Agreement on January 20, 2022. *See Wong*, 773 F.3d at 864 (affirming settlement approval and finding no “suspicious circumstances” where the parties negotiated with the assistance of an experienced third-party mediator); *Cooks v. TNG GP*, No. 2:16-cv-01160-KJM-AC, 2021 WL 5139613 at *4 (E.D. Cal. Nov. 4, 2021) (“The parties’ participation in mediation ‘tends to support the conclusion that the settlement process was not collusive.’”).

The arm's-length nature of these negotiations is further confirmed by the Settlement itself: it is non-reversionary, provides significant cash payments to Class Members who submit a simple, valid Claim Form, and contains no provisions that might suggest fraud or collusion, such as "clear sailing" or "kicker" clauses regarding attorneys' fees. *See Snyder*, 2019 WL 2103379, at *4 (approving settlement where "there is no provision for reversion of unclaimed amounts, no clear sailing clause regarding attorneys' fees, and none of the other types of settlement terms that sometimes suggest something other than an arm's-length negotiation"). For these reasons, there should be no question that the Settlement here was the result of good-faith, arm's-length negotiations and is entirely free from fraud or collusion. *See Schulte v. Fifth Third Bank*, No. 09-CV-6655, 2010 WL 8816289, at *4 n.5 (N.D. Ill. Sept. 10, 2010) (noting that courts "presume the absence of fraud or collusion in negotiating the settlement, unless evidence to the contrary is offered") (internal quotations omitted).

C. The Settlement Treats Class Members Equally.

Next, Rule 23(e)(2) requires the proposed settlement to treat class members "equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). Given that the Settlement Class here has nearly identical BIPA claims, the Settlement treats each of them identically. Defendant has established a non-reversionary fund of \$15,276,227.00, from which each Class Member who submitted an Approved Claim will receive a single,⁴ *pro rata* cash payment after fees and costs are paid. (Agreement §§ 1.36, 2.1); *see Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 855 (1999) (where class members are similarly situated with similar claims, equitable treatment is "assured by straightforward pro rata distribution of the limited fund").

⁴ As noted above, there may be a second cash payment made to individuals who timely cash their checks or successfully receive their electronic payments. (*See* dkt. 358, ¶ 24.)

The Settlement also provides for identical prospective relief requiring Kronos to provide specific notice to all of its Illinois Kronos Cloud Customers using finger-scan timeclocks, notifying them that they must establish a retention schedule for biometric data and obtain a BIPA-compliant release before anyone uses the clocks. (Agreement § 2.2.) Further, each Class Member will release the same BIPA claims against Kronos, and all will retain all their claims against their respective employers. (*Id.* §§ 1.26, 1.27, 1.28, 3.1.) Because the Settlement treats each Class Member equally, this factor is fully satisfied.

D. The Relief Secured for the Settlement Class is Adequate and Warrants Final Approval.

The final and most crucial factor under Rule 23(e)(2) scrutinizes whether the relief provided for the class is adequate. Fed. R. Civ. P. 23(e)(2)(C). In making this determination, Rule 23 identifies several sub-factors, including (i) the cost, risks, and delay of trial and appeal; (ii) the effectiveness of the proposed method of distributing relief to the class; and (iii) the terms of any proposed award of attorneys' fees, including timing of payment. *Id.*⁵ This analysis necessarily encompasses two of the Seventh Circuit's factors: "(1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer; [and] (2) the complexity, length, and expense of further litigation[.]" *Wong*, 773 F.3d at 863. Because the first Seventh Circuit factor "[is the] most important factor relevant to the fairness of a class action settlement[.]" it is critically important for a settlement to meet this standard. *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 958 (N.D. Ill. 2011) (internal quotations omitted). This Settlement does so.

⁵ The fourth sub-factor, which requires the parties to identify any side agreements made in connection with the settlement, is inapplicable as there are no such agreements. Fed. R. Civ. P. 23(e)(2)(C)(iv); (Declaration of J. Eli Wade-Scott, ("Wade-Scott Decl."), at ¶ 3, attached as Exhibit 3.)

1. The Relief Provided by the Settlement is Excellent.

The Settlement provides outstanding monetary relief for the Settlement Class and excels when compared to other class action settlements, including those under BIPA. Again, the deal creates a \$15,276,227.00 non-reversionary fund for the benefit of 81,910 Settlement Class members. Given the 26.78% claims rate, after any approved fees and costs are paid, each Class Member who submitted an Approved Claim will be paid approximately \$445.

Settlements in other statutory privacy class actions frequently don't come near this amount, either in terms of the amount of the payments or percentage of available relief. Such settlements all too often secure *cy pres* relief without any individual payments to class members. *See, e.g., In re Google LLC Street View Elec. Commc'ns Litig.*, No. 10-md-02184-CRB, 2020 WL 1288377, at *11–14 (N.D. Cal. Mar. 18, 2020) (approving, over objections of class members and state attorney general, a settlement providing only *cy pres* relief for violations of a federal privacy statute, where \$10,000 in statutory damages were available per claim). This has been true in finally-approved settlements in the BIPA context as well, where some settlements have offered only credit monitoring to class members, with *no* monetary relief. *See Carroll v. Crème de la Crème, Inc.*, 2017-CH-01624 (Cir. Ct. Cook Cnty. June 6, 2018). And of the BIPA settlements that have provided monetary relief, some have unnecessarily capped the amount class members can receive and reverted the inevitable remaining funds back to the defendant, rather than distributing the fund *pro rata* to class members. *E.g., Rosenbach v. Six Flags Ent. Corp.*, 2016-CH-00013 (Cir. Ct. Lake Cnty. Oct. 29, 2021) (approving \$36 million reversionary fund for approximately 1,110,000 class members, which capped class member payments at \$200 or \$60 depending on date of finger scan and reverted unclaimed funds to defendant); *Lark, et al. v. McDonald's USA, LLC, et al.*, No. 17-L-559 (Cir. Ct. St. Clair Cnty. Feb. 28, 2022) (approving \$50 million reversionary fund for more than 175,000 class members, which capped

class member payments at \$375 or \$190 depending on date of finger scan and reverted tens of millions of dollars in unclaimed funds to defendants).

This Settlement stands in stark contrast, as it creates a non-reversionary cash settlement fund for the Settlement Class, and the amount per person is among the highest in a BIPA vendor case to date. *See Thome v. NOVAtime Tech., Inc.*, No. 19-cv-6256, dkt. 90 (N.D. Ill. Mar. 8, 2021) (\$4.1 million fund for 62,000 class members and a \$10 million confession of judgment); *Kusinski v. ADP LLC*, 2017-CH-12364 (Cir. Ct. Cook Cnty. Feb. 10, 2021) (\$25 million fund for approximately 320,000 class members); *LaBarre v. Ceridian HCM, Inc.*, 2019-CH-06489 (Cir. Ct. Cook Cnty. Nov. 30, 2022) (approving \$3,493,074 fund for 14,142 class members); *see also Bryant v. Compass Group USA, Inc.*, No. 19-cv-06622, dkt. 90 (N.D. Ill. Nov. 2, 2021) (preliminarily approving \$6.8 million settlement for 66,159 class members, which releases both the vendor of the biometric technology and all of its customers). This monetary relief is even more remarkable considering that vendor claims are commonly released in employer BIPA cases for nothing, with no separate payment for the vendor's separate BIPA violations or promise of injunctive relief. *But see Fluker v. Glanbia Performance Nutrition, Inc.*, 2017-CH-12993 (Cir. Ct. Cook. Cnty.) (carving out third-party vendor, ADP, from release in BIPA settlement secured by Edelson PC).

To that end, the Settlement also preserves Class Members' BIPA claims against their employers, meaning they can pursue claims against their respective employers for the employer's own possible BIPA violations for the collection of the same biometric data. (Agreement § 1.27 (the Released Parties "expressly excludes any of Defendant's customers").) This carve-out enables Class Members to vitiate the full scope of their privacy rights under

BIPA, rather than, as in other cases, forcing Class Members to make a choice about which violations to pursue.

And the Class Members' employer BIPA claims are valuable: on average, class settlements between employees and their employers who deployed biometric timeclocks settle for over \$1,000 per class member before fees and costs are deducted. *E.g.*, *Martinez v. Nando's Rest. Grp., Inc.*, No. 19-cv-07012, dkt. 63 (N.D. Ill. Oct. 27, 2020) (fund constituting \$1,000 per person with direct checks sent to all class members); *Mazurkiewicz v. Mid City Nissan*, 2018-CH-09798 (Cir. Ct. Cook Cnty.) (\$1,250 per person); *Fluker*, No. 2017-CH-12933 (\$1,300 per person); *Cornejo v. Amcor Rigid Plastics USA, LLC*, No. 18-cv-7018, dkt. 57 (N.D. Ill. Sept. 20, 2020) (\$1,400 per person). Not only are the Class Members here receiving significant monetary relief in light of the defenses in vendor cases that are not present in employer cases, but they are maintaining their claims that fall into this employer-employee category.

The relief provided here is outstanding and should be approved.

2. *The Cost, Risk, and Delay of Further Litigation Compared to the Settlement's Benefits Favors Final Approval.*

"As courts recognize, a dollar obtained in settlement today is worth more than a dollar obtained after a trial and appeals years later." *Goldsmith v. Tech. Sols. Co.*, No. 92 C 4374, 1995 WL 17009594, at *4 (N.D. Ill. Oct. 10, 1995). In evaluating the adequacy of the relief provided to the class, courts should first compare the cost, risks, and delay of pursuing a litigated outcome to the settlement's immediate benefits. Fed. R. Civ. P. 23(e)(2), Advisory Committee's Note to 2018 amendment.

The Settlement here meets both the 23(e)(2)(C) requirements and the Seventh Circuit's first and second factors because it provides immediate relief to the Settlement Class while avoiding potentially years of risky litigation and appeals, with both Plaintiffs and Defendant

believing that they have strong cases for their side. *See Schulte I*, 805 F. Supp. 2d at 586 (“Settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation.”). The risks here were not insignificant.

First, if litigation were to continue, Kronos would continue to argue that Plaintiffs consented to the collection and disclosure of their biometric data—either implicitly or explicitly—by voluntarily scanning their fingers on Kronos timekeeping devices. (Dkt. 278 (asserting affirmative defenses for “Estoppel,” “Waiver,” “Consent,” “Ratification,” “Acquiescence,” and “Assumption of the Risk”).) Kronos was sure to raise this as a bar to class certification, too. Though Plaintiffs are confident BIPA requires nothing short of informed written consent, “no Illinois court has addressed the question” to date. (Order, dkt. 307 at 2-3 (“The court expects that the question whether [Kronos’ equitable and implied consent affirmative defenses] are valid under Illinois law will arise anew at summary judgment, class certification, and/or some other juncture.”).)

Second, Kronos would have also continued to assert that the fingerprint data collected by its scanners are neither “biometric identifiers” nor “biometric information” covered by BIPA. Rather, the argument goes, the scanner merely scans a person’s fingertip and creates a mathematical representation of the fingerprint (known as a “template”), and any image of the fingerprint is immediately discarded. While Plaintiffs seriously question the merit of this argument, given that “biometric information” includes “any information, regardless of how it is captured, converted, stored, or shared” based on a fingerprint, *see* 740 ILCS 14/10, no court has ruled on this issue yet at summary judgment or trial. *Howe v. Speedway LLC*, No. 19-cv-01374, dkts. 125, 140, 149 (N.D. Ill.) (fully briefed motion for summary judgment on this issue in fingerprint scan case against a Kronos customer).

Third, there are two key unresolved issues regarding the limitations period for BIPA claims, both of which have been argued and will soon be decided by the Illinois Supreme Court could have negatively impacted this case. The first is whether a one- or five-year limitations period applies to the various claims under § 15 of BIPA. *Tims v. Black Horse Carriers*, No. 127801 (Ill.). If the high court holds that a one-year period applies to claims under §§ 15(a) and (b)—instead of a five-year period—the vast majority of the class’s BIPA claims would be time barred absent settlement. (See Agreement § 1.32 (settling a five-year class period).) The second is whether BIPA claims under § 15(b) and § 15(d) accrue for limitations purposes the first time a defendant collects and discloses their biometric data or the last time. *Cothron v. White Castle Sys., Inc.*, No. 128004 (Ill.). Like *Tims*, a ruling in *Cothron* that claims start to accrue on the first scan and disclosure would decrease the size of the class here and strip many current Settlement Class members of relief.

Beyond these issues, if litigation were to continue, Plaintiffs would also be required to use significant resources to litigate the issue of class certification. The Advisory Committee notes to amended Rule 23(e) suggest that courts should consider the likelihood of certifying a class for litigation in evaluating this sub-factor because the issue of litigating class certification is a salient one. While Plaintiffs believe that they would ultimately prevail on certification issues given Defendant’s uniform conduct, class certification is still a significant hurdle and presents a risk to any class recovery. Even if adversarial class certification were granted, the possibility of an interlocutory appeal would still risk causing significant delay to any recovery. *Cf. Patel v. Facebook, Inc.*, 932 F.3d 1264, 1277 (9th Cir. 2019) (in BIPA case, affirming class certification on interlocutory appeal that pended for over a year). And assuming Plaintiffs would have succeeded at summary judgment and/or trial, Plaintiffs expect that Defendant would have re-

raised its arguments requesting a reduction in damages based on due process in light of the significant potential statutory damages at issue. (Dkt. 278 at 36-37); *see, e.g., Golan v. FreeEats.com, Inc.*, 930 F.3d 950, 963 (8th Cir. 2019) (statutory award in TCPA class action of \$1.6 billion reduced to \$32 million); *Wakefield v. ViSalus, Inc.*, 51 F.4th 1109, 1125 (9th Cir. 2022) (in TCPA case, vacating district court’s denial of defendant’s post-trial motion challenging the constitutionality of \$925 million statutory damages award under TCPA and remanding for further proceedings); *but see United States v. Dish Network L.L.C.*, 954 F.3d 970, 980 (7th Cir. 2020), *cert. dismissed*, 141 S. Ct. 729 (2021) (statutory award of \$280 million for violating various telemarketing statutes over 65 million times did not violate due process).

Finally, there is no guarantee that the Class Members would receive any benefit from protracted litigation. Protracted litigation is costly and time consuming, and it is possible that it “would provide Class Members with either no in-court recovery or some recovery many years from now . . .” *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. at 964. This Settlement provides immediate relief to Class Members, without the risk of protracted litigation. Thus, given the substantial risks, expense, and delay that would accompany further litigation, and in comparison to similar BIPA class action settlements, the Settlement offers substantial value relative to the strength of Plaintiffs’ case. This crucial factor therefore strongly supports final approval.

3. *The Method of Distributing Relief to the Class Members is Effective and Supports Final Approval.*

The “effectiveness of [the]...method of distributing relief to the class” weighs strongly in favor of the adequacy of this Settlement under Rule 23(e)(2)(C)(ii). An effective distribution method “get[s] as much of the available damages remedy to class members as possible and in as simple and expedient a manner as possible.” 4 NEWBERG ON CLASS ACTIONS § 13:53 (6th ed.).

Settlement distribution here is straightforward. Up until December 6, 2022, Class Members could submit a claim either by mail or online. Those who submitted online had the option to select to receive their Settlement Payment by Venmo, Zelle, Paypal, or check; those who submitted an Approved Claim by mail will receive a check in the mail and can update their address at any time on the Settlement Website. (Agreement § 1.5.) Once the Settlement is approved, the Settlement Administrator will distribute Settlement Payments to each Class Member for their *pro rata* portion of the fund. *See Crumpton v. Octapharma Plasma, Inc.*, No. 19-cv-08402, dkt. 92 (N.D. Ill. Feb. 16, 2022) (approving BIPA settlement where settlement administrator processed claims under counsel’s oversight and distributed *pro rata* shares to class members with valid claims). If, after 120 days of issuance, any electronic payments are unable to be processed or any checks go uncashed, and if there are enough residual funds to make redistribution feasible, those residual funds will remain in the Settlement Fund and be redistributed to Class Members who successfully received their e-payment or cashed their check. (Dkt. 358, ¶ 24.) If redistribution is not feasible, or if there are residual funds remaining after redistribution, Plaintiffs propose donating such funds, in equal amounts, to Legal Aid Chicago and the American Civil Liberties Union of Illinois (earmarked to support its Government Accountability and Personal Privacy efforts), as agreed by the Parties. (Agreement § 2.1(f).) This well-recognized method of distributing monetary relief fully satisfies this aspect of Rule 23(e)(2)(C)(ii).

4. *The Terms of the Requested Attorneys’ Fees are Reasonable.*

The third and final relevant sub-factor considers the adequacy of the relief provided to the class taking into account “the terms of [the] proposed award of attorney’s fees, including timing of payment[.]” Fed. R. Civ. P. 23(e)(2)(C)(iii).

After the Settlement Class received Notice, Class Counsel petitioned the Court for an award of reasonable attorneys' fees on November 22, 2022—16 days prior to the Objection Deadline. (Dkt. 374.) The Settlement's contemplated method of calculating attorneys' fees (i.e., the percentage-of-the-fund method) and Class Counsel's request for thirty-three percent (33%) of the non-reversionary Settlement Fund is reasonable and predicated on the outstanding relief provided to the Settlement Class. (Agreement § 8.1.) To be sure, the percentage-of-the-fund method has been used to determine a reasonable fee award in every BIPA class action settlement creating a common fund to date, and the requested percentage fee award is well in line with—if not on the low end of—common fund fee awards in BIPA cases in this District. *See, e.g., In re TikTok, Inc., Consumer Priv. Litig.*, No. 20-cv-04699, 2022 WL 2982782, at *35 (N.D. Ill. July 28, 2022) (awarding 33% of \$92 million fund) (Lee, J.); *Crumpton*, No. 19-cv-08402, dkt. 92 (awarding 33% of \$9.9 million fund) (Kendall, J.); *Alvarado v. Int'l Laser Prods., Inc.*, No. 18-cv-7756, dkt. 70 (N.D. Ill. Jan. 24, 2020) (awarding 35% of \$895,788.74 fund) (Pallmeyer, J.); *Neals v. ParTech, Inc.*, No. 19-cv-05660, dkt. 140 (N.D. Ill. July 20, 2022) (awarding 35% of \$790,000 fund) (Valderrama, J.). Accordingly, Class Counsel's request of 33% of the net fund in attorneys' fees is reasonable.

Finally, if approved, the Settlement provides that attorneys' fees will be paid within five business days after the final judgment becomes final and non-appealable. (Agreement §§ 1.13, 8.1.) These terms are reasonable and should be approved.

E. The Remaining Considerations Set Forth by the Seventh Circuit Support Approval of the Settlement.

In addition to the requirements that overlap with those now required by Rule 23(e), the Seventh Circuit requires a few additional considerations: the class's reaction to the settlement, the opinion of competent counsel, and whether the settlement raises any red flags that courts

should be wary of. *Wong*, 773 F.3d at 863. Here, the positive reaction of the Settlement Class, the support of counsel, and the lack of red flags all favor approval.

1. The Reaction of the Settlement Class Favors Approval.

The Court-approved Settlement Administrator diligently implemented the Notice plan outlined in the Agreement and the objection and exclusion deadlines have passed without a single person objecting to the Settlement and only one person opted out of participating. (Ferruzzi Decl. ¶ 17.) While the lack of objections and single opt out shed some light on the Settlement Class’s favorable reaction to the settlement, the better indicator is the rate at which Class Members participated in the settlement by submitting claims. *See Eubank v. Pella Corp.*, 753 F.3d 718, 728 (7th Cir. 2014) (“[A] low opt-out rate is no evidence that a class action settlement was ‘fair’ to the members of the class.”) Here, that 21,933 Approved Claims have been submitted—imputing a strong 26.78% claims rate—indicates a robust positive reaction from the Settlement Class.⁶ *See Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns*, FED. TRADE COMM’N, 11 (Sept. 2019) (“Across all cases in our sample requiring a claims process, the median calculated claims rate was 9%, and the weighted mean (*i.e.*, cases weighted by the number of notice recipients) was 4%.”). Indeed, the rate at which Class Members participated in this Settlement meets, and in most instances surpasses, nearly every other finally-approved BIPA settlement to date. *See LaBarre*, 2019-CH-06489 (26.2% claims rate); *Neals*, No. 19-cv-05660, dkt. 140 (N.D. Ill. July 20, 2022) (23.86% claims rate); *In*

⁶ In total, there were 9,269 claims submitted by mail and 349,789 submitted online. (Ferruzzi Decl. ¶ 19.) The Settlement Administrator observed a drastic spike in the number of online claims submitted on and after October 21, 2022, as 322,156 online claims were submitted after that date. (*Id.* ¶ 21.) The Settlement Administrator has reported that many of these claimants submitted suspicious email addresses and physical addresses that don’t exist. (*Id.*) Based on the Settlement Administrator’s reports, Class Counsel believes many of these claims were submitted by “bots” *en masse* and are fraudulent. The Settlement Administrator has initially rejected these claims and is further reviewing. (*Id.*)

re Facebook Biometric Info. Priv. Litig., 522 F. Supp. 3d 617, 620 (N.D. Cal. 2021) (22% claims rate); *Crumpton*, No. 19-CV-08402, dkt. 92 (20.6% claims rate); *Sekura v. L.A. Tan Enters., Inc.*, 2015-CH-16694 (Cir. Ct. Cook Cnty. Dec. 1, 2016) (15% claims rate); *Kusinski*, 2017-CH-12364 (12.7% claims rate); *Thome*, No. 19-cv-6256, dkt. 90 (10% claims rate); *Prelipceanu v. Jumio Corp.*, 2018-CH-15883 (Cir. Ct. Cook Cnty. July 21, 2020) (5% claims rate). The strong response rate combined with a total lack of objections and a single opt out thus strongly supports granting final approval to the Settlement.

2. *Experienced Counsel’s Belief that the Settlement is Beneficial to the Class Weighs in Favor of Final Approval.*

While the Seventh Circuit has expressed skepticism about the weight of this factor, *see Pearson*, 772 F.3d at 787, the opinion of competent counsel also supports final approval of the Settlement. Where class counsel has “extensive experience in consumer class actions and complex litigation[,]” their “belie[f] that the [s]ettlement is beneficial to the [c]lass” supports approval of the settlement. *Schulte I*, 805 F. Supp. 2d at 586; *see also Retsky Family Ltd. P’ship v. Price Waterhouse LLP*, No. 97 C 7694, 2001 WL 1568856, at *3 (N.D. Ill. Dec. 10, 2001) (finding plaintiff’s counsel competent, and their endorsement of a settlement thus supporting approval, where counsel were “experienced and skilled practitioners in the [relevant] field, and [were] responsible for significant settlements as well as legal decisions that enable litigation such as this to be successfully prosecuted”) (internal quotations omitted).

Here, as the Court found when it appointed interim lead counsel (dkt. 95) and as discussed at length in Plaintiffs’ motion for preliminary approval (dkt. 342 at 16–20), Class Counsel are competent to give their opinion on this Settlement. Put simply, and for the reasons discussed above, Class Counsel believe that the Settlement provides outstanding monetary and

prospective relief without the uncertainty and delay that years of additional litigation would bring. (Wade-Scott Decl. ¶ 4.) That is certainly in the best interest of the Settlement Class. (*Id.*)

For these reasons, the opinion of Class Counsel weighs in favor of final approval.

3. *The Settlement Raises No Red Flags.*

Finally, the Settlement raises none of the red flags identified by the Seventh Circuit in analyzing class settlements. In *Eubank v. Pella Corp.*, the Seventh Circuit identified “almost every danger sign in a class action settlement that our court and other courts have warned district judges to be on the lookout for[.]” 753 F.3d at 728. Those signs included (i) a single class containing two adverse subgroups, (ii) a familial relationship between class counsel and the class representative, (iii) failure to establish the amount of class member recovery, (iv) the reversion of any unawarded attorneys’ fees to defendant, (v) an advance of attorneys’ fees before notice of the settlement was provided to class members, (vi) a provision in the settlement agreement denying incentive awards to class representatives who objected to the settlement, (vii) providing some class members only coupons, and (viii) a complicated claims procedure creating substantial obstacles to recovery. *Id.* at 721-28.

Here, none of those red flags are present. There are no subgroups to this class, and the Class Representatives, Ms. Figueroa and Mr. Burton, have no familial or other relationship with Class Counsel or any member of their respective law firms. The claims process here is simple and straightforward: Class Members were able to submit the short, one-page Claim Form either online through the Settlement Website, or by mail by submitting the postage-prepaid Claim Form that was attached to their original postcard notice. Any unawarded attorneys’ fees will be distributed to Class Members who submitted Approved Claims, not revert to Kronos (Agreement § 8.1); there has been no advance of attorneys’ fees to Class Counsel; and there is no provision in

the Settlement Agreement denying an incentive award to a named plaintiff who does not support the Settlement.

The Settlement here is beneficial to Class Members and displays no warning signs that should give this Court pause. The Settlement should therefore be approved.

VII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court enter an order finally approving the Parties' Settlement and ordering such other relief as this Court deems reasonable and just.⁷

Respectfully submitted,

CHARLENE FIGUEROA AND JERMAINE BURTON, individually and on behalf of all others similarly situated

Dated: December 15, 2022

By: /s/ J. Eli Wade-Scott
One of Plaintiffs' attorneys

Jay Edelson
jedelson@edelson.com
J. Eli Wade-Scott
ewadescott@edelson.com
EDELSON PC
350 North LaSalle Street, 14th Floor
Chicago, Illinois 60654
Tel: 312.589.6370
Fax: 312.589.6378

James B. Zouras
jzouras@stephanzouras.com
Ryan F. Stephan
rstephan@stephanzouras.com
STEPHAN ZOURAS, LLP
100 N. Riverside Plaza
Suite 2150
Tel: 312.233.1550
Fax: 312.223.1560

⁷ For the Court's convenience, Plaintiffs will submit a proposed final approval order to the Court's designated email address prior to the December 20, 2022 final approval hearing.

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

CHARLENE FIGUEROA and JERMAINE
BURTON, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

KRONOS INCORPORATED,

Defendant.

No. 1:19-CV-01306

Honorable Gary Feinerman

STIPULATION OF CLASS ACTION SETTLEMENT

This Class Action Settlement Agreement (“Settlement Agreement”) is entered into by and among Plaintiff Charlene Figueroa and Plaintiff Jermaine Burton (“Plaintiffs”), for themselves individually and on behalf of the Settlement Class, and Defendant Kronos Incorporated (“Kronos” or “Defendant”) (Plaintiffs and Defendant are referred to separately as “Party” and collectively as the “Parties”). This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims upon and subject to the following terms and conditions, and subject to the approval of the Court.

RECITALS

A. On January 18, 2019, Plaintiffs filed a putative class action complaint against Kronos in the Circuit Court of Cook County, Illinois, alleging violations of the Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”). Plaintiffs claimed that Kronos, as a provider of timekeeping devices with a finger-scanner and “cloud” hosting services, collected and stored their biometric data without authorization when Plaintiffs scanned their fingers at employers that were using Kronos’s timeclocks and cloud-hosting services.

B. On February 21, 2019, Defendant removed the case to the United States District Court for the Northern District of Illinois, where it was assigned the caption *Figueroa v. Kronos Incorporated*, No. 1:19-CV-01306 (N.D. Ill.) (Dkt. 1.)

C. On April 15, 2019, Defendant filed a motion to dismiss the complaint for failure to state a claim. (Dkt. 29, 30.) The same day, Kronos filed a motion to strike Plaintiffs' class allegations. (Dkt. 32, 33.) The motions were fully briefed. (Dkts. 50, 51, 62, 63.)

D. On April 13, 2020, the Court entered an opinion and order denying both Defendant's motion to dismiss and motion to strike Plaintiffs' class allegations. (Dkt. 128.) The Court requested supplemental briefing on Plaintiffs' standing to bring their claims under 740 ILCS 14/15(a) at the same time, which the Parties simultaneously submitted on May 19, 2020. (Dkts. 137, 138.) The Court ultimately severed Plaintiffs' section 15(a) claims and remanded that portion of the case to state court. (Dkt. 150.) After the Seventh Circuit's decision in *Fox v. Dakkota Integrated Systems, LLC*, 980 F.3d 1146 (7th Cir. 2020), Kronos re-removed this portion of the case, which was re-consolidated. (Dkt. 179.)

E. Meanwhile, Defendant filed its answer and affirmative defenses to Plaintiffs' complaint, asserting thirteen affirmative defenses on May 12, 2020. (Dkt. 136.)

F. Following Kronos's answer, the Parties engaged in written discovery and sought the Court's intervention on several discovery disputes. On June 2, 2020, Plaintiffs issued written discovery requests to Kronos. Kronos produced its initial written responses on August 3, 2020. Kronos issued its first written requests to Plaintiffs on June 19, 2020, and Plaintiffs produced their first written responses on July 27, 2020. Both Plaintiffs and Kronos filed motions to compel (dkt. 155, 164); Plaintiffs' motion was fully briefed by the Parties and denied without prejudice

(see dkt. 166), and Kronos's motion was argued orally, with the Court granting in part and denying in part (see dkt. 168.)

G. Kronos also sought discovery from the putative class, which Plaintiffs contested. Kronos moved to compel this discovery (dkt. 173), which was denied without prejudice to Kronos issuing subpoenas. (Dkt. 179.) Kronos then issued more than sixty subpoenas to members of the absent class, upon which Plaintiffs moved for a protective order and absent members of the class moved to quash. (Dkt. 234.) Kronos meanwhile filed another motion to compel (dkt. 259) and moved the Court for leave to issue additional interrogatories. (Dkt. 261.) Each of these motions was fully briefed. (Dkts. 265, 266, 269, 270, 271.)

H. Plaintiffs argued that Kronos's additional discovery efforts—both on Plaintiffs and the putative class—were predicated on defective affirmative defenses. Plaintiffs accordingly moved to strike Kronos's equitable and implied consent defenses. (Dkt. 267.) The motion to strike was fully briefed and the Court granted the motion without prejudice to Kronos's re-pleading its defenses. (Dkt. 276). Kronos filed a second amended answer on April 7, 2021. (Dkt. 278.)

I. Kronos then moved to stay the case pending the Seventh Circuit's ruling on *Cothron v. White Castle System, Inc.*, No 20-3202 (7th Cir.) and the Illinois Appellate Court's decision in *Tims v. Black Horse Carriers, Inc.*, 2021 IL App (1st) 200563. (Dkt. 279.) Plaintiffs opposed, and this too was fully briefed. (Dkts. 283, 284.) The Court denied the motion to stay after a hearing on April 29, 2021. (Dkt. 288.)

J. Meanwhile, Plaintiffs moved to strike Kronos's affirmative defenses as amended. (Dkt. 285.) This motion was fully briefed (dkt. 294, 298), and argued at a hearing on June 29, 2021 (dkt. 299), after which the Court took it under advisement. The Court ultimately denied the

motion to strike on July 20, 2021. (Dkt. 307.) The Court then granted in part and denied in part the pending discovery motions concerning the subpoenas to the absent class. (Dkt. 323.)

K. All the while, the Parties proceeded in discovery. Plaintiffs issued additional requests for production to Kronos on August 24, 2020, and November 20, 2020. Over the course of several months, Kronos produced more than a hundred thousand pages of documents, which Plaintiffs reviewed. Plaintiffs also issued subpoenas to Idemia Identity & Security USA LLC on March 9, 2021, and a subpoena to MorphoTrust USA LLC on March 29, 2021. Idemia responded for both entities on April 23, 2021 and produced documents shortly thereafter.

L. With written discovery substantially complete in the spring of 2021, the Parties proceeded into depositions. Kronos took each Plaintiffs' deposition, one on May 28 and the other on June 2, 2021. Plaintiffs provided Kronos with a list of ten intended deponents in March of 2021, and scheduled depositions through the spring and summer of 2021. Beginning in May and continuing through July of 2021, Plaintiffs took six depositions of current and former Kronos employees ranging from product managers to senior directors of the company.

M. Amid the discovery and motion practice, the Parties agreed that a mediation would be productive. The Parties asked the Court to stay its ruling on the pending discovery motions in light of the forthcoming mediation, which the Court granted. (Dkt. 313, 319.) The Parties participated in a full-day mediation with Judge James F. Holderman (Ret.) of JAMS on August 31, 2021. That mediation was productive but ultimately not successful.

N. Plaintiffs issued a 30(b)(6) deposition notice to Kronos on September 17, 2021 and took another deposition of a current senior director on September 22, 2021. More depositions were scheduled.

O. The Parties, meanwhile, continued to consider the possibility of settlement. The Parties exchanged a number of drafts of a binding Memorandum of Understanding and engaged in several telephone and Zoom conferences beginning in mid-September and through mid-October.

P. Ultimately, after dozens of e-mails, phone calls, and numerous edits on the draft, the Parties executed a binding Memorandum of Understanding late in the evening on October 20, 2021.

Q. Plaintiffs and Class Counsel conducted a comprehensive examination of the law and facts relating to the allegations in the Action and Kronos's potential defenses. Plaintiffs believe that the claims asserted in the Action have merit, that they would have ultimately succeeded in obtaining adversarial certification of the proposed Settlement Class, and that they would have prevailed on the merits at summary judgment or at trial.

R. However, Plaintiffs and Class Counsel recognize that Kronos has raised factual and legal defenses in the Action that presented a significant risk that Plaintiffs may not prevail and/or that a class might not be certified for trial. Class Counsel have also taken into account the uncertain outcome and risks of any litigation, especially in complex actions, as well as difficulty and delay inherent in such litigation.

S. Plaintiffs and Class Counsel believe that this Agreement presents an exceptional result for the Settlement Class, and one that will be provided to the Settlement Class without delay. Plaintiffs and Class Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and based on good faith negotiations, and in the best interests of Plaintiffs and the Settlement Class. Therefore, Plaintiffs believe that it is desirable that the

Released Claims be fully and finally compromised, settled, and resolved with prejudice, and forever barred pursuant to the terms and conditions set forth in the Settlement Agreement.

T. Kronos denies the material allegations in the Action, as well as all allegations of wrongdoing and liability, including that it is subject to or violated BIPA, and believes that it would have prevailed on the merits and that a class would not be certified for trial. Nevertheless, Kronos has similarly concluded that this settlement is desirable to avoid the time, risk, and expense of defending protracted litigation, and to avoid the risk posed by the Settlement Class's claims for statutory damages under BIPA. Kronos thus desires to resolve finally and completely the pending and potential claims of Plaintiffs and the Settlement Class.

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

AGREEMENT

1. DEFINITIONS

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

1.1 “**Action**” means the case captioned *Figueroa v. Kronos Incorporated*, No. 1:19-CV-01306 (N.D. Ill.).

1.2 “**Agreement**” or “**Settlement Agreement**” means this Stipulation of Class Action Settlement and the attached Exhibits.

1.3 “**Approved Claim**” means a Claim Form submitted by a Settlement Class Member that (a) is timely and submitted in accordance with the directions on the Claim Form and the terms of this Agreement, (b) is fully completed and physically or electronically signed by the Settlement Class Member, and (c) satisfies the conditions of eligibility for a Settlement Payment as set forth in this Agreement.

1.4 “**Claims Deadline**” means the date by which all Claim Forms must be postmarked or submitted on the Settlement Website to be considered timely and shall be set as a date no later than ninety (90) days following the Notice Date, subject to Court approval. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order, as well as in the Notice and the Claim Form.

1.5 “**Claim Form**” means the document substantially in the form attached hereto as Exhibit A, as approved by the Court. The Claim Form, which shall be completed by Settlement Class Members who wish to file a claim for a Settlement Payment, shall be available in paper and electronic format. The Claim Form will require claiming Settlement Class Members to provide the following information: (i) full name, (ii) current U.S. Mail address, and (iii) current contact telephone number and email address. The Claim Form will not require notarization but will require affirmation that the information supplied is true and correct. The online Claim Form will provide Class Members with the option of having their Settlement Payment transmitted to them electronically through Venmo, Zelle, Paypal, or a check. Class Members who submit a paper Claim Form that is approved will be sent a check via U.S. Mail.

1.6 “**Class Counsel**” means attorneys Jay Edelson and J. Eli Wade-Scott of Edelson PC and Ryan F. Stephan and James B. Zouras of Stephan Zouras, LLP.

1.7 **“Class List Determination Date”** means the date upon which a final determination of the Class List is reached as described in Section 7.2(f).

1.8 **“Class Representatives”** or **“Plaintiffs”** means the named Plaintiffs in the Action, Charlene Figueroa and Jermaine Burton.

1.9 **“Court”** means the United States District Court for the Northern District of Illinois, Eastern Division, the Honorable Gary Feinerman presiding, or any judge who shall succeed him as the Judge assigned to the Action.

1.10 **“Kronos Customer Contact Date”** means the date by which Kronos will contact the Illinois Kronos Cloud Customers in accordance with the Confirmatory Discovery provisions contained at Section 7.2 herein, and shall be no later than March 7, 2022.

1.11 **“Defendant”** or **“Kronos”** means Kronos Incorporated.

1.12 **“Defendant’s Counsel”** or **“Kronos’s Counsel”** means attorneys Melissa A. Siebert, Erin Bolan Hines, and Maveric Ray Searle of Shook, Hardy, & Bacon LLP, and Debra Bernard of Perkins Coie LLP.

1.13 **“Effective Date”** means one business day following the later of: (i) the date upon which the time expires for filing or noticing any appeal of the Final Approval Order; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award or incentive award, the date of completion, in a manner that finally affirms and leaves in place the Final Approval Order without any material modification, of all proceedings arising out of the appeal(s) (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal(s) following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari

with respect to the Final Approval Order. If there are no objectors, the Effective Date is one day after the Final Approval Order.

1.14 **“Escrow Account”** means the separate, interest-bearing escrow account to be established by the Settlement Administrator under terms acceptable to Class Counsel and Defendant at a depository institution insured by the Federal Deposit Insurance Corporation. The money in the Escrow Account shall be invested in the following types of accounts and/or instruments and no other: (a) demand deposit accounts and/or (b) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or less. Any interest earned on the Escrow Account shall inure to the benefit of the Settlement Class as part of the Settlement Payment, if practicable. The Settlement Administrator shall be responsible for all tax filings with respect to the Escrow Account.

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

1.16 **“Final Approval Hearing”** means the hearing before the Court where Plaintiffs will request that the Final Approval Order be entered by the Court finally approving the Settlement as fair, reasonable, adequate, and approving the Fee Award and the incentive award to the Class Representatives.

1.17 **“Final Approval Order”** means the final approval order to be entered by the Court approving the settlement of the Action in accordance with this Settlement Agreement after the Final Approval Hearing and dismissing the Action with prejudice.

1.18 **“Illinois Kronos Cloud Customers”** means all individuals and/or entities who use, contract for, and/or otherwise utilize the Kronos Cloud to store finger scan data from a Kronos brand time clock with a finger scan attachment with ship-to and/or bill-to information in

Illinois, and any additional users of Kronos Cloud with pending BIPA lawsuits not otherwise included in the ship-to/bill-to information.

1.19 “**Kronos Cloud**” means data storage servers made available by Kronos to its customers that are accessed over the internet, and/or the data storage servers that are accessed over the internet of any company acquired by Kronos or retained by Kronos to provide data storage services.

1.20 “**Notice**” means the notice of the proposed Settlement and Final Approval Hearing, which is to be disseminated to the Settlement Class substantially in the manner set forth in this Settlement Agreement, fulfills the requirements of Due Process and Federal Rule of Civil Procedure 23, and is substantially in the form of the Exhibits attached hereto.

1.21 “**Notice Date**” means the date by which the Notice is disseminated to the Settlement Class and shall be a date no later than three (3) weeks after the Class List Determination Date.

1.22 “**Objection/Exclusion Deadline**” means the date by which a written objection to the Settlement Agreement by a Class Member must be filed with the Court or a request for exclusion submitted by a person within the Settlement Class must be postmarked or received by the Settlement Administrator, which shall be designated as a date ninety (90) days after the Notice Date, as approved by the Court. The Objection/Exclusion Deadline will be set forth in the Notice and on the Settlement Website.

1.23 “**Preliminary Approval Order**” means the Court’s order preliminarily approving the Agreement, certifying the Settlement Class for settlement purposes, and approving the form and manner of the Notice.

1.24 “**Plaintiffs’ Expert**” means an expert retained by Plaintiffs for purposes of confirmatory discovery and providing information to the Settlement Administrator, as discussed in Section 5.1 and 7.2. The Plaintiffs’ Expert will be Mark Rapazzini from Kroll Business Services.

1.25 “**Proprietary Information**” means information that identifies or that could identify Illinois Kronos Cloud Customers or individual class members obtained by Kronos.

1.26 “**Released Claims**” means any and all past and present claims or causes of action related to BIPA, including, but not limited to, any claims arising out of BIPA, tort or privacy claims, or any other federal, state, or local statute, regulation, or common law, arising out of or related to the alleged possession, collection, capture, purchase, receipt through trade, obtaining, sale, lease, trade, profit from, disclosure, re-disclosure, dissemination, storage, transmittal, and/or protection from disclosure of alleged biometric information or biometric identifiers.

1.27 “**Released Parties**” means Kronos, and its agents, subsidiaries and parents and their respective managers, employees, officers, directors, partners, members, owners, heirs, executors, predecessors, successors, assigns, insurers, agents, and attorneys. Released Parties expressly excludes any of Defendant’s customers, such as i) Kronos’s customers that are employers in Illinois; ii) Kronos’s customers that use, contract for and/or utilize Kronos brand time clocks; and/or iii) Kronos Cloud Customers.

1.28 “**Releasing Parties**” means Plaintiffs and each Settlement Class Member and their respective present or past heirs, executors, estates, administrators, assigns and agents.

1.29 “**Settlement**” or “**Settlement Agreement**” means the final resolution of the Action as embodied by the terms and conditions of this Settlement Agreement.

1.30 “**Settlement Administration Expenses**” means the expenses reasonably incurred by the Settlement Administrator in or relating to administering the Settlement, providing Notice, creating and maintaining the Settlement Website, receiving and processing Claim Forms, dispersing Settlement Payments, related tax expenses, fees of the escrow agent, and other such related expenses, with all such expenses to be paid from the Settlement Fund.

1.31 “**Settlement Administrator**” means Kroll Business Services, subject to approval of the Court, which will provide the Notice, create and maintain the Settlement Website, receive and process Claim Forms, send Settlement Payments to Settlement Class Members, be responsible for tax reporting, and perform such other settlement administration matters set forth herein or contemplated by the Settlement.

1.32 “**Settlement Class**” means all persons who used a Kronos brand time clock with a finger sensor attachment for timekeeping purposes in Illinois and whose finger-scan data was hosted by Kronos between January 18, 2014, and thirty days after the date the Court enters the Preliminary Approval Order. Excluded from the Settlement Class are: (1) any Judge or Magistrate presiding over this action and members of their families, (2) Defendant, Defendant’s subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, (3) persons who properly execute and file a timely request for exclusion from the class, (4) the legal representatives, successors or assigns of any such excluded persons, (5) individuals who only scanned at (i) a State or local government agency; (ii) a banking institution subject to Title V of the federal Gramm-Leach Bliley Act of 1999; or (iii) a court of Illinois, a clerk of the court, or any judge or justice thereof, and (6) persons who were members of the settlement class in the *Diaz v. Greencore, Inc.*, 2017-CH-13198 (Cir. Ct. Cook Cty.) and *Dixon v. Washington Jane Smith Home*, 17-cv-8033 (N.D. Ill.) settlements. The

definition of Settlement Class does not encompass individuals who used finger sensors at employers who never used Kronos Cloud, nor does it encompass individuals who used finger sensors exclusively during a time frame that their employers did not use Kronos Cloud.

1.33 “**Settlement Class List**” or “**Class List**” means the list provided by Defendant or Class Counsel to the Settlement Administrator containing a list of all names, personal e-mail addresses (where available), and last known U.S. mail addresses of all persons in the Settlement Class for whom Defendant or Class Counsel was able to obtain such information pursuant to the process outlined in Section 7.2.

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

1.35 “**Settlement Fund**” means the non-reversionary cash fund that shall be established by Defendant in the amount of Fifteen Million Two Hundred Seventy-Six Thousand Two Hundred and Twenty-Seven dollars (\$15,276,227.00). Within twenty-one (21) days of the entry of the Preliminary Approval Order, Kronos, its insurer(s), or any other party on behalf of Kronos, shall deposit \$750,000 (Seven Hundred and Fifty Thousand Dollars) into the Escrow Account for the purpose of funding Settlement Administration Expenses. If the deposit date falls on Christmas Eve or New Year’s Eve, then the deposit will be made on the Monday following the holiday. Within ten (10) business days of Final Approval, assuming that there are no objections or appeals, Kronos shall transmit the remaining balance of the Settlement Fund to the Escrow Account. In no circumstance shall the Settlement Fund be less than \$15,276,227.00. Subject to confirmatory discovery and potential upward adjustment as set forth in Sections 7.2-7.3, the Settlement Fund shall satisfy all monetary obligations of Defendant under this

Settlement Agreement, including the Fee Award, litigation costs, Settlement Administration Expenses, payments to the Settlement Class Members, any incentive award, and any other payments or other monetary obligations contemplated by this Agreement. The Settlement Fund shall be kept in the Escrow Account with permissions granted to the Settlement Administrator to access said funds until such time as the above-listed payments are made. In no event shall any amount paid by Defendant into the Escrow Account, or any interest earned thereon, revert to Defendant or any other Released Party.

1.36 “**Settlement Payment**” means a *pro rata* portion of the Settlement Fund less any Fee Award, incentive award to the Class Representatives, and Settlement Administration Expenses.

1.37 “**Settlement Website**” means the website to be created, launched, and maintained by the Settlement Administrator, which will provide access to relevant settlement administration documents, including the Notice, relevant court filings, and the ability to submit Claim Forms online. The Settlement Website shall be live and active by the Notice Date, and the URL of the Settlement Website shall be www.kronosbipasettlement.com, or such other URL as the Parties may subsequently agree to.

2. SETTLEMENT RELIEF

2.1 Settlement Payments to Settlement Class Members.

a. Settlement Class Members shall have until the Claims Deadline to submit Claim Forms. Each Settlement Class Member who submits an Approved Claim shall be entitled to a Settlement Payment.

b. The Settlement Administrator shall have sole and final authority for determining if Settlement Class Members’ Claim Forms are complete, timely, and

accepted as an Approved Claim.

c. Within twenty-eight (28) days of the Effective Date, or such other date as the Court may set, the Settlement Administrator shall send Settlement Payments from the Settlement Fund by electronic deposit or by check via First Class U.S. Mail to the account or address provided on the Approved Claim Form, as elected by the Class Member with an Approved Claim.

d. Each payment issued to a Class Member by check will state on the face of the check that it will become null and void unless cashed within one hundred and twenty (120) calendar days after the date of issuance.

e. In the event that an electronic deposit to a Class Member is unable to be processed, the Settlement Administrator shall attempt to contact the Class Member within thirty (30) calendar days to correct the problem.

f. To the extent that a check issued to a Settlement Class Member is not cashed within one hundred twenty (120) days after the date of issuance, or an electronic deposit is unable to be processed within one hundred twenty (120) days of the first attempt, such funds shall be distributed as *cy pres* to Legal Aid Chicago (earmarked for workers' rights representation) and American Civil Liberties Union of Illinois or other appropriate entity agreed upon by the Parties and approved by the Court.

2.2 Prospective Relief.

a. Defendant agrees that, on or before the Effective Date, it shall implement the following policies and procedures should Defendant continue to use Kronos Cloud to host finger scan data provided by Illinois Kronos Cloud Customers:

i. Defendant shall notify its Illinois Kronos Cloud Customers that, to

the extent they are using Kronos time clocks with finger-sensor attachments, the Illinois Kronos Cloud Customers shall:

1. Establish a retention and destruction schedule that complies with BIPA and need to follow that schedule with timely data deletion;
2. Notify the subjects of collection, in writing, that finger-sensor data, which may be considered biometric information under BIPA, is being collected, stored, used, and disclosed by the Illinois Kronos Cloud Customer and/or Kronos;
3. Notify the subjects of collection in writing of the purposes and length of term that finger-sensor data is being collected, stored, used and disclosed; and
4. Obtain a written release to the collection, storage, use and disclosure by the Illinois Kronos Cloud Customer and by Kronos.

3. RELEASE

3.1 **The Release.** Upon the Effective Date, and in consideration of the settlement relief and other consideration described herein, the Releasing Parties, and each of them, shall be deemed to have released, and by operation of the Final Approval Order shall have, fully, finally, and forever released, acquitted, relinquished and completely discharged the Released Parties from any and all Released Claims.

4. NOTICE TO THE CLASS

4.1 The Notice shall include:

a. *Class List.* After the Class List Determination Date, Plaintiffs' Expert shall provide the Settlement Administrator with the Class List pursuant to Section 7.2(f), copying Kronos. All Illinois Kronos Cloud Customers' information provided to the Settlement Administrator from Kronos will be considered Proprietary Information and will not be shared with Class Counsel except as necessary to effectuate Notice. To the extent that it is necessary to disclose Proprietary Information to Class Counsel, the Parties will work cooperatively to determine ways to avoid that information being shared. In the event that no agreement can be reached, and Class Counsel determines it is necessary for Class Counsel to get limited Proprietary Information, Kronos expressly reserves the right to seek a protective order from Magistrate Judge Gilbert prior to Class Counsel receiving any such information. Class Counsel agrees that they shall not disclose or use, directly or indirectly, any information pertaining to Illinois Customers that is disclosed to them hereunder for any purpose other than effectuating the Settlement.

b. The Class List may not be used by the Settlement Administrator for any purpose other than advising specific individual Settlement Class members of their rights, mailing Settlement Payments, and otherwise effectuating the terms of the Settlement Agreement or the duties arising thereunder, including the provision of Notice of the Settlement.

c. The Notice shall include the best notice practicable, including but not limited to:

i. *Update Addresses.* Prior to mailing any Notice, the Settlement Administrator will update the U.S. mail addresses of persons on the Class List using the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. The Settlement Administrator shall take all reasonable steps to obtain the correct address of any Settlement

Class members for whom Notice is returned by the U.S. Postal Service as undeliverable and shall attempt re-mailings as described below.

ii. *Direct Notice.* The Settlement Administrator shall send Notice via e-mail substantially in the form of Exhibit B to all persons in the Settlement Class for whom a personal email address is available on the Class List no later than the Notice Date. The Settlement Administrator is authorized to send up to three (3) reminder emails to each person on the Class List with an email at the request of Class Counsel. The reminder emails shall be substantially in the form of Exhibit B, with minor, non-material modifications to indicate that it is a reminder email rather than an initial notice. The Settlement Administrator shall also, no later than the Notice Date, send a Notice via First Class U.S. Mail substantially in the form of Exhibit C to each such Settlement Class member's physical address in the Class List.

iii. *Internet Notice.* No later than the Notice Date, the Settlement Administrator will develop, host, administer and maintain a Settlement Website containing the notice substantially in the form of Exhibit D. The Settlement Website shall include a toll-free phone number and mailing address through which persons in the Settlement Class may contact the Settlement Administrator or Class Counsel directly.

iv. *CAFA Notice.* Pursuant to 28 U.S.C. § 1715, not later than ten (10) days after the Agreement is filed with the Court, the Settlement Administrator shall cause to be served upon the Attorneys General of each U.S. State in which Settlement Class members reside, the Attorney General of the United States, and

other required government officials, notice of the proposed settlement as required by law.

4.2 The Notice shall advise the Settlement Class of their rights under the Settlement, including the right to be excluded from or object to the Settlement Agreement or its terms. The Notice 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 approved by the Court and specified in the Notice, the person making an objection shall file notice of his or her intention to do so and at the same time (a) files copies of such papers he or she proposes to submit at the Final Approval Hearing with the Clerk of the Court, (b) files copies of such papers through the Court's CM/ECF system if the objection is from a Settlement Class Member represented by counsel, who must also file an appearance, and (c) sends copies of such papers via e-mail, U.S. mail, hand, or overnight delivery service to Class Counsel and Defendant's Counsel.

4.3 **Right to Object or Comment.** Any Settlement Class Member who intends to object to this Settlement Agreement must present the objection in writing, which must be personally signed by the objector and must include: (a) the Settlement Class Member's full name and current address, (b) a statement that he or she believes himself or herself to be a member of the Settlement Class, (c) whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class, (d) the specific grounds for the objection, (e) all documents or writings that the Settlement Class Member desires the Court to consider, (f) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection, and (g) a statement indicating whether the objector

intends to appear at the Final Approval Hearing (either personally or through counsel, who must file an appearance or seek *pro hac vice* admission). Any Settlement Class Member who fails to timely file a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Section and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, shall be foreclosed from seeking any review of this Settlement Agreement or the Final Approval Order by appeal or other means, and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action in any other action or proceeding.

4.4 **Right to Request Exclusion.** Any person in the Settlement Class may submit a request for exclusion from the Settlement on or before the Objection/Exclusion Deadline. To be valid, any request for exclusion must (a) be in writing; (b) identify the case name *Figueroa v. Kronos Incorporated*, No. 19-cv-1306 (N.D. Ill.); (c) state the full name and current address of the person in the Settlement Class seeking exclusion; (d) be signed by the person(s) seeking exclusion; and (e) be postmarked or received by the Settlement Administrator on or before the Objection/Exclusion Deadline. In light of the COVID-19 pandemic, the Settlement Administrator shall create a dedicated e-mail address to receive exclusion requests electronically. Each request for exclusion must also contain a statement to the effect that “I hereby request to be excluded from the proposed Settlement Class in *Figueroa v. Kronos Incorporated*, No. 19-cv-1306 (N.D. Ill.).” A request for exclusion that does not include all of the foregoing information, that is sent to an address or e-mail address other than that designated in the Notice, or that is not postmarked or electronically delivered to the Settlement Administrator within the time specified, shall be invalid and the persons serving such a request shall be deemed to remain Settlement

Class Members and shall be bound as Settlement Class Members by this Settlement Agreement, if approved. Any person who elects to request exclusion from the Settlement Class shall not (a) be bound by any orders or the Final Approval Order entered in the Action, (b) receive a Settlement Payment under this Settlement Agreement, (c) gain any rights by virtue of this Settlement Agreement, or (d) be entitled to object to any aspect of this Settlement Agreement or the Final Approval Order or Alternative Approval Order (as defined below). No person may request to be excluded from the Settlement Class through “mass” or “class” opt-outs.

5. SETTLEMENT ADMINISTRATION

5.1 Settlement Administrator’s Duties.

a. *Non-disclosure Obligation:* The Settlement Administrator shall enter into a non-disclosure agreement that provides that any and all Illinois Kronos Cloud Customers’ information provided to the Settlement Administrator from Kronos will be considered Proprietary Information and will not be shared with Class Counsel except as necessary to effectuate notice, as provided in Section 4.1 of this Settlement Agreement.

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

c. *Undeliverable Notice via U.S. Mail.* If any Notice sent via U.S. mail is returned as undeliverable, the Settlement Administrator shall forward it to any forwarding addresses provided by the U.S. Postal Service. If no such forwarding address is provided, the Settlement Administrator shall perform skip traces to attempt to obtain the most recent addresses for such Settlement Class members.

d. *Maintenance of Records.* The Settlement Administrator shall maintain reasonably detailed records of its activities under this Settlement Agreement. The

Settlement Administrator shall maintain all such records as required by applicable law in accordance with its business practices and such records will be made available to Class Counsel and Defendant's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide weekly reports to Class Counsel and Defendant's Counsel with information concerning the Notice, the number of Claim Forms submitted, the number of Approved Claims, any requests for exclusion, and the administration and implementation of the Settlement. The Settlement Administrator shall make available for inspection by Defendant's Counsel all of the Approved Claim Forms received by the Settlement Administrator at any time upon reasonable notice. The Settlement Administrator shall confirm whether an individual submitted an Approved Claim Form upon request by Class Counsel. The Settlement Administrator shall make available for inspection by Class Counsel and Defendant's Counsel the Claim Forms for denied Claims received by the Settlement Administrator at any time upon reasonable notice. The Settlement Administrator will redact information that identifies the Claimant's employer prior to making any Claim Forms available for inspection by Class Counsel. Should the Court request, the Parties shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a post-distribution accounting of all amounts from the Settlement Fund paid to Settlement Class Members, the number and value of checks not cashed, the number and value of electronic payments unprocessed, and the amount distributed to any *cy pres* recipient.

e. *Receipt of Requests for Exclusion.* The Settlement Administrator shall receive requests for exclusion from persons in the Settlement Class and provide to Class

Counsel and Defendant's Counsel a copy thereof within five (5) days of the Objection/Exclusion Deadline. If the Settlement Administrator receives any requests for exclusion or other requests from Settlement Class Members after the Objection/Exclusion Deadline, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel.

f. *Processing Claim Forms.* The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner. The Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud, including by cross-referencing Approved Claims with the Class List. The Settlement Administrator shall determine whether a Claim Form submitted by a Settlement Class Member is an Approved Claim and shall reject Claim Forms that fail to (a) comply with the instructions on the Claim Form or the terms of this Agreement, or (b) provide full and complete information as requested on the Claim Form. In the event a person submits a timely Claim Form by the Claims Deadline, but the Claim Form is not otherwise complete, then the Settlement Administrator shall give such person reasonable opportunity to provide any requested missing information, which information must be received by the Settlement Administrator no later than twenty-eight (28) calendar days after the Claims Deadline. In the event the Settlement Administrator does not receive such information within twenty-eight (28) calendar days after the Claims Deadline, then any such claim shall be denied. The Settlement Administrator may contact any person

who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form.

g. *Timing of Settlement Payments.* The Settlement Administrator shall make Settlement Payments contemplated in Section 2 of this Settlement Agreement to all Settlement Class Members, who, if necessary, have completed required tax forms, within twenty-eight (28) days after the Effective Date.

h. *Tax Reporting.* The Settlement Administrator shall be responsible for all tax filings related to the Escrow Account, including requesting Form W-9's from Settlement Class Members and performing back-up withholding as necessary, and making any required "information returns" as that term is used in 26 U.S.C. § 1 *et seq.* Neither Class Counsel nor Defendant make any representations regarding the tax treatment of the Settlement Fund nor will Defendant accept any responsibility for the tax treatment to the Settlement Payments received by any Settlement Class Member.

6. PRELIMINARY APPROVAL AND FINAL APPROVAL

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

- a. Appoint Plaintiffs as Class Representatives of the Settlement Class for settlement purposes only;
- b. Appoint Class Counsel to represent the Settlement Class;
- c. Certify the Settlement Class under Federal Rule of Civil Procedure 23, for settlement purposes only;

d. Preliminarily approve this Settlement Agreement for purposes of disseminating Notice to the Settlement Class; and

e. Approve the form and contents of the Notice and the method of its dissemination to members of the Settlement Class.

One week prior to the Notice Date, the Parties will request that the Court schedule a status hearing to set the date for the Final Approval Hearing after the expiration of the CAFA notice period, to review comments and/or objections regarding this Settlement Agreement, to consider its fairness, reasonableness and adequacy, to consider the application for a Fee Award and incentive award to the Class Representatives, and to consider whether the Court shall enter a Final Approval Order approving this Settlement Agreement and dismissing the Action with prejudice.

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

a. find that it has personal jurisdiction over all Settlement Class Members and subject matter jurisdiction to approve this Settlement Agreement, including all attached Exhibits;

b. approve the Settlement as fair, reasonable and adequate as to, and in the best interests of, the Settlement Class Members;

c. direct the Parties and their counsel to implement and consummate the Settlement according to its terms and conditions;

d. declare the Settlement to be binding on, and have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and all other Settlement Class Members and Releasing Parties;

e. find that the Notice implemented pursuant to the Settlement Agreement (1) constitutes the best practicable notice under the circumstances, (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and their rights to object to or exclude themselves from this Settlement Agreement and to appear at the Final Approval Hearing, (3) is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice, and (4) fulfills the requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court;

f. find that the Class Representatives and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement;

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

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

i. authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement and its implementing documents (including all Exhibits to this Settlement Agreement) that (i) shall be consistent in all material respects with the Final Approval Order, and (ii) do not limit the rights of Settlement Class Members;

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

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

7. TERMINATION OF THE SETTLEMENT AGREEMENT, CONFIRMATORY DISCOVERY, & ADJUSTMENT OF THE SETTLEMENT FUND

7.1 **Termination.** Subject to Section 9 below, the Class Representatives, on behalf of the Settlement Class, or Defendant, shall have the right to terminate this Agreement by providing written notice of the election to do so to Class Counsel or Defendant's Counsel within ten (10) days of any of the following events: (i) the Court's refusal to enter the Preliminary Approval Order approving of this Agreement in any material respect; (ii) the Court's refusal to enter the Final Approval Order in this Action in any material respect; (iii) the Court's refusal to enter a final judgment in this Action in any material respect; (iv) the date upon which the Final Approval Order is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; or (v) the date upon which an Alternative Approval Order is modified or reversed in any material respect by the Court of Appeals or the Supreme Court. If the Class List exceeds 200,000 total individuals as determined by the confirmatory discovery process below, the Parties shall return to mediation with Judge Holderman, but the Agreement is voidable at the option of either Plaintiffs or Defendant upon seven (7) days' written notice by electronic mail. If the Class List exceeds 200,000 total individuals, at any time between the Class List Determination Date and the date the Agreement becomes void, Plaintiffs may unilaterally exercise the option to accept a total

Settlement Fund amount of Seventeen Million Eight Hundred Thousand dollars (\$17,800,000.00). Plaintiffs' exercise of this option will prevent the Agreement from becoming void. Plaintiffs may exercise this option without returning to mediation with the Defendant and without waiting for Defendant to provide notice of intention to void the agreement.

7.2 Confirmatory Discovery. Defendant has represented that there are approximately 171,643 persons in the Settlement Class. The size of the Settlement Class and Class List shall be confirmed through the following process:

a. By no later than the Kronos Customer Contact Date, Kronos will contact all Illinois Kronos Cloud Customers and request the name, email address, and last-known U.S. mailing address information for all individuals in the Settlement Class. Kronos shall request that the Illinois Kronos Cloud Customers respond no later than thirty-five (35) days after the Kronos Customer Contact Date;

b. Plaintiffs' Expert will have access to all the information that Kronos obtains from the Illinois Kronos Cloud Customers on an expert's eyes-only basis to verify its receipt and to ask Kronos questions about the information. Plaintiffs' Expert and Kronos will execute a non-disclosure agreement that governs the protection of the information received from the Illinois Kronos Cloud Customers. The Parties must agree on the content of the non-disclosure agreement between Plaintiffs' Expert and Kronos, which must include that Plaintiffs' Expert will not share individual class member information or information that identifies the Illinois Kronos Cloud Customer with Plaintiffs or Class Counsel but may share any other information necessary to describe the quantity, quality, or issues with the acquired information to Plaintiffs as necessary to effectuate an accurate Settlement Class List. If the Parties do not agree on the content of

the non-disclosure agreement, this matter shall be submitted to Magistrate Judge Gilbert (or a judge sitting in his stead) to resolve the dispute. To the extent there is a dispute about sharing information with Plaintiffs, such disputes shall be resolved by Magistrate Judge Gilbert;

c. Within forty-two (42) days of the Kronos Customer Contact Date, Kronos shall compile all information received from the Illinois Kronos Cloud Customers and will provide Class List information to Plaintiffs' Expert. At the same time, Kronos will provide Class Counsel with a list of all Illinois Kronos Cloud Customers who declined to provide the name, email address, and last-known U.S. mailing address information for all individuals in the Settlement Class;

d. Within fourteen (14) days of receiving the list of non-compliant Illinois Kronos Cloud Customers, Plaintiffs will subpoena any Illinois Kronos Cloud Customers who decline to voluntarily provide the name, email address, and last-known U.S. mailing address information for all individuals in the Settlement Class to Kronos. Class Counsel will have a return date for compliance on all subpoenas of twenty-eight (28) days for non-compliant Illinois Kronos Cloud Customers to provide the name, email address, and last-known U.S. mailing address of members of the Settlement Class;

e. Within seven (7) days of receiving subpoena responses from Illinois Kronos Cloud Customers, Class Counsel will (1) provide Plaintiffs' Expert with the name, email address, and last-known U.S. mailing address information for all individuals in the Settlement Class obtained; and (2) initiate proceedings to compel responses from any Illinois Kronos Cloud Customers that fails to comply with the subpoena;

f. Unless there is a pending request for judicial resolution of any subpoena, within seven (7) days of receiving the name, personal email address, and last-known U.S. mailing address information for individuals in the Settlement Class obtained from Class Counsel's subpoenas, Plaintiffs (in conjunction with Plaintiffs' Expert) will confirm the total number of individuals in the Settlement Class to Kronos and provide the information that it obtained through the subpoena process to arrive at this number. In the event that the Parties disagree on the number of individuals or propriety of certain individuals' inclusion in the Settlement Class, the Parties will meet and confer over the subsequent fourteen (14) days to attempt to resolve the dispute. If the Parties are unable to resolve the dispute within that time, the dispute will be resolved by Magistrate Judge Gilbert. Once the Parties have reached agreement or Magistrate Judge Gilbert has resolved disputes, the individuals identified through the foregoing process (as agreed or decided by Magistrate Judge Gilbert) will comprise the Class List. Once agreed or decided, there will be no further changes to the Class List.

g. The Parties will request referral of the case to Magistrate Judge Gilbert, pursuant to FRCP 72(a), for oversight of the information-gathering/subpoena process and resolution of any disputes in connection with carrying out the confirmatory discovery in this Section. Determinations by Magistrate Judge Gilbert shall be final and binding when entered. If the Parties are unable to come to an agreement, then either Party may seek resolution of the dispute by filing a motion before Magistrate Judge Gilbert. The Parties each agree to waive any and all rights to appeal Magistrate Judge Gilbert's final determination of any dispute related to this confirmatory discovery, including the right to appeal to the district judge pursuant to Federal Rule of Civil Procedure 72(a) and any right

to appeal to the United States Court of Appeals for the Seventh Circuit, but not their right to contest such determination in mediation should the Parties return to mediation before Judge Holderman pursuant to Section 7.3 of this Agreement.

7.3 Adjustment of Settlement Fund. Following the Class List Determination Date, if the Class List exceeds 180,225 individuals, the Settlement Fund shall equal eighty-nine dollars (\$89) per person on the Class List. By way of example, if the Settlement Class Size after the Class List Determination Date is 190,000 individuals, then the Settlement Fund will be \$16,910,000.00. If, after the Class List Determination Date, the Settlement Class Size exceeds 200,000 total individuals, the Parties shall return to mediation with Judge Holderman, but the Agreement is voidable at the option of either Plaintiffs or Defendant upon seven days' written notice by electronic mail, subject to Plaintiffs' unilateral option to accept a total Settlement Fund amount of Seventeen Million Eight Hundred Thousand dollars (\$17,800,000.00) as set forth in Section 7.1 above.

8. INCENTIVE AWARD AND CLASS COUNSEL'S ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

8.1 Defendant agrees that Class Counsel is entitled to reasonable attorneys' fees and unreimbursed expenses incurred in the Action as the Fee Award from the Settlement Fund. The amount of the Fee Award shall be determined by the Court based on petition from Class Counsel. Class Counsel has agreed, with no consideration from Defendant, to limit their request for attorneys' fees and unreimbursed costs to thirty-three percent (33%) of the Settlement Fund, after costs of Notice and Settlement Administration Expenses are deducted. Defendant may challenge the amount requested. Payment of the Fee Award shall be made from the Settlement Fund and should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this Section shall remain in

the Settlement Fund and be distributed to Settlement Class Members with Approved Claims as Settlement Payments. The Fee Award shall be payable within five (5) business days after the Effective Date. Payment of the Fee Award shall be made by the Settlement Administrator via wire transfer to accounts designated by Class Counsel after providing necessary information for electronic transfer.

8.2 Defendant agrees that the Class Representatives shall each be paid an incentive award in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00) from the Settlement Fund, in addition to any Settlement Payment pursuant to this Settlement Agreement and in recognition of their efforts on behalf of the Settlement Class, subject to Court approval. Should the Court award less than this amount, the difference in the amount sought and the amount ultimately awarded pursuant to this Section shall remain in the Settlement Fund and be distributed to Settlement Class Members as Settlement Payments. Any incentive award shall be paid from the Settlement Fund (in the form of a check to the Class Representative that is sent care of Class Counsel), within five (5) business days after the Effective Date.

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

9.1 The Effective Date shall not occur unless and until each and every one of the following events occurs, and shall be the date upon which the last (in time) of the following events occurs subject to the provisions in Section 1.12:

- a. This Agreement has been signed by the Parties, Class Counsel and Defendant's Counsel;
- b. The Court has entered a Preliminary Approval Order;
- c. The Court has entered a Final Approval Order, or a judgment materially identical to this Settlement Agreement that has become final and unappealable, following

Notice to the Settlement Class and a Final Approval Hearing, as provided in the Federal Rules of Civil Procedure; and

d. In the event that the Court enters an approval order and final judgment in a form other than that provided above (the “Alternative Approval Order”) to which the Parties have consented, that Alternative Approval Order has become final and unappealable.

9.2 If some or all of the conditions specified in Section 9.1 are not met, or in the event that this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Agreement shall be canceled and terminated subject to Section 9.3, unless Class Counsel and Defendant’s Counsel mutually agree in writing to proceed with this Settlement Agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Settlement Agreement on notice to all other Parties. Notwithstanding anything herein, the Parties agree that the following shall not prevent the Settlement Agreement from becoming effective, nor shall they be grounds for termination of the Agreement: (1) the Court’s decision as to the amount of the Fee Award to Class Counsel set forth above or the incentive award to the Class Representative, regardless of the amounts awarded, or (2) the Court’s determination that it lacks jurisdiction such that the Parties’ Agreement will be renewed in an appropriate forum.

9.3 If this Settlement Agreement is terminated or fails to become effective for the reasons set forth above, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Approval Order or other order entered by the Court in accordance with the terms of this Agreement shall be treated as

vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Settlement Agreement had never been entered into.

10. MISCELLANEOUS PROVISIONS.

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

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

10.3 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiffs and the other Settlement Class Members, and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand subject to the voidability provisions contained herein. Accordingly, the Parties and their attorneys agree not to assert that

the Action was brought by Plaintiffs or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis. Plaintiffs, Defendant, and their respective counsel further agree not to make defamatory or disparaging remarks, comments, or statements concerning Kronos or Plaintiffs in media outlets or on social media, though this provision shall expressly exclude statements made by Plaintiffs' counsel or their clients in the course of other litigation. Kronos reserves any and all rights and claims it may have related to statements made by Plaintiffs' counsel or their clients in the course of other litigation.

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

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

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

b. is, may be deemed, or shall be used, offered or received against Defendant as, an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

c. is, may be deemed, or shall be used, offered or received against Plaintiffs or the Settlement Class, or each or any of them as an admission, concession or evidence of, the infirmity or strength of any claims asserted in the Action, the truth or falsity of any fact alleged by Defendant, or the availability or lack of availability of meritorious defenses to the claims raised in the Action;

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

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

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

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

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

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

10.9 This Settlement Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits A–D other than the representations, warranties and covenants contained and memorialized in such documents. This Settlement Agreement may be

amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

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

10.11 Plaintiffs represent and warrant that they have not assigned any claim or right or interest relating to any of the Released Claims against the Released Parties to any other person or party and that they are fully entitled to release the same.

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

10.13 This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Signature by digital, facsimile, or in PDF format will constitute sufficient execution of this Settlement Agreement. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.


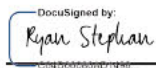
10.14 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement.

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

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

10.17 Where this Settlement Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: J. Eli Wade-Scott, ewadescott@edelson.com, EDELSON PC, 350 North LaSalle Street, 14th Floor, Chicago, Illinois 60654; Melissa A. Siebert, masiebert@shb.com, SHOOK, HARDY, & BACON LLP, 111 S Wacker Dr, Chicago, IL 60606.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

CHARLENE FIGUEROADated: 1/20/2022By (signature):  Charlene FigueroaName (printed): Charlene Figueroa**JERMAINE BURTON**Dated: 1/18/2022By (signature):  Jermaine BurtonName (printed): Jermaine Burton**EDELSON PC**Dated: 1/18/2022By (signature):  J. Eli Wade-ScottName (printed): J. Eli Wade-ScottIts (title): Partner**STEPHAN ZOURAS, LLP**Dated: 1/20/2022By (signature):  Ryan StephanName (printed): Ryan StephanIts (title): Founding Partner/Attorney**KRONOS INCORPORATED**

Dated: _____

By (signature): _____

Name (printed): _____

Its (title): _____

SHOOK HARDY AND BACON, LLP

Dated: _____

By (signature): _____

Name (printed): _____

CHARLENE FIGUEROA

Dated: _____

By (signature): _____

Name (printed): _____

JERMAINE BURTON

Dated: _____

By (signature): _____

Name (printed): _____

EDELSON PC

Dated: _____

By (signature): _____

Name (printed): _____

Its (title): _____

STEPHAN ZOURAS, LLP

Dated: _____

By (signature): _____

Name (printed): _____

Its (title): _____

KRONOS INCORPORATED

Dated: January 19, 2022


By (signature):  _____

Name (printed): Elizabeth M. McCarron

Its (title): SVP, Chief Legal Officer

SHOOK HARDY AND BACON, LLP

Dated: January 20, 2022

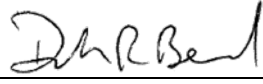
By (signature):  _____

Name (printed): Melissa Siebert

Its (title): Counsel

PERKINS COIE LLP

Dated: January 20, 2022

By (signature): 

Name (printed): Debra R. Bernard

Its (title): Partner

Exhibit A

Figueroa v. Kronos Incorporated, Case No. 1:19-CV-01306**CLAIM FORM**

Instructions: You are eligible for a payment as part of the Settlement for this case if you meet the class definition. If you received notice in this case, our records indicate that you are a member of the Class. Fill out each section of this form and sign where indicated. Please select whether you prefer to receive payment via check, Venmo, PayPal, or Zelle. If you opt for payment via check and your Claim Form is approved, you will receive a check in the mail at the address you provide below. Depending on the number of valid claims submitted, you may need to complete an IRS Form W-9 to satisfy tax reporting obligations. You may complete the Form W-9 now at [\[link to W-9\]](#); doing so now will ensure that you receive your full payment as soon as possible. THIS CLAIM FORM MUST BE SUBMITTED BY **[CLAIMS DEADLINE]** AND MUST BE FULLY COMPLETED (EXCEPT WHERE OPTIONAL), BE SIGNED, AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT.

The Settlement Administrator will review your Claim Form. If accepted, you will receive payment for an equal, or *pro rata*, share depending on the number of valid claim forms received. This process takes time; please be patient.

| | | |
|--|---------------------|-------------------------|
| <u>First Name</u> | | <u>Last Name</u> |
| <u>Street Address</u> | | |
| <u>City</u> | <u>State</u> | <u>ZIP Code</u> |
| <u>Email Address</u> | | |
| <u>Contact Phone #:</u> (You may be contacted if further information is required) | | |

| | |
|--|---------------------------------|
| Please provide the information in this box if you can do so. If you are not able to provide it, it will not impact your claim. | |
| Employer Where You Used Kronos Timeclock | Approximate Dates of Employment |

Select Payment Method. Select the box of how you would like to receive your payment and provide the requested information:

- Check
- Zelle®
- PayPal®
- Venmo®

[Based on the selection, the claimant will be prompted to provide the information the Settlement Administrator requires to complete the payment]

Para informacion en Espanol, visitar [www.\[tobedetermined\].com](http://www.[tobedetermined].com).

Settlement Class Member Verification: By submitting this Claim Form, I declare that I am an individual who scanned my finger on a Kronos-brand timeclock in Illinois between January 18, 2014, and [date 30 days after preliminary approval].

E- Signature: _____

Date: __ __/ __ __/ __ __

Exhibit B

From: tobedetermined@domain.com
To: JohnDoeClassMember@domain.com
Re: Legal Notice of Proposed Class Action Settlement

RECORDS INDICATE YOU SCANNED YOUR FINGER ON A KRONOS-BRAND TIMECLOCK IN ILLINOIS AND ARE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

This is a court-authorized notice. You are not being sued. This is not an ad for a lawyer.

For more information, visit www.tobedetermined.com.

Para una notificación en Español, visitar www.tobedetermined.com.

This notice is to inform you that a proposed Settlement has been reached in a class action lawsuit between Kronos Incorporated (“Kronos”) and all individuals who scanned their fingers on Kronos-brand timeclocks at work in Illinois and had their finger-scan data hosted by Kronos between January 18, 2014 and [30 days after preliminary approval]. The case is called *Figueroa v. Kronos Incorporated*, Case No. 1:19-CV-01306. The lawsuit claims that Kronos violated an Illinois law called the Illinois Biometric Information Privacy Act when it collected and stored biometric data from workers through Kronos-brand timeclocks, without complying with the law’s requirements. Kronos denies those allegations and that the law applies to Kronos. The Court has not decided who is right or wrong. Please read this notice carefully. Your legal rights are affected whether you act or don’t act.

Who is included in the Settlement Class? Records indicate that you are included in the Settlement Class. The Settlement Class includes all persons who scanned their finger on Kronos-brand timeclocks at their job in Illinois, and whose finger-scan data was hosted by Kronos, between January 18, 2014 and [30 days after preliminary approval].

What can I get out of the Settlement? If you’re eligible and the Court approves the Settlement, you can file a claim to receive a cash payment. The payment amount is estimated to be approximately \$290-\$580, depending on the number of valid and timely claims approved. This amount is an equal share of a \$15,276,277 fund that Kronos agreed to create, after any Court-approved payment of Settlement administration expenses, attorneys’ fees, and any incentive award.

How do I get my payment? Just complete and verify the short and simple Claim Form online at [Claim Form Link], or you can visit www.tobedetermined.com and download a paper Claim Form and submit it by mail. When submitting by mail, you will receive a check. By submitting online you can choose to receive your payment via check, Venmo, PayPal, or Zelle. ***All Claim Forms must be submitted online or postmarked by [Claims Deadline].***

What are my other options? You can do nothing, comment on or object to any of the Settlement terms, or exclude yourself from the Settlement. If you do nothing, you won’t get a payment, and you won’t be able to sue Kronos or certain related companies and individuals in a future lawsuit about the claims addressed in the Settlement.

You can also object to the Settlement if you disagree with any of its terms by writing to the Court. You can only exclude yourself, not others. If you exclude yourself, you won't get a payment but you'll keep your right to sue Kronos on the issues the Settlement concerns. You must contact the Settlement Administrator by mail or email ([email address]) to exclude yourself from the Settlement. *All Requests for Exclusion and Objections must be received by [Objection/Exclusion Deadline].*

Do I have a lawyer? Yes. The Court has appointed lawyers from the law firms Edelson PC and Stephan Zouras, LLP as "Class Counsel." They represent you and other Settlement Class Members. The lawyers will request to be paid from the total amount that Kronos agreed to pay to the Settlement Class Members after payment of notice and administration costs. You can hire your own lawyer, but you'll need to pay that lawyer's legal fees if you do. The Court has also chosen Charlene Figueroa and Jermaine Burton—Class Members like you—to represent the Settlement Class as Class Representatives.

When will the Court approve the Settlement? The Court will hold a final approval hearing on [date] at [time] before the Honorable Gary S. Feinerman in Room 2141 at the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604. Instructions for participating remotely may be posted on the Settlement Website. During the hearing, the Court will hear objections, determine if the Settlement is fair, and consider Class Counsel's request for fees and expenses of up to 33% of the Settlement Fund and an incentive award of \$7,500 each for both Class Representatives. The request will be posted on the Settlement Website by [two weeks prior to Objection/Exclusion Deadline].

Exhibit C

COURT AUTHORIZED NOTICE OF CLASS
ACTION AND PROPOSED SETTLEMENT

RECORDS INDICATE YOU
SCANNED YOUR FINGER ON
A KRONOS-BRAND
TIMECLOCK IN ILLINOIS
AND ARE ENTITLED TO A
PAYMENT FROM A CLASS
ACTION SETTLEMENT

Figueroa v. Kronos Incorporated
c/o Settlement Administrator
P.O. Box 0000
City, ST 00000-0000

First-Class
Mail
US Postage
Paid
Permit #



Postal Service: Please do not mark barcode

XXX—«ClaimID» «MailRec»

«First1» «Last1»

«C/O»

«Addr1» «Addr2»

«City», «St» «Zip» «Country»

By Order of the Court Dated: [date]

XXX

CLAIM FORM

THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR POSTMARKED BY [CLAIMS DEADLINE] AND MUST BE FULLY COMPLETED, BE SIGNED, AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT.

Instructions: Fill out each section of this form and sign where indicated. If you prefer to receive payment via Venmo, PayPal, or Zelle (instead of a check), you must submit a Claim Form online on the Settlement Website at [www.\[tobedetermined\].com](http://www.[tobedetermined].com). If you submit this paper Claim Form by mail and it is approved, you will receive a check in the mail at the address you provide below. Depending on the number of valid claims submitted, you may need to complete an IRS Form W-9 to satisfy tax reporting obligations. You may complete the Form W-9 now on the Settlement Website at [www.\[tobedetermined\].com](http://www.[tobedetermined].com); doing so now will ensure that you receive your full payment as soon as possible.

Name (First, M.I., Last): _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Email Address (optional): _____

Contact Phone #: (_____) _____ - _____ (You may be contacted if further information is required.)

| | |
|---|---------------------------------|
| <i>Please provide the information in this box if you can do so. If you are not able to provide it, it will not impact your claim.</i> | |
| Employer Where You Used Kronos Timeclock | Approximate Dates of Employment |

Settlement Class Member Verification: By submitting this Claim Form, I declare that I am an individual who scanned my finger on a Kronos-brand timeclock in Illinois between January 18, 2014, and [date 30 days after preliminary approval].

Signature: _____ Date: ____/____/____

Print Name: _____

The Settlement Administrator will review your Claim Form. If approved, you will be mailed a check for an equal, or *pro rata*, share depending on the number of valid claim forms received. This process takes time; please be patient.

Questions, visit [www.\[tobedetermined\].com](http://www.[tobedetermined].com) or call [toll free number]

This notice is to inform you that a proposed Settlement has been reached in a class action lawsuit between Kronos Incorporated (“Kronos”) and individuals who scanned their fingers on Kronos-brand timeclocks at work in Illinois. The case is called *Figueroa v. Kronos Incorporated*, Case No. 1:19-CV-01306. The lawsuit claims that Kronos violated an Illinois law called the Illinois Biometric Information Privacy Act when it collected and stored biometric data from workers through Kronos-brand timeclocks, without complying with the law’s requirements. Kronos denies those allegations and if the law applies to Kronos. The Court has not decided who is right or wrong. Please read this notice carefully. Your legal rights are affected whether you act, or don’t act.

Who is included in the Settlement Class? Our records indicate that you are included in the Settlement Class. The Settlement Class includes all persons who scanned their finger on Kronos-brand timeclocks at work in Illinois, and whose finger-scan data was hosted by Kronos, between January 18, 2014 and [30 days after preliminary approval].

What can I get out of the Settlement? If you’re eligible and the Court approves the Settlement, you can file a claim to receive a cash payment. The payment amount is estimated to be approximately \$290-\$580, depending on the number of valid claims submitted. This amount is an equal share of a \$15,276,277 fund that Kronos agreed to create, after any Court-approved payment of Settlement expenses, attorneys’ fees, and any incentive award.

How do I get my payment? Just complete and return the attached Claim Form by mail, or you can visit the Settlement Website, www.[tobedetermined].com, and submit a Claim Form online. All Claim Forms must be postmarked or submitted online by [Claims Deadline].

What are my other options? You can do nothing, comment on or object to any of the Settlement terms, or exclude yourself from the Settlement. If you do nothing, you won’t get a payment, and you won’t be able to sue Kronos or certain related companies and individuals in a future lawsuit about the claims addressed in the Settlement. You can also comment on or object to the Settlement if you disagree with any of its terms by writing to the Court. If you exclude yourself, you won’t get a payment but you’ll keep your right to sue Kronos on the issues the Settlement concerns. You must contact the Settlement Administrator by mail or email to exclude yourself from the Settlement. All Requests for Exclusion and Objections must be received by [Objection/Exclusion Deadline].

Do I have a lawyer? Yes. The Court has appointed lawyers from the law firms Edelson PC and Stephan Zouras, LLP as “Class Counsel.” They represent you and other Settlement Class Members. The lawyers will request to be paid from the total amount that Kronos agreed to pay to the Settlement Class Members, after payment of notice and administration costs. You can hire your own lawyer, but you’ll need to pay that lawyer’s legal fees if you do. The Court has also chosen Charlene Figueroa and Jermaine Burton—Class Members like you—to represent the Settlement Class as Class Representatives.

When will the Court approve the Settlement? The Court will hold a final approval hearing on [date] at [time] before the Honorable Gary S. Feinerman in Room 2141 at the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604. Instructions for participating remotely may be posted on the Settlement Website. During the hearing, the Court will hear objections, determine if the Settlement is fair, and consider Class Counsel’s request for fees and expenses of up to 33% of the Settlement Fund, and an incentive award of \$7,500 each for both Class Representatives. The request will be posted on the Settlement Website by [2 weeks before Objection/Exclusion Deadline].

NO POSTAGE
NECESSARY
IF MAILED IN
THE UNITED
STATES

Figueroa v. Kronos Incorporated Settlement
c/o Settlement Administrator
PO Box 0000
City, ST 00000-0000

XXX

Exhibit D

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Figueroa v. Kronos Incorporated, Case No. 1:19-CV-01306
(United States District Court Northern District of Illinois)

IF YOU SCANNED YOUR FINGER ON A KRONOS-BRAND TIMECLOCK IN ILLINOIS AND HAD YOUR FINGER-SCAN DATA HOSTED BY KRONOS BETWEEN JANUARY 18, 2014 AND [30 DAYS AFTER PRELIMINARY APPROVAL], YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

This is a court-authorized notice. You are not being sued. This is not an ad for a lawyer.

Para una notificacion en Espanol, visitar [www.\[tobedetermined\].com](http://www.[tobedetermined].com).

- A proposed Settlement has been reached in a class action lawsuit between Kronos Incorporated (“Kronos” or “Defendant”) and individuals who scanned their fingers on Kronos-brand timeclocks at their jobs in Illinois and whose finger-scan data was hosted by Kronos between January 18, 2014 and [30 days after preliminary approval]. The lawsuit claims that Kronos collected and stored biometric data from workers through Kronos-brand timeclocks when Kronos provided “cloud” hosting for their employers. The lawsuit claims these activities required compliance with an Illinois law called the Illinois Biometric Information Privacy Act, and that Kronos did not comply. Kronos denies these allegations and that the law applies to Kronos. The Court has not decided who is right or wrong. The Settlement has been preliminarily approved by a federal court in Chicago.
- You are included in the Settlement if you scanned your finger on a Kronos-brand timeclock at your job in Illinois and your finger-scan data was hosted by Kronos between January 18, 2014, and [30 days after preliminary approval]. If you received a notice of the Settlement in the mail or by email, records indicate that you are included in the Settlement, you may submit a Claim Form online or by mail to receive a cash payment.
- If the Court approves the Settlement, members of the Class who submit valid, timely and approved claims will receive an equal share of a \$15,276,277 settlement fund that Kronos has agreed to create, after all notice and administration costs, incentive award, and attorneys’ fees have been paid. Individual payments to Settlement Class Members who submit a valid claim form are estimated to be \$290-\$580, depending on the number of approved claims.
- Please read this notice carefully. Your legal rights are affected whether you act, or don’t act.

| YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT | |
|---|--|
| SUBMIT A CLAIM FORM | This is the only way to receive a payment. |
| DO NOTHING | You will receive no payment under the Settlement and give up your rights to sue Kronos or certain related companies and individuals about the issues in this case. |
| EXCLUDE YOURSELF | You will receive no payment, but you will retain any rights you currently have to sue Kronos about the issues in this case. |
| OBJECT | Write to the Court explaining why you don't like the Settlement. |
| ATTEND A HEARING | Ask to speak in Court about the fairness of the Settlement |

These rights and options—**and the deadlines to exercise them**—are explained in this notice.

The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be provided only after any issues with the Settlement are resolved. Please be patient.

BASIC INFORMATION

1. What is this notice and why should I read it?

The Court authorized this notice to let you know about a proposed Settlement with Kronos. You have legal rights and options that you may act on before the Court decides whether to give final approval to the proposed Settlement. You may be eligible to receive a cash payment as part of the Settlement. This notice explains the lawsuit, the Settlement, and your legal rights.

The Honorable Gary S. Feinerman of the United States District Court for the Northern District of Illinois is overseeing this class action. The case is called *Figueroa v. Kronos Incorporated*, Case No. 1:19-CV-01306. The persons who filed the lawsuit, Charlene Figueroa and Jermaine Burton, are the Plaintiffs. The company they sued, Kronos Incorporated, is the Defendant.

2. What is a class action lawsuit?

A class action is a lawsuit in which individuals called “Class Representatives” bring a single lawsuit on behalf of other people who they assert have similar legal claims. All of these people together are potential members of the “Class.” When a Class is certified for settlement and the Settlement is finally approved by the Court, the Settlement resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement Class.

THE CLAIMS IN THE LAWSUIT AND THE SETTLEMENT

3. What is this lawsuit about?

The Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*, regulates the collection, storage, and/or use of a person’s biometric data in Illinois, including requiring consent to the collection of biometric data. Biometric data includes fingerprints. This lawsuit alleges that Kronos as a provider of timekeeping devices with a finger-scanner and “cloud” hosting services collected and stored biometric data without authorization from individuals who scanned their fingers at employers that were using Kronos-brand timeclocks and cloud-hosting services. Kronos denies these allegations and denies that it was subject to or violated BIPA.

More information about Plaintiff’s complaint in the lawsuit and the Defendant’s defenses can be found in the “Court Documents” section of the Settlement Website at [www.\[tobedetermined\].com](http://www.[tobedetermined].com).

4. Who is included in the Settlement Class?

You are a member of the Settlement Class if you scanned your finger on a Kronos-brand timeclock at your job in Illinois, and that finger-scan data was hosted by Kronos, between January 18, 2014, and [30 days after preliminary approval] If you received a notice of the Settlement via email or in the mail, records indicate that you are a Class Member and are included in the Settlement. You may call or email the Settlement Administrator at [phone number] or [email address] to ask whether you are a member of the Settlement Class.

Pictured below are examples of Kronos-brand timeclocks with the finger-scan attachment:



THE SETTLEMENT BENEFITS

5. What does the Settlement provide?

Cash Payments. If you're eligible, you can file a claim to receive a cash payment. The amount of such payment is estimated to be \$290-\$580, depending on the number of approved claims. This is a *pro rata*, or equal, share of a \$15,276,277 fund that Kronos has agreed to create, after the payment of settlement expenses, attorneys' fees, and any incentive award for the two Class Representatives in the litigation approved by the Court.

Prospective Relief. Under the settlement, Kronos has agreed to notify employers that use Kronos-brand timeclocks and use Kronos as a host for finger-scan data that they need to obtain written releases from individuals who scan their fingers on Kronos-brand timeclocks, make all BIPA-required disclosures, and establish and maintain a retention and destruction policy that is made available to the public.

HOW TO GET SETTLEMENT BENEFITS

6. How do I get a payment?

If you are a Settlement Class Member and you want to get a payment, you must complete and submit a valid Claim Form by **[Claims Deadline]**. If you received an email notice, it contained a link to the online Claim Form, which is also available on this website here **[Claim Form Link]** and can be filled out and submitted online. The online Claim Form lets you select to receive your payment by Venmo, Zelle, PayPal, or check. A paper Claim Form with pre-paid postage was attached to the postcard notice you may have received in the mail. Those who submit a paper Claim Form will receive a check by mail, if the claim is approved.

Depending on the number of approved claims, you may need to complete an IRS Form W-9 to satisfy IRS tax reporting obligations related to the payment. You may complete the **[Form W-9 link]** now on the Settlement Website; doing so now will ensure that you receive your full payment as soon as possible.

7. When will I get my payment?

The hearing date to consider the fairness of the Settlement is scheduled for **[Final Approval Hearing Date]**. If the Court approves the Settlement, Class Members whose claims were approved by the Settlement Administrator and, if necessary, who have completed a W-9 Form on the Settlement Website will be issued a check or electronic payment (as chosen by the Settlement Class Member) within 60 days after the Settlement has been finally approved by the Court and/or after any appeals process is complete. Please be patient. Uncashed checks and electronic payments that are unable to be completed will expire and become void 120 days after they are issued and will be donated to **[name of cy pres recipient]**, or such other not-for-profit organization(s) as the Court may order as *cy pres* recipient.

THE LAWYERS REPRESENTING YOU

8. Do I have a lawyer in the case?

Yes, the Court has appointed Jay Edelson and J. Eli Wade-Scott of Edelson PC and Ryan F. Stephan and James B. Zouras of Stephan Zouras, LLP as the attorneys to represent the Settlement Class. These attorneys are called "Class Counsel." In addition, the Court appointed Plaintiffs Charlene

Figueroa and Jermaine Burton to serve as the Class Representatives. They are Settlement Class Members like you. Class Counsel can be reached by calling [x-xxx-xxxx].

9. Should I get my own lawyer?

You don't need to hire your own lawyer because Class Counsel is working on your behalf. You may hire your own lawyer, but if you do so, you will have to pay that lawyer.

10. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees and expenses of up to 33% of the Settlement Fund (after payment of notice and administration costs) and will also request an incentive award of \$7,500 for each of the two Class Representatives from the Settlement Fund. The Court will determine the proper amount of any attorneys' fees and expenses to award Class Counsel and the proper amount of any award to the Class Representatives. The Court may award less than the amounts requested.

YOUR RIGHTS AND OPTIONS

11. What happens if I do nothing at all?

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 Kronos or other Released Parties (defined in the Settlement Agreement) regarding any of the Released Claims. **Submitting Claim Form that is approved by the Settlement Administrator is the only way to receive a payment from 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, [www.\[to be determined\].com](http://www.[to be determined].com), or call (XXX) XXX-XXXX.

12. What happens if I ask to be excluded?

You may exclude yourself from the Settlement. If you do so, you will not receive any cash payment, but you will not release any claims you may have against the Kronos and the Released Parties and are free to pursue whatever legal rights you may have by pursuing your own individual lawsuit against Kronos and the Released Parties at your own risk and expense.

13. How do I ask to be excluded?

You can mail or email a letter stating that you want to be excluded from the Settlement. Your letter must: (a) be in writing; (b) identify the case name, *Figueroa v. Kronos Incorporated*, No. 19-cv-1306 (N.D. Ill.); (c) state the full name and current address of the person in the Settlement Class seeking exclusion; (d) be signed by the person seeking exclusion; and (e) be postmarked or received by the Settlement Administrator on or before [Objection/Exclusion Deadline]. Each request for exclusion must also contain a statement to the effect that "I hereby request to be excluded from the proposed Settlement Class in *Figueroa v. Kronos Incorporated*, No. 19-cv-1306 (N.D. Ill.)." You must mail or email your exclusion request no later than [Objection/Exclusion Deadline] to:

Figueroa v. Kronos Settlement Administrator
P.O. Box 0000
City, ST 00000-0000

-or-

[email address]

You can't exclude yourself over the phone. No person may request to be excluded from the Settlement Class through "mass" or "class" opt-outs.

14. If I don't exclude myself, can I sue Kronos for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Kronos and any other Released Party for the claims being resolved by this Settlement.

15. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, you will not receive a payment.

16. How do I object to the Settlement?

If you do not exclude yourself from the Settlement Class, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should deny approval by filing an objection. To object, you must file a letter or brief with the Court stating that you object to the Settlement in *Figueroa v. Kronos Incorporated*, Case No. 1:19-CV-01306 (N.D. Ill.), no later than [Objection/Exclusion Deadline]. Your objection must be e-filed or delivered to the Court at the following address:

Clerk of the United States District Court for the Northern District of Illinois
Everett McKinley Dirksen United States Courthouse
219 South Dearborn Street
Chicago, Illinois 60604

Due to the COVID-19 pandemic, the Court is accepting filings from pro se litigants via email. Instructions on how to file via email can be found [here](#).

The objection must be in writing, must be signed, and must include the following information: (a) your full name and current address, (b) a statement that you believe you are a member of the Settlement Class, (c) whether the objection applies only to you, to a specific subset of the Settlement Class, or to the entire Settlement Class, (d) the specific grounds for your objection, (e) all documents or writings that you wish the Court to consider, (f) the name and contact information of any attorneys representing, advising, or in any way assisting you in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection, and (g) a statement indicating whether you intend to appear at the Final Approval Hearing. If you hire an attorney in connection with making an objection, that attorney must file an appearance with the Court or seek *pro hac vice* admission to practice before the Court, and electronically file the objection by the objection deadline of [Objection/Exclusion Deadline]. 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.

In addition to filing your objection with the Court, you must send via mail, email, hand, or overnight delivery service, by no later than **[Objection/Exclusion Deadline]**, copies of your objection and any supporting documents to both Class Counsel and Kronos's lawyers at the addresses listed below:

| Class Counsel | Kronos's Counsel |
|--|---|
| J. Eli Wade-Scott ewadescott@edelson.com EDELSON PC 350 North LaSalle Street, 14th Floor Chicago, Illinois 60654 | Melissa A. Siebert masiebert@shb.com SHOOK, HARDY, & BACON LLP 111 S Wacker Drive Chicago, Illinois 60606 |

Class Counsel will file with the Court and post on the Settlement Website its request for attorneys' fees and incentive awards on **[date 2 weeks before Objection / Exclusion deadline]**.

17. What's the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class as a Class Member. Excluding yourself from the Settlement Class is telling the Court that you don't want to be a Settlement Class Member. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

18. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Final Approval Hearing at **[time]** on **[date]** before the Honorable Gary S. Feinerman in Room 2141 of the Northern District Court of Illinois, Dirksen U.S. Courthouse, 219 South Dearborn Street, Chicago, Illinois, 60604, or via remote means as instructed by the Court. The purpose of the hearing is for the Court to determine whether the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed Settlement, including those related to the amount requested by Class Counsel for attorneys' fees and expenses and the incentive award to the Class Representatives.

Note: The date and time of the Final Approval Hearing are subject to change by Court Order. Any changes will be posted at the Settlement Website, [www.\[tobedetermined\].com](http://www.tobedetermined.com).

19. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. You are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as your written objection was filed or mailed on time and meets the other criteria described in the Settlement, the Court will consider it. You may also pay a lawyer to attend, but you don't have to.

20. May I speak at the hearing?

Yes. If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the hearing concerning any part of the proposed Settlement. If you filed an objection (*see* Question 16 above) and intend to appear at the hearing, you must state your intention to do so in your objection.

GETTING MORE INFORMATION

21. Where do I get more information?

This notice summarizes the proposed Settlement. More details, including the Settlement Agreement and other documents are available at www.tobedetermined.com or at the Clerk's Office in the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays and any closures as a result of the COVID-19 pandemic. You can also contact the Settlement Administrator at [x-xxx-xxxx] or Class Counsel at the number provided above with any questions.

PLEASE DO NOT CONTACT THE COURT, THE JUDGE, THE DEFENDANT OR THE DEFENDANT'S LAWYERS WITH QUESTIONS ABOUT THE SETTLEMENT OR DISTRIBUTION OF SETTLEMENT PAYMENTS.

EXHIBIT 2

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

CHARLENE FIGUEROA and JERMAINE
BURTON, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

KRONOS INCORPORATED,

Defendant.

Case No. 1:19-cv-01306

Honorable Gary S. Feinerman

**DECLARATION OF PAUL FERRUZZI OF KROLL SETTLEMENT
ADMINISTRATION LLC IN CONNECTION WITH FINAL APPROVAL OF
SETTLEMENT**

I, Paul Ferruzzi, hereby declare:

1. I am a Senior Manager at Kroll Settlement Administration LLC (“Kroll”),¹ the court-appointed Settlement Administrator² in the above-captioned case, whose principal office is located at 2000 Market Street, Suite 2700, Philadelphia, Pennsylvania, 19103. I am over twenty-one years of age and am authorized to make this declaration on behalf of Kroll and myself. The following statements are based on my personal knowledge and information provided by other experienced Kroll employees working under my general supervision. This declaration is being filed in connection with Plaintiffs’ motion for final approval of a class action settlement.

2. Kroll has extensive experience in class action matters, having provided services in class action settlements involving antitrust, securities fraud, employment and labor, consumer, and

¹ Except as otherwise indicated, all defined terms used in this declaration shall have the same meanings ascribed to them in the Settlement Agreement (as defined below).

² The Settlement Agreement and Preliminary Approval Order appoint “Kroll Business Services” as the Settlement Administrator. Kroll Business Services is the name of the division of Kroll, LLC in which Kroll Settlement Administration LLC is a unit and is not a legal entity. Kroll Settlement Administration LLC is the actual Settlement Administrator in this case.

government enforcement matters. Kroll has provided notification and/or claims administration services in more than 3,000 cases.

3. Kroll was appointed as the Settlement Administrator to provide notification and settlement administration services in connection with a certain Stipulation of Class Action Settlement (the “Settlement Agreement”) entered into in connection with the above-captioned case, referred to herein as the “Settlement.” Kroll’s duties in this Settlement have and will include: (a) preparing and sending notices in connection with the Class Action Fairness Act; (b) receiving and analyzing the Class Member data (“the Class List”); (c) establishing a post office box for the receipt of general mail and correspondence; (d) creating a website with online claim filing capabilities; (e) establishing an email address to receive Class Member inquiries; (f) establishing a toll-free number with an Interactive Voice Response (IVR) system and live operators; (g) preparing and sending Notice via email and U.S. Mail; (h) receiving and processing mail from the United States Postal Service (“USPS”) with forwarding addresses; (i) receiving and processing undeliverable mail, without a forwarding address, from the USPS; (j) receiving and processing any opt-outs and objections; (k) receiving and processing Claim Forms; and (l) such other tasks as counsel for the Parties or the Court orders Kroll to perform.

4. CAFA Mailing: As noted above, on behalf of the Defendant, Kroll provided notice of the proposed settlement reflected in the Settlement Agreement pursuant to the Class Action Fairness Act 28 U.S.C. §1715(b) (“the CAFA Notice”). At Defendant’s Counsel’s direction, on February 22, 2022, Kroll sent the CAFA Notice, attached hereto as **Exhibit A** via First-Class Certified Mail, to (i) the Attorney General of the United States and (ii) 57 state Attorneys General identified in the service list for the CAFA Notice, attached hereto as **Exhibit B**. The CAFA Notice directed the Attorneys General to the website www.CAFANotice.com, a site that contains all the Settlement documents referenced in the CAFA Notice.

5. Class List: From April 25, 2022, through August 11, 2022, Kroll received Class Member data, from Kronos’ Counsel as well as from subpoena responses from Illinois Kronos Cloud Customers who declined to voluntarily provide data for individuals in the Settlement Class

to Kronos. The data files key components were names, addresses and email addresses (if applicable). Kroll undertook several steps to reconcile the lists and compiled the eventual Class List for the mailing of Notices, including reviewing the Class List for duplications and incorrect mailing addresses. As a result of this process, Kroll was able to identify 81,910 unique records. Of the 81,910 records on the Class List, Kroll identified 33,589 Class Member records with only a physical address, 308 records with only an email address and 46,452 Class Members with both an physical address and email address. There were 1,561 Class Members on the Class List with no mail and/or email address. Additionally, in an effort to ensure that Notices would be deliverable to Class Members, Kroll ran the Class List through the USPS's National Change of Address ("NCOA") database and updated the Class List with address changes received from the NCOA.

6. On October 28, 2022, Kroll informed Class Counsel that, as of that date, the total class size included 84,193 individuals, 81,910 of which had an available mailing address or email address. As described in the preceding paragraph, after removal of duplicate records, the total class size is 81,910 individuals, 80,349 of which have an available mailing address or email address.

7. Post Office Box: On March 1, 2022, Kroll designated a post office box with the mailing address *Figueroa v Kronos* c/o Kroll Settlement Administration, P.O. Box 5324, New York, NY 10150-5324 in order to receive completed Claim Forms, W9s, requests for exclusion, and correspondence from Class Members.

8. Settlement Website: On May 10, 2022, Kroll created and since such date has been hosting a dedicated Settlement Website with the URL, www.KronosBIPASettlement.com. The Settlement Website contains a summary of the Settlement, important deadlines, such as the Claims Deadline, Objection/Exclusion Deadline, and the Final Approval Hearing date, and answers to frequently asked questions. It also offers the long-form Notice (in English and Spanish), the Claim Form, and the capability to electronically submit a Claim Form and Form W-9. Attached hereto as **Exhibits C through E** are true and correct copies of the long-form Notice in English and Spanish, and the Claim Form, respectively. During the claim filing period, members of the Settlement Class were able to log in and submit a Claim Form using the "Class Member ID" provided on the mailed

and emailed Notices. Class Members also had the option to submit a generic, non-login Claim Form that did not require a Class Member ID. The online Claim Form also enables Class Members to select the method by which they wish to receive their Settlement Payment: Venmo, Zelle, Paypal, or check. The Settlement Website also contains relevant case documents including the complaint; Settlement Agreement; motion for preliminary approval; Preliminary Approval Order; motion for attorneys' fees and expenses (which was posted on November 23, 2022), and the exhibits attached to each of the forgoing documents. The Settlement Website also includes information and dates for Class Members including the Claims Deadline, the Objection Deadline, the Exclusion Deadline, the date and time of the Final Approval Hearing, and instructions on how to appear at the Final Approval Hearing telephonically.

9. Email Address: On July 26, 2022, Kroll established a dedicated email address, info@kronosbipasettlement.com, as an alternative method for Class Members to submit requests for exclusion and correspondence to Kroll. This email address received more than eighty-three (83) inquires, all of which were responded to by Kroll staff.

10. Toll-Free Number: On May 3, 2022, Kroll established and is still maintaining a toll-free number, (833) 620-3585, for individuals to call and obtain additional information regarding the Settlement. As of December 15, 2022, the IVR call center line has received 1,881 calls.

11. Mailed Notice: On or about May 3, 2022, Kroll received from counsel a Word version of the postcard Notice with a fold over Claim Form attached to be mailed to Class Members. Kroll prepared and formatted drafts of the Notice for mailing, which counsel reviewed and approved. A true and correct copy of the finalized postcard Notice is attached hereto as **Exhibit F**. On September 7, 2022, Kroll caused 80,041 Notices to be mailed via First Class Mail.

12. As of December 15, 2022, 628 Notices were returned by the USPS with a forwarding address. The 628 Notices were automatically re-mailed to the updated addresses provided by the USPS.

13. As of December 15, 2022, Kroll has received 5,415 Notices returned by the USPS as undeliverable as addressed with no forwarding address. On October 18, 2022, Kroll ran 5,322 undeliverable records through an advanced address search.³ The advance address search produced 4,374 updated addresses. On November 2, 2022, Kroll re-mailed Notices to the 4,374 updated addresses obtained from the advanced address search. To date, 96 of the re-mailed Notices have been returned to Kroll as undeliverable.

14. Email Notice: On September 7, 2022, Kroll caused the email Notice to be sent to the 46,760 email addresses on file for Class Members as noted above. A true and correct copy of a complete exemplar email Notice (including the subject line) is attached hereto as **Exhibit G**. Of the 46,760 emails attempted for delivery, 8,865 emails were rejected/bounced back as undeliverable.

15. In total, 1,561 Settlement Class members did not have an email address or mailing address available, and as of December 15, 2022, a total of 2,183 Settlement Class members have had both their email Notice and postcard Notice returned as undeliverable. As a result, approximately 95.4% of the Settlement Class received at least one form of direct Notice of the Settlement.

16. Reminder Notices: On November 17, 2022, Kroll sent a first round of reminder email Notices to 35,573 Class Members on the Class List with email addresses who had not yet submitted a Claim Form at that time and whose emails had not been rejected/bounced back as undeliverable after the September 7, 2022 email service. On November 29, 2022, Kroll sent a second round of reminder email Notices to 34,673 Class Members on the Class List who had not yet submitted a Claim Form at that time and whose emails had not been rejected/bounced back as undeliverable after the September 7, 2022 email service and first reminder email service.

³ The remaining 93 undeliverable Notices received to date were received after the advanced address search was run and therefore those records were not included in the search.

17. Exclusions: The Exclusion Deadline was December 6, 2022. As of December 15, 2022, Kroll's records indicate that it has received one (1) request for exclusion. A true and correct copy of the request for exclusion received is attached hereto as **Exhibit H**.

18. Objections: The Objection Deadline was December 8, 2022. As of December 15, 2022, Kroll's records indicate that it has received no objections to the Settlement.

19. Claim Form Processing: The last day to submit Claim Forms was December 6, 2022. As of December 15, 2022, Kroll's records indicate that it has received 9,269 Claim Forms received through the mail and 349,789 Claim Forms filed electronically through the Settlement Website. Kroll is still in the process of reviewing and validating Claim Forms.

20. Of the 349,789 electronic Claim Forms received, and as of December 15, 2022, Kroll has accepted 13,428 electronic Claim Forms submitted by individuals on the Class List and is in the process of reviewing 336,361 electronic Claim Forms submitted by individuals without a Class Member ID. Of the 9,269 paper Claim Forms received, Kroll has accepted 8,505 submitted by individuals on the Class List and is still in the process of reviewing 764 paper Claim Forms. In total, Kroll has accepted 21,933 Claim Forms as Approved Claims as of December 15, 2022, which imputes a claims rate of approximately 26.78%.

21. As part of its claims review process, Kroll discovered that 14,205 Claim Forms were filed electronically through the Settlement Website without a Class Member ID between September 7, 2022 and October 20, 2022. Thereafter, there was then a significant spike in the number electronic Claim Forms submitted through the Settlement Website, with 322,156 Claim Forms having been filed without a Class Member ID between October 21, 2022 and December 6, 2022. Upon further analysis Kroll has discovered that various Claim Forms filed on or after such date originated from suspicious email addresses and street addresses that don't exist, and based on Kroll's experience, it believes to be potentially fraudulent or otherwise invalid. Kroll has flagged these claims as initially rejected and will further review.

22. As of December 15, 2022, Kroll has incurred \$55,280.75 in total fees and expenses in connection with administering the Settlement and anticipates that it will incur approximately \$611,871.79 in total expenses to administer the Settlement.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct to the best of my knowledge and that this Declaration was executed on December 15, 2022 in Philadelphia, PA.

A handwritten signature in cursive script, appearing to read "Paul Ferruzzi", is written in black ink.

PAUL FERRUZZI

Exhibit A



VIA US MAIL

To: All "Appropriate" Federal and State Officials Per 28 U.S.C. § 1715 (see attached distribution list)

Re: CAFA Notice for the Proposed Settlement in *Charlene Figueroa, et al. v. Kronos, Inc.*, Civil Action No. 1:19-cv-01306, pending in the United States District Court for the Northern District of Illinois, Eastern Division

Pursuant to Section 3 of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715, Defendant Kronos, Inc. ("Defendant" or "Kronos") hereby notifies you of the proposed settlement of the above-captioned action (the "Action") currently pending in the United States District Court for the Northern District of Illinois, Eastern Division (the "Court").

Eight items must be provided to you in connection with any proposed class action settlement pursuant to 28 U.S.C. § 1715(b). Each of these items is addressed below:

1. 28 U.S.C. § 1715 (b)(1) - a copy of the complaint and any materials filed with the complaint and any amended complaints.

The Class Action Complaint is available at the website: www.cafanotice.com under the Figueroa v. Kronos folder as **Exhibit A**.

2. 28 U.S.C. § 1715 (b)(2) - notice of any scheduled judicial hearing in the class action.

On February 10, 2022, Plaintiff filed a motion for preliminary approval of the class action, which was granted by Order dated February 18, 2022. The Court has scheduled the Fairness Hearing for this matter for December 6, 2022, at 9:30 am. The Preliminary Approval Order is available at the website: www.cafanotice.com under the Figueroa v. Kronos folder as **Exhibit B**.

3. 28 U.S.C. § 1715(b)(3) - any proposed or final notification to class members.

A proposed Summary Notice and Long-Form Notice of Settlement will be provided to Class Members, which will be available on the website created for the administration of this matter. These are available at the website: www.cafanotice.com under the Figueroa v. Kronos folder as **Exhibit C**, **Exhibit D**, and **Exhibit E** respectively. The Notices describe, among other things, claim submission process and the Class Members' rights to object or exclude themselves from the Class.

4. 28 U.S.C. § 1715(b)(4) - any proposed or final class action settlement.



The Settlement Agreement is available at the website: www.cafanotice.com under the Figueroa v. Kronos folder as **Exhibit F**.

5. 28 U.S.C. § 1715(b)(5) - any settlement or other agreement contemporaneously made between class counsel and counsel for defendants.

There are no other settlements or other agreements between Class Counsel and counsel for Defendant beyond what is set forth in the Agreement.

6. 28 U.S.C. § 1715(b)(6) - any final judgment or notice of dismissal.

The Court has not yet entered a final judgment or notice of dismissal. Accordingly, no such document is presently available.

7. 28 U.S.C. § 1715(b)(7) – (A) If feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State’s appropriate State official; or (B) if the provision of the information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement.

The class is defined as all persons who used a Kronos brand time clock with a finger sensor attachment for timekeeping purposes in Illinois and whose finger-scan data was hosted by Kronos between January 18, 2014, and March 20, 2022.

Approximately 99% of the class resides in Illinois and the remaining approximately 1% are split between the other 49 states.

8. 28 U.S.C. § 1715(b)(8) - any written judicial opinion relating to the materials described in 28 U.S.C. § 1715(b) subparagraphs (3) through (6).

The Preliminary Approval Order is available at the website: www.cafanotice.com under the Figueroa v. Kronos folder as **Exhibit B**.

If you have any questions about this notice, the Action, or the materials located in the on website: www.cafanotice.com under the Figueroa v. Kronos folder, please contact undersigned listed below.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "J R Prutsman".

James R. Prutsman

Senior Director

Exhibit B

SERVICE LIST FOR CAFA NOTICE

U.S. Attorney General

Merrick B. Garland
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Alabama Attorney General

Steve Marshall
501 Washington Ave.
P.O. Box 300152
Montgomery, AL 36130

Alaska Attorney General

Treg Taylor
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501

American Samoa Attorney General

Fainu'uulelei Falefatu Ala'ilima-Utu
Executive Office Building 3rd Floor
PO BOX 7
Utulei, AS 96799

Arizona Attorney General

Mark Brnovich
2005 N Central Ave
Phoenix, AZ 85004

Arkansas Attorney General

Leslie Rutledge
323 Center St., Suite 200
Little Rock, AR 72201

California Attorney General

Rob Bonta
1300 I St., Ste. 1740
Sacramento, CA 95814

Colorado Attorney General

Phil Weiser
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, CO 80203

Connecticut Attorney General

William Tong
165 Capitol Avenue
Hartford, CT 06106

Delaware Attorney General

Kathy Jennings
Carvel State Office Building
820 N. French St.,
Wilmington, DE 19801

District of Columbia Attorney General

Karl A. Racine
400 6th St., NW
Washington, DC 20001

Florida Attorney General

Ashley Moody
The Capitol, PL 01
Tallahassee, FL 32399

Georgia Attorney General

Chris Carr
40 Capitol Square, SW
Atlanta, GA 30334

Guam Attorney General

Leevin T. Camacho
590 S. Marine Corps Dr, Ste 706
ITC Building Tamuning, Guam 96913

Hawaii Attorney General

Holly T. Shikada
425 Queen St.
Honolulu, HI 96813

Idaho Attorney General

Lawrence Wasden
700 W. Jefferson Street, Suite 210
P.O. Box 83720
Boise, ID 83720

Illinois Attorney General

Kwame Raoul
James R. Thompson Ctr.
100 W. Randolph St.
Chicago, IL 60601

Indiana Attorney General

Todd Rokita
Indiana Government Center South
5th Floor
302 West Washington Street
Indianapolis, IN 46204

Iowa Attorney General

Tom Miller
Hoover State Office Building
1305 E. Walnut
Des Moines, IA 50319

Kansas Attorney General

Derek Schmidt
120 S.W. 10th Ave., 2nd Fl.
Topeka, KS 66612

Kentucky Attorney General

Daniel Cameron
700 Capitol Avenue
Capitol Building, Suite 118
Frankfort, KY 40601

Louisiana Attorney General

Jeff Landry
P.O. Box 94095
Baton Rouge, LA 70804

Maine Attorney General

Aaron Frey
State House Station 6
Augusta, ME 04333

Maryland Attorney General

Brian Frosh
200 St. Paul Place
Baltimore, MD 21202

Massachusetts Attorney General

Maura Healey
1 Ashburton Place
Boston, MA 02108

Michigan Attorney General

Dana Nessel
P.O. Box 30212
525 W. Ottawa St.
Lansing, MI 48909

Minnesota Attorney General

Keith Ellison
445 Minnesota Street
Suite 1400
St. Paul, MN 55101

Mississippi Attorney General

Lynn Fitch
Department of Justice
P.O. Box 220
Jackson, MS 39205

Missouri Attorney General

Eric Schmitt
Supreme Ct. Bldg.
207 W. High St.
Jefferson City, MO 65101

Montana Attorney General

Austin Knudsen
Justice Bldg.
215 N. Sanders
Helena, MT 59620

Nebraska Attorney General

Doug Peterson
State Capitol
P.O. Box 98920
Lincoln, NE 68509

Nevada Attorney General

Aaron D. Ford
Old Supreme Ct. Bldg.
100 N. Carson St.
Carson City, NV 89701

New Hampshire Attorney General

John Formella
33 Capitol St.
Concord, NH 03301

New Jersey Attorney General

Matthew J. Platkin
Richard J. Hughes Justice Complex
25 Market Street, P.O. Box 080
Trenton, NJ 08625

New Mexico Attorney General

Hector Balderas
P.O. Drawer 1508
Santa Fe, NM 87504

New York Attorney General

Letitia A. James
Department of Law - The Capitol, 2nd fl.
Albany, NY 12224

North Carolina Attorney General

Josh Stein
Dept. of Justice
P.O. Box 629
Raleigh, NC 27602

North Dakota Attorney General

Drew Wrigley
State Capitol
600 E. Boulevard Ave.
Bismarck, ND 58505

Ohio Attorney General

Dave Yost
State Office Tower
30 E. Broad St.
Columbus, OH 43266

Oklahoma Attorney General

John O'Connor
313 NE 21st Street
Oklahoma City, OK 73105

Oregon Attorney General

Ellen F. Rosenblum
Justice Bldg.
1162 Court St., NE
Salem, OR 97301

Pennsylvania Attorney General

Josh Shapiro
16th Floor, Strawberry Square
Harrisburg, PA 17120

Puerto Rico Attorney General

Domingo Emanuelli Hernandez
PO Box 9020192
San Juan, PR 00902

Rhode Island Attorney General

Peter F. Neronha
150 S. Main St.
Providence, RI 02903

South Carolina Attorney General

Alan Wilson
Rembert C. Dennis Office Building
P.O. Box 11549,
Columbia, SC 29211

South Dakota Attorney General

Jason Ravensborg
1302 East Highway 14, Suite 1
Pierre, SD 57501

Tennessee Attorney General

Herbert H. Slatery III
425 5th Avenue North
Nashville, TN 37243

Texas Attorney General

Ken Paxton
Capitol Station
P.O. Box 12548
Austin, TX 78711

U.S. Virgin Islands Attorney General

Denise N. George
34-38 Kronprindsens Gade
GERS Building, 2nd Floor
St. Thomas, Virgin Islands 00802

Utah Attorney General

Sean Reyes
PO BOX 142320
Salt Lake City, UT 84114

Vermont Attorney General

T.J. Donovan
109 State St.
Montpelier, VT 05609

Virginia Attorney General

Jason Miyares
202 North Ninth Street
Richmond, VA 23219

Washington Attorney General

Bob Ferguson
1125 Washington St. SE
P.O. Box 40100
Olympia, WA 98504

West Virginia Attorney General

Patrick Morrissey
State Capitol Complex
Building 1, Room E-26
1900 Kanawha Blvd, E
Charleston, WV 25305

Wisconsin Attorney General

Josh Kaul
Wisconsin Department of Justice, State Capitol,
Room 114 East
P.O. Box 7857
Madison, WI 53707

Wyoming Attorney General

Bridget Hill
109 State Capitol
Cheyenne, WY 82002

Northern Mariana Islands Attorney General

Edward Manibusan
P.O. Box 10007
Administration Building
Saipan, MP 96950

Exhibit C

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Figueroa v. Kronos Incorporated, Case No. 1:19-CV-01306
(United States District Court Northern District of Illinois)

IF YOU SCANNED YOUR FINGER ON A KRONOS-BRAND TIMECLOCK IN ILLINOIS AND HAD YOUR FINGER-SCAN DATA HOSTED BY KRONOS BETWEEN JANUARY 18, 2014 AND MARCH 20, 2022, YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

This is a court-authorized notice. You are not being sued. This is not an ad for a lawyer.

Para una notificación en Español, visitar www.kronosbipasettlement.com.

- A proposed Settlement has been reached in a class action lawsuit between Kronos Incorporated (“Kronos” or “Defendant”) and individuals who scanned their fingers on Kronos-brand timeclocks at their jobs in Illinois and whose finger-scan data was hosted by Kronos between January 18, 2014 and March 20, 2022. The lawsuit claims that Kronos collected and stored biometric data from workers through Kronos-brand timeclocks when Kronos provided “cloud” hosting for their employers. The lawsuit claims these activities required compliance with an Illinois law called the Illinois Biometric Information Privacy Act, and that Kronos did not comply. Kronos denies these allegations and that the law applies to Kronos. The Court has not decided who is right or wrong. The Settlement has been preliminarily approved by a federal court in Chicago.
- You are included in the Settlement if you scanned your finger on a Kronos-brand timeclock at your job in Illinois and your finger-scan data was hosted by Kronos between January 18, 2014, and March 20, 2022. If you received a notice of the Settlement in the mail or by email, records indicate that you are included in the Settlement, and you may submit a Claim Form online or by mail to receive a cash payment.
- If the Court approves the Settlement, members of the Class who submit valid, timely and approved claims will receive an equal share of a \$15,276,227 settlement fund that Kronos has agreed to create, after all notice and administration costs, incentive award, and attorneys’ fees have been paid. Individual payments to Settlement Class Members who submit a valid claim form are estimated to be \$290-\$580, depending on the number of approved claims.
- Please read this notice carefully. Your legal rights are affected whether you act, or don’t act.

| YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT | |
|---|--|
| SUBMIT A CLAIM FORM | This is the only way to receive a payment. |
| DO NOTHING | You will receive no payment under the Settlement and give up your rights to sue Kronos or certain related companies and individuals about the issues in this case. |
| EXCLUDE YOURSELF | You will receive no payment, but you will retain any rights you currently have to sue Kronos about the issues in this case. |
| OBJECT | Write to the Court explaining why you don't like the Settlement. |
| ATTEND A HEARING | Ask to speak in Court about the fairness of the Settlement |

These rights and options—**and the deadlines to exercise them**—are explained in this notice.

The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be provided only after any issues with the Settlement are resolved. Please be patient.

BASIC INFORMATION

1. What is this notice and why should I read it?

The Court authorized this notice to let you know about a proposed Settlement with Kronos. You have legal rights and options that you may act on before the Court decides whether to give final approval to the proposed Settlement. You may be eligible to receive a cash payment as part of the Settlement. This notice explains the lawsuit, the Settlement, and your legal rights.

Judge Gary S. Feinerman of the United States District Court for the Northern District of Illinois is overseeing this class action. The case is called *Figueroa v. Kronos Incorporated*, Case No. 1:19-CV-01306. The persons who filed the lawsuit, Charlene Figueroa and Jermaine Burton, are the Plaintiffs. The company they sued, Kronos Incorporated, is the Defendant.

2. What is a class action lawsuit?

A class action is a lawsuit in which individuals called “Class Representatives” bring a single lawsuit on behalf of other people who they assert have similar legal claims. All of these people together are potential members of the “Class.” When a Class is certified for settlement and the Settlement is finally approved by the Court, the Settlement resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement Class.

THE CLAIMS IN THE LAWSUIT AND THE SETTLEMENT

3. What is this lawsuit about?

The Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*, regulates the collection, storage, and/or use of a person’s biometric data in Illinois, including requiring consent to the collection of biometric data. Biometric data includes fingerprints. This lawsuit alleges that Kronos as a provider of timekeeping devices with a finger-scanner and “cloud” hosting services collected and stored biometric data without authorization from individuals who scanned their fingers at employers that were using Kronos-brand timeclocks and cloud-hosting services. Kronos denies these allegations and denies that it was subject to or violated BIPA.

More information about Plaintiffs’ complaint in the lawsuit and the Defendant’s defenses can be found in the “Court Documents” section of the Settlement Website at www.kronosbipasettlement.com.

4. Who is included in the Settlement Class?

You are a member of the Settlement Class if you scanned your finger on a Kronos-brand timeclock at your job in Illinois, and that finger-scan data was hosted by Kronos, between January 18, 2014, and March 20, 2022. If you received a notice of the Settlement via email or in the mail, records indicate that you are a Class Member and are included in the Settlement. You may call or email the Settlement Administrator at 833-620-3585 or info@kronosbipasettlement.com to ask whether you are a member of the Settlement Class.

Pictured below are examples of Kronos-brand timeclocks with the finger-scan attachment:



THE SETTLEMENT BENEFITS

5. What does the Settlement provide?

Cash Payments. If you're eligible, you can submit a claim to receive a cash payment. The amount of such payment is estimated to be \$290-\$580, depending on the number of approved claims. This is a *pro rata*, or equal, share of a \$15,276,277 fund that Kronos has agreed to create, after the payment of settlement expenses, attorneys' fees, and any incentive award for the two Class Representatives in the litigation approved by the Court.

Prospective Relief. Under the settlement, Kronos has agreed to notify employers that use Kronos-brand timeclocks and use Kronos as a host for finger-scan data that they need to obtain written releases from individuals who scan their fingers on Kronos-brand timeclocks, make all BIPA-required disclosures, and establish and maintain a retention and destruction policy that is made available to the public.

HOW TO GET SETTLEMENT BENEFITS

6. How do I get a payment?

If you are a Settlement Class Member and you want to get a payment, you must complete and submit a valid Claim Form by December 6, 2022. If you received an email notice, it contained a link to the online Claim Form, which is also available on this website [here](#) and can be filled out and submitted online. The online Claim Form lets you select to receive your payment by Venmo, Zelle, PayPal, or check. A paper Claim Form with pre-paid postage was attached to the postcard notice you may have received in the mail. Those who submit a paper Claim Form will receive a check by mail, if the claim is approved.

Depending on the number of approved claims, you may need to complete an IRS Form W-9 to satisfy IRS tax reporting obligations related to the payment. You may complete the Form W-9 now on the Settlement Website [here](#); doing so now will ensure that you receive your full payment as soon as possible.

7. When will I get my payment?

The hearing date to consider the fairness of the Settlement is scheduled for December 20, 2022 at 9:30 a.m CT. If the Court approves the Settlement, Class Members whose claims were approved by the Settlement Administrator and, if necessary, who have completed a Form W-9 on the Settlement Website will be issued a check or electronic payment (as chosen by the Settlement Class Member) within 60 days after the Settlement has been finally approved by the Court and/or after any appeals process is complete. Please be patient. Uncashed checks and electronic payments that are unable to be completed will expire and become void 120 days after they are issued and will be donated to Legal Aid Chicago and American Civil Liberties Union of Illinois, or such other not-for-profit organization(s) as the Court may order as *cy pres* recipient.

THE LAWYERS REPRESENTING YOU

8. Do I have a lawyer in the case?

Yes, the Court has appointed Jay Edelson and J. Eli Wade-Scott of Edelson PC and Ryan F. Stephan and James B. Zouras of Stephan Zouras, LLP as the attorneys to represent the Settlement Class. These attorneys are called “Class Counsel.” In addition, the Court appointed Plaintiffs Charlene Figueroa and Jermaine Burton to serve as the Class Representatives. They are Settlement Class Members like you. Class Counsel can be reached by calling 1-866-354-3015.

9. Should I get my own lawyer?

You don’t need to hire your own lawyer because Class Counsel is working on your behalf. You may hire your own lawyer, but if you do so, you will have to pay that lawyer.

10. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys’ fees and expenses of up to 33% of the Settlement Fund (after payment of notice and administration costs) and will also request an incentive award of \$7,500 for each of the two Class Representatives from the Settlement Fund. The Court will determine the proper amount of any attorneys’ fees and expenses to award Class Counsel and the proper amount of any award to the Class Representatives. The Court may award less than the amounts requested.

YOUR RIGHTS AND OPTIONS

11. What happens if I do nothing at all?

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 Kronos or other Released Parties (defined in the Settlement Agreement) regarding any of the Released Claims. **Submitting Claim Form that is approved by the Settlement Administrator is the only way to receive a payment from 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, www.kronosbipasettlement.com, or call 833-620-3585.

12. What happens if I ask to be excluded?

You may exclude yourself from the Settlement. If you do so, you will not receive any cash payment, but you will not release any claims you may have against the Kronos and the Released Parties and are free to pursue whatever legal rights you may have by pursuing your own individual lawsuit against Kronos and the Released Parties at your own risk and expense.

13. How do I ask to be excluded?

You can mail or email a letter stating that you want to be excluded from the Settlement. Your letter must: (a) be in writing; (b) identify the case name, *Figueroa v. Kronos Incorporated*, No. 19-cv-1306 (N.D. Ill.); (c) state the full name and current address of the person in the Settlement Class seeking exclusion; (d) be signed by the person seeking exclusion; and (e) be postmarked or received by the Settlement Administrator on or before December 6, 2022. Each request for exclusion must also contain a statement to the effect that “I hereby request to be excluded from the proposed Settlement Class in *Figueroa v. Kronos Incorporated*, No. 19-cv-1306 (N.D. Ill.).” You must mail or email your exclusion request no later than December 6, 2022 to:

Figueroa v. Kronos
c/o Kroll Settlement Administrator
PO Box 5324
New York, NY 10150-5324

-or-

info@kronosbipasettlement.com

You can’t exclude yourself over the phone. No person may request to be excluded from the Settlement Class through “mass” or “class” opt-outs.

14. If I don’t exclude myself, can I sue Kronos for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Kronos and any other Released Party for the claims being resolved by this Settlement.

15. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, you will not receive a payment.

16. How do I object to the Settlement?

If you do not exclude yourself from the Settlement Class, you can object to the Settlement if you don’t like any part of it. You can give reasons why you think the Court should deny approval by filing an objection. To object, you must file a letter or brief with the Court stating that you object to the Settlement in *Figueroa v. Kronos Incorporated*, Case No. 1:19-CV-01306 (N.D. Ill.), no later than December 8, 2022. Your objection must be e-filed or delivered to the Court at the following address:

Clerk of the United States District Court for the Northern District of Illinois
Everett McKinley Dirksen United States Courthouse
219 South Dearborn Street
Chicago, Illinois 60604

Due to the COVID-19 pandemic, the Court is accepting filings from pro se litigants via email. Instructions on how to file via email can be found [here](#).

The objection must be in writing, must be signed, and must include the following information: (a) your full name and current address, (b) a statement that you believe you are a member of the Settlement Class, (c) whether the objection applies only to you, to a specific subset of the Settlement Class, or to the entire Settlement Class, (d) the specific grounds for your objection, (e) all documents or writings that you wish the Court to consider, (f) the name and contact information of any attorneys representing, advising, or in any way assisting you in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection, and (g) a statement indicating whether you intend to appear at the Final Approval Hearing. If you hire an attorney in connection with making an objection, that attorney must file an appearance with the Court or seek *pro hac vice* admission to practice before the Court, and electronically file the objection through the Court's CM/ECF system by the objection deadline of December 8, 2022. 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. Any objections by Settlement Class Members representing themselves that are filed in paper form will be placed on the docket by the Clerk of Court. If you exclude yourself from the Settlement, you cannot file an objection.

Class Counsel will file with the Court and post on the Settlement Website its request for attorneys' fees and incentive awards on November 22, 2022.

17. What's the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class as a Class Member. Excluding yourself from the Settlement Class is telling the Court that you don't want to be a Settlement Class Member. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

18. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Final Approval Hearing on December 20, 2022 at 9:30 a.m. CT before Judge Gary S. Feinerman in Room 2141 of the Northern District Court of Illinois, Dirksen U.S. Courthouse, 219 South Dearborn Street, Chicago, Illinois, 60604, or via remote means as instructed by the Court. The purpose of the hearing is for the Court to determine whether the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed Settlement, including those related to the amount requested by Class Counsel for attorneys' fees and expenses and the incentive award to the Class Representatives.

Note: The date and time of the Final Approval Hearing are subject to change by Court Order. Any changes will be posted at the Settlement Website, www.kronosbipasettlement.com.

19. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. You are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as your written objection was filed on time and meets the other criteria described in the Court's Preliminary Approval Order, the Court will consider it. You may also pay a lawyer to attend, but you don't have to.

20. May I speak at the hearing?

Yes. If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the hearing concerning any part of the proposed Settlement. If you filed an objection (*see* Question 16 above) and intend to appear at the hearing, you must state your intention to do so in your objection.

GETTING MORE INFORMATION

21. Where do I get more information?

This notice summarizes the proposed Settlement. More details, including the Settlement Agreement and other documents are available at www.kronosbipasettlement.com or at the Clerk's Office in the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays and any closures as a result of the COVID-19 pandemic. You can also contact the Settlement Administrator at 833-620-3585 or Class Counsel at 1-866-354-3015 with any questions.

PLEASE DO NOT CONTACT THE COURT, THE JUDGE, THE DEFENDANT OR THE DEFENDANT'S LAWYERS WITH QUESTIONS ABOUT THE SETTLEMENT OR DISTRIBUTION OF SETTLEMENT PAYMENTS.

Exhibit D

AVISO DEL ACUERDO PROPUESTO PARA LA DEMANDA COLECTIVA

Figueroa v. Kronos Incorporated, caso No. 1:19-CV-01306
(Tribunal de Distrito de los Estados Unidos del Distrito Norte de Illinois)

SI USTED ESCANEÓ SU DEDO EN UN RELOJ DE LA MARCA KRONOS EN ILLINOIS Y KRONOS ALMACENÓ LOS DATOS DE ESCANEADO DE SUS DEDOS ENTRE EL 18 DE ENERO DE 2014 Y EL 20 DE MARZO DE 2022, USTED PUEDE TENER DERECHO A UN PAGO DE UN ACUERDO DE DEMANDA COLECTIVA.

Esta es una notificación autorizada por el Tribunal. No está siendo demandado. Esto no es un anuncio para un abogado.

Para una notificación en español, visite www.kronosbipasettlement.com.

- Se ha llegado a un acuerdo propuesto en una demanda colectiva entre Kronos Incorporated (“Kronos” o “Demandado”) y las personas que escanearon sus dedos en relojes de la marca Kronos en sus trabajos en Illinois y cuyos datos de escaneo de dedos fueron almacenados por Kronos entre el 18 de enero de 2014 y el 20 de marzo de 2022. La demanda afirma que Kronos recopiló y almacenó datos biométricos de los trabajadores a través de relojes de la marca Kronos cuando Kronos proporcionó alojamiento “en la nube” para sus empleadores. La demanda afirma que estas actividades requerían el cumplimiento de una ley de Illinois llamada Ley de Privacidad de la Información Biométrica de Illinois, y que Kronos no cumplió. Kronos niega estas acusaciones y que la ley se aplique a Kronos. El Tribunal aún no ha decidido quién tiene razón o quién no. El Acuerdo ha sido aprobado preliminarmente por un tribunal federal en Chicago.
- Usted está incluido en el Acuerdo si usted escaneó su dedo en un reloj de la marca Kronos en su trabajo en Illinois y Kronos almacenó los datos de escaneo de su dedo entre el 18 de enero de 2014 y el 20 de marzo de 2022. Si recibió un aviso del Acuerdo por correo o por correo electrónico, los registros indican que está incluido en el Acuerdo y puede enviar un Formulario de Reclamo en línea o por correo para recibir un pago en efectivo.
- Si el Tribunal aprueba el Acuerdo, los miembros del Colectivo que presenten reclamos válidos, oportunos y aprobados recibirán una parte igual de un fondo de acuerdo de \$15,276,227 que Kronos ha acordado crear, después de que se hayan pagado todos los costos de notificación y administración, gratificación de incentivo y honorarios de abogados. Los pagos individuales a los Miembros del Grupo del Acuerdo que presenten un formulario de reclamo válido se estiman en \$290-\$580, dependiendo del número de reclamos aprobados.
- Lea este aviso atentamente. Sus derechos legales se ven afectados, ya sea que actúe o no actúe.

| SUS DERECHOS Y OPCIONES LEGALES EN ESTE ACUERDO | |
|--|--|
| ENVIAR UN FORMULARIO DE RECLAMO | Esta es la única forma de recibir un pago. |
| NO HACER NADA | No recibirá ningún pago en virtud del Acuerdo y renunciará a sus derechos para demandar a Kronos o a ciertas compañías e individuos relacionados sobre los problemas en este caso. |
| EXCLUIRSE A SÍ MISMO | No recibirá ningún pago, pero conservará todo derecho que tenga actualmente para demandar a Kronos sobre las cuestiones en este caso. |
| OBJECCIÓN | Escriba al Tribunal explicando por qué no está de acuerdo con el Acuerdo. |
| ASISTIR A UNA AUDIENCIA | Pedir hablar en el Tribunal sobre la imparcialidad del Acuerdo |

Estos derechos y opciones, y **los plazos para ejercerlos**, se explican en este aviso.

El Tribunal a cargo de este caso aún tiene que decidir si finalmente aprueba el Acuerdo. Los pagos se proporcionarán solo después de que se resuelvan los problemas con el Acuerdo. Por favor, sea paciente.

INFORMACIÓN BÁSICA

1. ¿Qué es este aviso y por qué debo leerlo?

El Tribunal autorizó este aviso para informarle sobre un Acuerdo propuesto con Kronos. Usted tiene derechos y opciones legales sobre los que puede actuar antes de que el Tribunal decida si otorga la aprobación definitiva al Acuerdo propuesto. Usted puede ser elegible para recibir un pago en efectivo como parte del Acuerdo. Este aviso explica la demanda, el Acuerdo y sus derechos legales.

El Juez Gary S. Feinerman del Tribunal de Distrito de los Estados Unidos para el Distrito Norte de Illinois está supervisando esta demanda colectiva. El caso se llama *Figueroa v. Kronos Incorporated*, caso No. 1:19-CV-01306. Las personas que presentaron la demanda, Charlene Figueroa y Jermaine Burton, son los demandantes. La compañía que demandaron, Kronos Incorporated, es la demandada.

2. ¿Qué es una demanda colectiva?

Una demanda colectiva es una demanda en la que ciertas personas llamadas “Representantes del Colectivo” presentan una sola demanda en nombre de otras personas que, según afirman, tienen reclamaciones legales similares. Todas estas personas juntas son miembros potenciales del “Colectivo”. Cuando un Colectivo está certificado para el acuerdo y el Acuerdo finalmente es aprobado por el Tribunal, el Acuerdo resuelve los problemas para todos los Miembros del Colectivo del Acuerdo, excepto para aquellos que se excluyan del mismo.

LOS RECLAMOS EN LA DEMANDA Y EL ACUERDO

3. ¿De qué se trata esta demanda?

La Ley de Privacidad de la Información Biométrica de Illinois (“BIPA”), 740 ILCS 14/1, *et seq.*, regula la recopilación, el almacenamiento o el uso de los datos biométricos de una persona en Illinois, incluida la exigencia del consentimiento para la recopilación de datos biométricos. Los datos biométricos incluyen huellas dactilares. Esta demanda alega que Kronos, como proveedor de dispositivos de cronometraje con un escáner de dedos y servicios de alojamiento en la “nube”, recopiló y almacenó datos biométricos sin autorización de personas que escanearon sus dedos con empleadores que usaban relojes de la marca Kronos y servicios de alojamiento en la nube. Kronos niega estas acusaciones y niega que haya estado sujeta a la BIPA o que la haya incumplido.

En la demanda puede encontrar más información sobre la queja del Demandante y las respuestas del Demandado en la sección “Documentos judiciales” del sitio web del Acuerdo en www.kronosbipasettlement.com.

4. ¿Quién está incluido en el Colectivo del Acuerdo?

Usted es un miembro del Colectivo del Acuerdo si usted escaneó su dedo en un reloj de la marca Kronos en su trabajo en Illinois y Kronos almacenó esos datos de escaneo de su dedo entre el 18 de enero de 2014 y el 20 de marzo de 2022. Si recibió un aviso del Acuerdo por correo o por correo electrónico, los registros indican que usted es un Miembro del Colectivo y está incluido en el Acuerdo. Puede llamar o enviar un correo electrónico al Administrador del Acuerdo al 833-620-3585 o a info@kronosbipasettlement.com para preguntar si usted es miembro del Colectivo del Acuerdo.

A continuación, se muestran ejemplos de relojes de la marca Kronos con el accesorio de escaneo de dedos:



BENEFICIOS DEL ACUERDO

5. ¿Qué brinda el Acuerdo?

Pagos en efectivo. Si usted es elegible, puede presentar un reclamo para recibir un pago en efectivo. El monto de dicho pago se estima en \$290-\$580, en función del número de reclamos aprobados. Este es una porción *prorrataada*, o igual, de un fondo de \$15,276,277 que Kronos ha acordado crear, después del pago de los gastos del acuerdo, los honorarios de los abogados y cualquier incentivo otorgado para los dos Representantes del Colectivo en el litigio aprobado por el Tribunal.

Posible alivio. Según el acuerdo, Kronos ha acordado notificar a los empleadores que usen relojes de la marca Kronos y que usan Kronos como host para los datos de escaneo de dedos que necesitan obtener comunicados por escrito de personas que escanean sus dedos en relojes de la marca Kronos, hacer todas las divulgaciones requeridas por la BIPA y establecer y mantener una política de retención y destrucción que se ponga a disposición del público.

CÓMO OBTENER BENEFICIOS DEL ACUERDO

6. ¿Cómo recibo un pago?

Si usted es un Miembro del Grupo de Acuerdo y desea recibir un pago, debe completar y enviar un Formulario de Reclamo válido a más tardar el 6 de diciembre de 2022. Si recibió un aviso por correo electrónico, contenía un enlace al Formulario de Reclamo en línea, que también está disponible en este sitio web aquí y se puede completar y enviar en línea. El Formulario de Reclamo en línea le permite seleccionar recibir su pago por Venmo, Zelle, PayPal o cheque. Se adjuntó un Formulario de Reclamo en papel con franqueo prepagado al aviso en forma de postal que puede haber recibido por correo. Aquellos que envíen un Formulario de Reclamo en papel recibirán un cheque por correo, si el reclamo es aprobado.

Según la cantidad de reclamos aprobados, es posible que deba completar un Formulario W-9 del IRS para satisfacer las obligaciones de declaración de impuestos del IRS relacionadas con el pago. Puede completar el Formulario W-9 ahora en el sitio web del acuerdo aquí; hacerlo ahora asegurará que reciba su pago completo lo antes posible.

7. ¿Cuándo recibiré mi pago?

La fecha de la audiencia para considerar la imparcialidad del Acuerdo está programada para el 20 de diciembre de 2022 a las 9:30 a.m. CT. Si el Tribunal aprueba el Acuerdo, a los Miembros del Colectivo cuyos reclamos fueron aprobados por el Administrador del Acuerdo y, si es necesario, que hayan completado un Formulario W-9 en el Sitio Web del Acuerdo se les emitirá un cheque o pago electrónico (según lo elegido por el Miembro del Colectivo del Acuerdo) dentro de los 60 días posteriores a que el Acuerdo haya sido finalmente aprobado por el Tribunal o después de que se complete cualquier proceso de apelación. Por favor, sea paciente. Los cheques no cobrados y los pagos electrónicos que no se puedan completar caducarán y se anularán 120 días después de su emisión y se donarán a Legal Aid Chicago y la Unión Americana de Libertades Civiles de Illinois, o cualquier otra organización sin fines de lucro que el Tribunal pueda ordenar como destinatario *cy pres*.

LOS ABOGADOS QUE LO REPRESENTAN

8. ¿Cuento con un abogado en el caso?

Sí, el Tribunal ha designado a Jay Edelson y J. Eli Wade-Scott de Edelson PC y Ryan F. Stephan y a James B. Zouras de Stephan Zouras, LLP como los abogados para representar al Colectivo del Acuerdo. Estos abogados se denominan “Abogados del Colectivo”. Además, el Tribunal nombró a los Demandantes Charlene Figueroa y Jermaine Burton para actuar como Representantes del Colectivo. Son Miembros del Colectivo del Acuerdo como usted. Puede comunicarse con el abogado del Colectivo llamando al 1-866-354-3015.

9. ¿Debo contratar a mi propio abogado?

No necesita contratar a su propio abogado porque los Abogados del Colectivo trabajan en su nombre. Puede contratar a su propio abogado, pero, si lo hace, tendrá que pagarle a ese abogado.

10. ¿Cómo se pagará a los abogados?

Los Abogados del Colectivo le pedirán al Tribunal los honorarios y gastos de los abogados, que pueden ser de hasta el 33% del Fondo del Acuerdo (después del pago de los costos de aviso y administración) y también solicitará una gratificación de incentivo de \$ 7,500 para cada uno de los dos Representantes del Colectivo del Fondo del Acuerdo. El Tribunal determinará la cantidad adecuada de honorarios y gastos de cualquier abogado para otorgarles a los Abogados del Colectivo y la cantidad adecuada de gratificación para los Representantes del Colectivo. El Tribunal podrá conceder cantidades inferiores a las solicitadas.

SUS DERECHOS Y OPCIONES

11. ¿Qué pasa si no hago nada?

Si no hace nada, no recibirá dinero del Fondo del Acuerdo, pero aún estará obligado por todas las órdenes y sentencias del Tribunal. A menos que se excluya del Acuerdo, no podrá presentar ni continuar una demanda contra Kronos u otras Partes Exoneradas (definidas en el Acuerdo de Conciliación) con respecto a cualquiera de las Reclamaciones Exoneradas. **Enviar un Formulario**

de Reclamo aprobado por el Administrador del Acuerdo es la única forma de recibir un pago de este Acuerdo.

Para enviar un Formulario de Reclamo o para obtener información sobre cómo solicitar la exclusión del colectivo o presentar una objeción, visite el sitio web del Acuerdo, www.kronosbipasettlement.com, o llame al 833-620-3585.

12. ¿Qué pasa si pido que me excluyan?

Usted puede excluirse del Acuerdo. Si lo hace, no recibirá ningún pago en efectivo, pero no renunciará a ninguna reclamación que pueda tener contra Kronos y las Partes Exoneradas y es libre de perseguir cualquier derecho legal que pueda tener presentando su propia demanda individual contra Kronos y las Partes Exoneradas bajo su propio riesgo y costo.

13. ¿Cómo pido ser excluido?

Puede enviar por correo o correo electrónico una carta que indique que desea ser excluido del Acuerdo. Su carta debe: (a) ser por escrito; (b) identificar el nombre del caso, *Figueroa v. Kronos Incorporated*, No. 19-cv-1306 (N.D. Ill.); (c) indicar el nombre completo y la dirección actual de la persona en el Colectivo del Acuerdo que busca la exclusión; (d) estar firmada por la persona que solicita la exclusión; y (e) ser matasellada o recibida por el Administrador del Acuerdo el 6 de diciembre de 2022 o antes. Cada solicitud de exclusión también debe contener una declaración similar a esta: “Por la presente, solicito que se me excluya del Colectivo del Acuerdo propuesto en *Figueroa v. Kronos Incorporated*, No. 19-cv-1306 (N.D. Ill.)”. Debe enviar su solicitud de exclusión por correo o correo electrónico a más tardar el 6 de diciembre de 2022 a:

Figueroa v. Kronos
c/o Kroll Settlement Administrator
PO Box 5324
New York, NY 10150-5324

-0-

info@kronosbipasettlement.com

No puede excluirse por teléfono. Ninguna persona puede solicitar ser excluida del Colectivo del Acuerdo a través de bajas “masivas” o “colectivas”.

14. Si no me excluyo, ¿puedo demandar a Kronos por lo mismo más adelante?

No. A menos que se excluya a sí mismo, usted renuncia al derecho de demandar a Kronos y a cualquier otra Parte Exonerada por los reclamos que resuelve este Acuerdo.

15. Si me excluyo, ¿puedo obtener algún beneficio de este Acuerdo?

No. Si usted se excluye, no recibirá un pago.

16. ¿Cómo objeto el Acuerdo?

Si no se excluye del Colectivo del Acuerdo, puede objetarlo si no está de acuerdo con alguna de sus partes. Al presentar una objeción puede dar razones por las que cree que el Tribunal debería negar la aprobación. Para objetar, debe presentar una carta o escrito al Tribunal que indique que usted se opone al Acuerdo en *Figueroa v. Kronos Incorporated*, caso No. 1:19-CV-01306 (N.D. Ill.), a más tardar el 8 de diciembre de 2022. Su objeción debe ser presentada electrónicamente o entregada al Tribunal en la siguiente dirección:

Clerk of the United States District Court for the Northern District of Illinois
Everett McKinley Dirksen United States Courthouse
219 South Dearborn Street
Chicago, Illinois 60604

Debido a la pandemia de COVID-19, el Tribunal está aceptando presentaciones de litigantes pro se por correo electrónico. Se pueden encontrar instrucciones sobre cómo enviar una presentación por correo electrónico [aquí](#).

La objeción debe ser por escrito, debe estar firmada y debe incluir la siguiente información: (a) su nombre completo y dirección actual; (b) una declaración de que cree que es miembro del Colectivo del Acuerdo; (c) si la objeción se aplica solo a usted, a un subconjunto específico del Colectivo del Acuerdo o a todo el Colectivo del Acuerdo; (d) los motivos específicos de su objeción; (e) todos los documentos o escritos que desea que el Tribunal considere; (f) el nombre y la información de contacto de cualquier abogado que lo represente, asesore o ayude de alguna manera en relación con la preparación o presentación de la objeción o que pueda beneficiarse de la búsqueda de la objeción, y (g) una declaración que indique si tiene la intención de comparecer en la Audiencia de Aprobación Definitiva. Si contrata a un abogado para hacer una objeción, ese abogado debe presentar una comparecencia ante el Tribunal o buscar admisión *pro hac vice* a la práctica ante el Tribunal, y presentar electrónicamente la objeción a través del sistema CM/ECF del Tribunal antes de la fecha límite de objeción el 8 de diciembre de 2022. Si contrata a su propio abogado, usted será el único responsable del pago de los honorarios y gastos en los que incurra el abogado en su nombre. El secretario del Tribunal colocará en el expediente cualquier objeción de los miembros de la clase del acuerdo que se representen a sí mismos y que se presente en forma impresa. Si se excluye del Acuerdo, no puede presentar una objeción.

Los Abogados del Colectivo presentarán ante el tribunal y publicarán en el sitio web del Acuerdo su petición de honorarios de abogados y gratificaciones de incentivo el 22 de noviembre de 2022.

17. ¿Cuál es la diferencia entre objetar y excluirse del Acuerdo?

Objetar es simplemente expresarle al Tribunal que no le agrada algo del Acuerdo. Solo puede objetar si permanece en el Colectivo del Acuerdo como Miembro del Colectivo. Excluirse del Colectivo del Acuerdo es expresarle al Tribunal que no quiere ser un Miembro del Colectivo del Acuerdo. Si se excluye, no tiene ningún fundamento para objetar porque el caso ya no lo afecta.

AUDIENCIA DE APROBACIÓN DEFINITIVA DEL TRIBUNAL

18. ¿Cuándo y dónde decidirá el Tribunal si aprueba el Acuerdo?

El Tribunal celebrará la Audiencia de Aprobación Definitiva el 20 de diciembre de 2022 a las 9:30 a.m. CT ante El Jueza Gary S. Feinerman en la Sala 2141 del Tribunal del Distrito Norte de Illinois, Dirksen U.S. Courthouse, 219 South Dearborn Street, Chicago, Illinois, 60604, o a través de medios remotos según las instrucciones del Tribunal. El propósito de la audiencia es que el Tribunal determine si el Acuerdo es justo, razonable, adecuado y en el interés del Colectivo del Acuerdo. En la audiencia, el Tribunal escuchará toda objeción y argumento relacionado con la imparcialidad del Acuerdo propuesto, incluidos los relacionados con la cantidad solicitada por el Abogado del Colectivo para los honorarios y gastos de los abogados y la gratificación de incentivo a los Representantes del Colectivo.

Nota: la fecha y la hora de la Audiencia de Aprobación Definitiva están sujetas a cambios por Orden Judicial. Cualquier cambio se publicará en el sitio web del acuerdo, www.kronosbipasettlement.com.

19. ¿Tengo que concurrir a la audiencia?

No. Los Abogados del Grupo responderán las preguntas que el Tribunal desee realizar. Es bienvenido a venir por su propia cuenta. Si envía una objeción, no tiene que venir al Tribunal para hablar sobre ella. El Tribunal considerará su objeción por escrito, siempre y cuando se haya presentado o enviado por correo a tiempo y cumpla con los otros criterios descritos en la Orden de Aprobación Preliminar de los Tribunales. También puede pagarle a un abogado para que asista, pero no tiene que hacerlo.

20. ¿Puedo hablar en la audiencia?

Sí. Si no se excluye del Colectivo del Acuerdo, puede solicitar permiso al Tribunal para hablar en la audiencia con respecto a cualquier parte del Acuerdo propuesto. Si presentó una objeción (*consulte la Pregunta 16 detallada anteriormente*) y tiene la intención de comparecer en la audiencia, debe manifestar su intención de hacerlo en su objeción.

OBTENER MÁS INFORMACIÓN

21. ¿Dónde puedo obtener más información?

Este aviso resume el Acuerdo propuesto. Hay más detalles, incluido el Acuerdo de Conciliación y otros documentos, disponibles en www.kronosbipasettlement.com o en la Oficina del Secretario en el Palacio de Justicia de los Estados Unidos Everett McKinley Dirksen, 219 South Dearborn Street, Chicago, Illinois 60604, entre las 8:30 a.m. y las 4:30 p.m., de lunes a viernes, excepto los días no hábiles del Tribunal y cualquier cierre como resultado de la pandemia de COVID-19. También puede comunicarse con el Administrador del Acuerdo al 833-620-3585 o los Abogados del Colectivo al 1-866-354-3015 si tiene alguna pregunta.

POR FAVOR, NO SE COMUNIQUE CON EL TRIBUNAL, EL JUEZ, EL DEMANDADO O LOS ABOGADOS DEL DEMANDADO POR PREGUNTAS SOBRE EL ACUERDO O LA DISTRIBUCIÓN DE LOS PAGOS DEL ACUERDO.

Exhibit E

5140100000000

5 1 4 0 1 0 0 0 0 0 0 0

Figueroa v. Kronos Incorporated, Case No. 1:19-CV-01306**CLAIM FORM**

Instructions: You are eligible for a payment as part of the Settlement for this case if you meet the class definition. If you received notice in this case, our records indicate that you are a member of the class. Fill out each section of this form and sign where indicated. If you prefer to receive payment via , Venmo, PayPal, or Zelle please fill out a claim online at www.kronosbipasettlement.com. If you opt for payment via check and your Claim Form is approved, you will receive a check in the mail at the address you provide below. Depending on the number of valid claims submitted, you may need to complete an IRS Form W-9 to satisfy tax reporting obligations, which is available on this Settlement Website. Please complete the Form W-9 after you submit your Claim Form; doing so now will ensure that you receive your full payment as soon as possible. THIS CLAIM FORM MUST BE SUBMITTED BY DECEMBER 6, 2022 AND MUST BE FULLY COMPLETED (EXCEPT WHERE OPTIONAL), BE SIGNED, AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT.

The Settlement Administrator will review your Claim Form. If accepted, you will receive payment for an equal, or *pro rata*, share depending on the number of valid claim forms received. This process takes time; please be patient.

| | | |
|--|---------------------|-------------------------|
| <u>First Name</u> | | <u>Last Name</u> |
| <u>Street Address</u> | | |
| <u>City</u> | <u>State</u> | <u>ZIP Code</u> |
| <u>Email Address</u> | | |
| <u>Contact Phone #:</u> (You may be contacted if further information is required) | | |

| | |
|--|---------------------------------|
| Please provide the information in this box if you can do so. If you are not able to provide it, it will not impact your claim. | |
| Employer Where You Used Kronos Timeclock | Approximate Dates of Employment |

Settlement Class Member Verification: By submitting this Claim Form, I declare that I am an individual who scanned my finger on a Kronos-brand timeclock in Illinois between January 18, 2014, and March 20, 2022.

E- Signature: _____

Date: ____/____/____

51401

51401

CF

CF

Page 1 of 1

Page 1 of 1

Exhibit F

**COURT AUTHORIZED NOTICE
OF CLASS ACTION AND
PROPOSED SETTLEMENT**

Figuerola v. Kronos Incorporated
c/o Kroll Settlement Administrator
PO Box 5324
New York, NY 10150-5324

RECORDS INDICATE YOU
SCANNED YOUR FINGER
ON A KRONOS-BRAND
TIMECLOCK IN ILLINOIS
AND ARE ENTITLED TO A
PAYMENT FROM A CLASS
ACTION SETTLEMENT.

<<refnum barcode>>

Postal Service Please do not mark barcode

Class Member ID: <<refnum>>

<<FirstName>> <<LastName>>

<<BusinessName>>

<<Address>>

<<Address2>>

<<City>>, <<ST>> <<Zip>>-<<zip4>>

By Order of the Court Dated: February 18, 2022

se 1:19-cv-01306 Document # 37-12 Filed 12/19/22 Page 39 of 46 PageID #: 60

This notice is to inform you that a proposed Settlement has been reached in a class action lawsuit between Kronos Incorporated ("Kronos") and individuals who scanned their fingers on Kronos-brand timeclocks at work in Illinois. The case is called *Figueroa v. Kronos Incorporated*, Case No. 1:19-CV-01306. The lawsuit claims that Kronos violated an Illinois law called the Illinois Biometric Information Privacy Act when it collected and stored biometric data from workers through Kronos-brand timeclocks, without complying with the law's requirements. Kronos denies those allegations and if the law applies to Kronos. The Court has not decided who is right or wrong. Please read this notice carefully. Your legal rights are affected whether you act, or don't act.

Who is included in the Settlement Class? Our records indicate that you are included in the Settlement Class. The Settlement Class includes all persons who scanned their finger on Kronos-brand timeclocks at work in Illinois, and whose finger-scan data was hosted by Kronos, between January 18, 2014 and March 20, 2022.

What can I get out of the Settlement? If you're eligible and the Court approves the Settlement, you can submit a claim to receive a cash payment. The payment amount is estimated to be approximately \$290-\$580, depending on the number of valid claims submitted. This amount is an equal share of a \$15,276,227 fund that Kronos agreed to create, after any Court-approved payment of Settlement expenses, attorneys' fees, and any incentive award.

How do I get my payment? Just complete and return the attached Claim Form by mail, or you can visit the Settlement Website, www.kronosbipasettlement.com, and submit a Claim Form online. ***All Claim Forms must be postmarked or submitted online by December 6, 2022.***

What are my other options? You can do nothing, comment on or object to any of the Settlement terms, or exclude yourself from the Settlement. If you do nothing, you won't get a payment, and you won't be able to sue Kronos or certain related companies and individuals in a future lawsuit about the claims addressed in the Settlement. You can also comment on or object to the Settlement if you disagree with any of its terms by writing to the Court. If you exclude yourself, you won't get a payment but you'll keep your right to sue Kronos on the issues the Settlement concerns. You must contact the Settlement Administrator by mail or email to exclude yourself from the Settlement. ***All Requests for Exclusion must be received by December 6, 2022 and all Objections must be received by December 8, 2022.***

Do I have a lawyer? Yes. The Court has appointed lawyers from the law firms Edelson PC and Stephan Zouras, LLP as "Class Counsel." They represent you and other Settlement Class Members. The lawyers will request to be paid from the total amount that Kronos agreed to pay to the Settlement Class Members, after payment of notice and administration costs. You can hire your own lawyer, but you'll need to pay that lawyer's legal fees if you do. The Court has also chosen Charlene Figueroa and Jermaine Burton—Class Members like you—to represent the Settlement Class as Class Representatives.

When will the Court approve the Settlement? The Court will hold a final approval hearing on December 20, 2022 at 9:30 a.m. C.T. before the Honorable Gary S. Feinerman in Room 2141 at the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604. Instructions for participating remotely may be posted on the Settlement Website. During the hearing, the Court will hear objections, determine if the Settlement is fair, and consider Class Counsel's request for fees and expenses of up to 33% of the Settlement Fund, and an incentive award of \$7,500 each for both Class Representatives. The request will be posted on the Settlement Website by November 22, 2022.

Figueroa v. Kronos Incorporate Settlement
c/o Settlement Administrator
P.O. Box 5324
New York, NY 10150-5324

CLAIM FORM

THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR POSTMARKED BY DECEMBER 6, 2022 AND MUST BE FULLY COMPLETED (EXCEPT WHERE OPTIONAL), BE SIGNED, AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT.

Instructions: Fill out each section of this form and sign where indicated. If you prefer to receive payment via Venmo, PayPal, or Zelle (instead of a check), you must submit a Claim Form online on the Settlement Website at www.kronosbipasettlement.com. If you submit this paper Claim Form by mail and it is approved, you will receive a check in the mail at the address you provide below. Depending on the number of valid claims submitted, you may need to complete an RS Form W-9 to satisfy tax reporting obligations. You may complete the Form W-9 now on the Settlement Website at www.kronosbipasettlement.com; doing so now will ensure that you receive your full payment as soon as possible.

Class Member ID: <<refnum>>

<<firstname>> <<mi>> <<lastname>>

<<address1>> <<address2>>

<<City>>, <<State>> <<Zip>>

If different than the preprinted data on the left, please print your correct information:

First Name

MI

Last Name

Address

City

State

ZipCode

Email Address (optional): _____@_____

Contact Phone #: (_____) _____ - _____ (You may be contacted if further information is required)

Please provide the information in this box if you can do so. If you are not able to provide it, it will not impact your claim.

Employer Where You Used Kronos Timeclock:

Approximate Date of Employment:

Settlement Class Member Verification: By submitting this Claim Form, I declare that I am an individual who scanned my finger on a Kronos-brand timeclock in Illinois between January 18, 2014 and March 20, 2022.

Signature: _____ Date: ____/____/____

Print Name: _____

The Settlement Administrator will review your Claim Form. If accepted, you will be mailed a check for a pro rata share depending on the number of valid Claim Forms received. This process takes time, please be patient.

Questions, visit www.kronosbipasettlement.com or call (833) 620-3585

Exhibit G

From: tobedetermined@domain.com
To: JohnDoeClassMember@domain.com
Re: Legal Notice of Proposed Class Action Settlement

Your Class Member ID: <<Refnum>>

**RECORDS INDICATE YOU SCANNED YOUR FINGER ON A KRONOS-BRAND
TIMECLOCK IN ILLINOIS AND ARE ENTITLED TO A PAYMENT FROM A CLASS
ACTION SETTLEMENT.**

This is a court-authorized notice. You are not being sued. This is not an ad for a lawyer.

For more information, visit www.kronosbipasettlement.com

Para una notificacion en Espanol, visitar www.kronosbipasettlement.com

This notice is to inform you that a proposed Settlement has been reached in a class action lawsuit between Kronos Incorporated (“Kronos”) and all individuals who scanned their fingers on Kronos-brand timeclocks at work in Illinois and had their finger-scan data hosted by Kronos between January 18, 2014 and March 20, 2022. The case is called *Figueroa v. Kronos Incorporated*, Case No. 1:19-CV-01306. The lawsuit claims that Kronos violated an Illinois law called the Illinois Biometric Information Privacy Act when it collected and stored biometric data from workers through Kronos-brand timeclocks, without complying with the law’s requirements. Kronos denies those allegations and that the law applies to Kronos. The Court has not decided who is right or wrong. Please read this notice carefully. Your legal rights are affected whether you act or don’t act.

Who is included in the Settlement Class? Records indicate that you are included in the Settlement Class. The Settlement Class includes all persons who scanned their finger on Kronos-brand timeclocks at their job in Illinois, and whose finger-scan data was hosted by Kronos, between January 18, 2014 and March 20, 2022.

What can I get out of the Settlement? If you’re eligible and the Court approves the Settlement, you can submit a claim to receive a cash payment. The payment amount is estimated to be approximately \$290-\$580, depending on the number of valid and timely claims approved. This amount is an equal share of a \$15,276,227 fund that Kronos agreed to create, after any Court-approved payment of Settlement administration expenses, attorneys’ fees, and any incentive award.

How do I get my payment? Just complete and verify the short and simple Claim Form online at [[Claim Form Link](#)], or you can visit www.kronosbipasettlement.com and download a paper Claim Form and submit it by mail. When submitting by mail, you will receive a check. By submitting online you can choose to receive your payment via check, Venmo, PayPal, or Zelle. ***All Claim Forms must be submitted online or postmarked by December 6, 2022.***

What are my other options? You can do nothing, comment on or object to any of the Settlement terms, or exclude yourself from the Settlement. If you do nothing, you won’t get a payment, and you

won't be able to sue Kronos or certain related companies and individuals in a future lawsuit about the claims addressed in the Settlement.

You can also object to the Settlement if you disagree with any of its terms by writing to the Court. You can only exclude yourself, not others. If you exclude yourself, you won't get a payment but you'll keep your right to sue Kronos on the issues the Settlement concerns. You must contact the Settlement Administrator by mail or email (info@kronosbipasettlement.com) to exclude yourself from the Settlement. ***All Requests for Exclusion must be received by December 6 and all Objections must be received by December 8, 2022.***

Do I have a lawyer? Yes. The Court has appointed lawyers from the law firms Edelson PC and Stephan Zouras, LLP as "Class Counsel." They represent you and other Settlement Class Members. The lawyers will request to be paid from the total amount that Kronos agreed to pay to the Settlement Class Members after payment of notice and administration costs. You can hire your own lawyer, but you'll need to pay that lawyer's legal fees if you do. The Court has also chosen Charlene Figueroa and Jermaine Burton—Class Members like you—to represent the Settlement Class as Class Representatives.

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Exhibit H

Archived: Thursday, December 1, 2022 11:59:16 AM

From: [Christine Olson](#)


Sent: Wed, 30 Nov 2022 11:30:41

To: info kronosbipasettlement

Subject: [EXTERNAL] Kronos Class Member #51401CBK2QNZ9

Sensitivity: Normal

I want to exclude myself, Christine Olson, as a class member.

Christine Olson


Kronos Class member #51401CBK2QNZ9

Christine Olson

EXHIBIT 3

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

CHARLENE FIGUEROA and JERMAINE
BURTON, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

KRONOS INCORPORATED,

Defendant.

Case No. 1:19-cv-01306

Honorable Gary S. Feinerman

**DECLARATION OF J. ELI WADE-SCOTT
IN SUPPORT OF PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Pursuant to 28 U.S.C. § 1746, I hereby declare and state as follows:

1. I am an attorney admitted to practice before the Supreme Court of the State of Illinois and the Northern District of Illinois. I am over the age of eighteen years old. I am entering this Declaration in support of Plaintiffs' Motion for and Memorandum in Support of Final Approval of Class Action Settlement. This Declaration is based upon my personal knowledge except where expressly noted otherwise. If called upon to testify to the matters stated herein, I could and would competently do so.

2. I am a partner at Edelson PC, which has been retained to represent Plaintiff Jermaine Burton in this matter. I have been appointed Class Counsel on behalf of the Settlement Class, along with Jay Edelson of Edelson PC and Ryan Stephan and James Zouras of Stephan Zouras, LLP.¹

¹ Except as otherwise indicated, all defined terms used in this Declaration shall have the same meanings ascribed to them in the proposed Class Action Settlement Agreement.

3. The written Settlement Agreement provided to the Court represents the entirety of the parties' proposed Settlement.

4. I believe that the Settlement is in the best interest of the Settlement Class. For the reasons discussed in Plaintiffs' motion for final approval, the Settlement provides outstanding monetary and prospective relief without the uncertainty and delay that years of additional litigation would bring.

*

*

*

I declare under penalty of the perjury that the foregoing is true and correct. Executed on December 15, 2022 at Chicago, Illinois.

/s/ J. Eli Wade-Scott