

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MADISYN STAUFFER, ON BEHALF)	
OF HERSELF AND ALL OTHERS)	
SIMILARLY SITUATED,)	
)	
Plaintiffs,)	Case No. 3:20-CV-00046-MAB
)	
vs.)	
)	
INNOVATIVE HEIGHTS FAIRVIEW)	
HEIGHTS, LLC, ET AL.,)	
)	
Defendants.)	

PRELIMINARY APPROVAL ORDER

BEATTY, Magistrate Judge:

This matter is before the Court on Plaintiff Madisyn Stauffer’s Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement between Plaintiff and Defendant Sky Zone Franchise Group, LLC (“Sky Zone”) (Doc. 201). The Court has reviewed the motion, all supporting documents, and the Settlement Agreement between Plaintiff and Sky Zone (the “Settlement Agreement”) (Doc. 201-1, pp. 1-33), and hereby finds and ORDERS as follows:

1. Unless defined herein, all capitalized terms in this Order shall have the same meanings as set forth in the Settlement Agreement (*see* Doc. 201-1 at pp. 3-11).

Certification of the Settlement Class and Preliminary Approval of the Settlement

2. The Settlement Agreement includes the Settlement Class, which consists of two groups, defined as follows:

A. The 511 persons specifically identified in the Sky Zone No-Claim Class

List who have been identified by name and contact information during discovery of Sky Zone franchisees and whose franchisee-employers identified as having scanned one or more fingers into a computer system at a Sky Zone franchisee location in Illinois at any time from April 29, 2014, through the Preliminary Approval Date, April 23, 2024; and

B. All persons who are on the Claims-Made Class List and who, at any time from April 29, 2014, through the Preliminary Approval Date, April 23, 2024, scanned one or more fingers into a computer system at any of the following Sky Zone franchisee locations in Illinois:

- Sky Zone in Aurora, IL
- Sky Zone in Joliet, IL
- Sky Zone in Elmhurst, IL

Excluded from the Settlement Class are the Court and staff to whom this case is assigned, any immediate family members of the Court or its staff, and any person who timely and properly opts out of the Settlement Agreement pursuant to the procedures set forth therein.¹

3. This Court finds that the Court will likely be able to certify the Settlement Class for purposes of judgment on the Settlement Agreement pursuant to Federal Rule

¹ The Settlement Class is sometimes referred to herein as the Class.

of Civil Procedure 23(e)(1)(B)(ii) because the requirements for certification under Rule 23(a) and 23(b)(3) are satisfied. Namely:

a. Rule 23(a)(1) is satisfied, as the Class is so numerous that joinder of all members is impracticable.

b. Rule 23(a)(2) is satisfied, as there are numerous questions of law and fact arising from the nucleus of operative fact common to those Class members, including, among others: (i) whether Sky Zone collected, captured, purchased, received through trade, or otherwise obtained the Class' biometric identifiers or biometric information; (iii) whether Sky Zone had to, and whether it did, inform the Class in writing that a biometric identifier or biometric information was allegedly being collected or stored; (iv) whether Sky Zone had to, and whether it did inform the Class in writing of the specific purpose and length of term for which a biometric identifier or biometric information was allegedly being collected, stored, and used; (v) whether Sky Zone had to, and whether it did, receive written releases from the Class before allegedly capturing, collecting, purchasing, receiving through trade, or otherwise allegedly obtaining their biometric identifiers or biometric information; (vi) whether any alleged violations of BIPA by Sky Zone were negligent, reckless, or intentional, and (vii) whether Sky Zone had valid defenses to the claims filed against it by virtue of its role as franchisor that did not employ Class members.

c. Rule 23(a)(3) is satisfied because the claims of the proposed Class Representative typify those of the absent Class members, as each Class member

scanned his/her finger and was subject to the same alleged misconduct in the same manner.

d. Rule 23(a)(4) is satisfied because the proposed Class Representative will fairly and adequately protect the interests of the Class as a whole, and has done so thus far. The Class Representative's interests are aligned with, and not antagonistic to, those of the Class members in seeking to vindicate the privacy rights of the Class under BIPA. Further, the Class Representative has proceeded with counsel who have vigorously pursued this case and have fairly and adequately protected the interests of the Class.

e. Rule 23(b)(3) is satisfied because the common questions of law or fact predominate over questions affecting individual members, as the common issues will be resolved through generalized and common proof—such as Sky Zone's policies and practices in light of its legal rights, obligations, and defenses—which are more substantial than any issues that may be subject to individualized proof. Moreover, a class action is a superior method for fairly and efficiently adjudicating the controversy and avoiding inconsistent outcomes.

4. Accordingly, subject to the Final Approval Hearing referred to in this Order, the Court certifies the Settlement Class and appoints Madisyn Stauffer as Class Representative of the Settlement Class.

5. Pursuant to Federal Rule of Civil Procedure 23(g), the Court appoints Kevin P. Green, Richard S. Cornfeld, Daniel S. Levy, and Thomas C. Horscroft of Goldenberg Heller & Antognoli, P.C., as Class Counsel. The Court finds that these attorneys are

competent and capable of exercising the responsibilities of Class Counsel and have and will fairly and adequately protect the interests of the Settlement Class.

6. The Court has conducted a preliminary evaluation of the settlement set forth in the Settlement Agreement for fairness, adequacy, and reasonableness. Based on this preliminary evaluation, the Court finds that the settlement is fair, reasonable and adequate, is likely to be approved under Federal Rule of Civil Procedure 23(e)(2), and is in the best interests of the Settlement Class. The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives of the class action against Sky Zone, and provides substantial relief to the Settlement Class without the risks, burdens, costs, or delays associated with continued litigation, trial, and/or appeal. The Court also finds that the Settlement Agreement is the result of arm's-length negotiations between experienced class action attorneys familiar with the legal and factual issues of this case, who have diligently investigated and prosecuted this matter, and was facilitated and overseen by an experienced mediator, Hon. James Epstein (Ret.), a former trial court judge and former justice of the Illinois Appellate Court. Therefore, the Court grants preliminary approval of the settlement.

Notice and Administration

7. Pursuant to Federal Rule of Civil Procedure 23(e)(1)(B), the Court directs that notice of the Settlement Agreement shall be provided to the members of the Settlement Class as set forth herein.

8. The Court hereby approves the appointment of Atticus Administration, LLC as the Settlement Administrator responsible for administering the Class Notice and

the claims for relief submitted by Class Members in accordance with the terms of the Settlement Agreement. The Court also authorizes the Settlement Administrator to carry out such other responsibilities as are provided for in the Settlement Agreement or as may be agreed to by counsel for the Parties.

9. The Court approves the proposed content and method for giving notice to the Settlement Class. Counsel for the Parties are directed to modify such notices to reflect the dates set by this order prior to publication and dissemination. The proposed method of dissemination of Notice set forth in the Settlement Agreement, is the best notice practicable under the circumstances, is a reasonable manner for notice, and constitutes valid, due, and sufficient notice to the Settlement Class in full compliance with the requirements of applicable law, including but not limited to the Due Process Clause of the United States Constitution, and is approved. The Court further finds that the Notice is reasonably calculated, under all circumstances, to apprise members of the Settlement Class of the pendency of this Action, the terms of the Settlement Agreement, and their rights under the Settlement Agreement, including the right to object to or exclude themselves from the settlement. Class Counsel and Sky Zone Counsel, by agreement, may revise the Notice in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication. Therefore, the Settlement Administrator is directed to send notice on or before May 14, 2024 (the "Settlement Notice Date") in accordance with the Settlement Agreement, as follows:

a. **Mail Notice.** Within twenty-one (21) days after the Preliminary Approval Date, the Settlement Administrator will send via U.S. mail, postage prepaid: (1) the Sky Zone No-Claim Class Mailed Notice to each individual identified on the Sky Zone No-Claim Class List; and (2) the Claims-Made Class Mailed Notice to each individual identified on the Claims-Made Class List. Prior to sending notice, the Settlement Administrator will process the address of each person identified in the Class List through the U.S. Postal Service's National Change of Address database (the "Address Database"). The notice will be mailed to the last known address reflected in the Class List Contact Information unless a different address is listed in the Address Database, in which case the notice will be mailed to the address listed in the Address Database. For up to thirty-five (35) days after the Settlement Notice Date, the Settlement Administrator will re-mail notice via standard U.S. Mail, postage prepaid, to any updated addresses to the extent that it received address change notifications from the U.S. Postal Service or pursuant to a request from a person on the Class List.

b. **Email Notice.** Within twenty-one (21) days after the Preliminary Approval Date, the Settlement Administrator will email: (1) the Sky Zone No-Claim Class Email Notice to each person on the Sky Zone No-Claim Class List whose email address is identified in the Class List Contact Information; and (2) the Claims-Made Class Email Notice to person on the Claims-Made Class List whose email address is identified in the Class List Contact Information.

c. **Text Message Notice.** Within twenty-one (21) days after the Preliminary Approval Date, the Settlement Administrator will send: (1) the Sky Zone No-Claim Class Text Notice to each person on the Sky Zone No-Claim Class List whose phone number is identified in the Class List Contact Information; and (2) the Claims-Made Class Text Notice to each person on the Claims-Made Class List whose phone number is identified in the Class List Contact Information.

d. **Follow-Up Notice.** Forty-Five (45) days after Settlement Notice Date, the Settlement Administrator will: (1) email the Claims-Made Class Follow-Up Email Notice to each person on the Claims-Made Class List who has not yet returned a Claim Form and whose email address is identified in the Class List Contact Information ; and (2) send the Claims-Made Class Follow-Up Text Notice to each person on the Claims-Made Class List who has not yet returned a Claim Form and whose phone number is identified in the Class List Contact Information.

e. **Settlement Website.** Within seven (7) days after the Preliminary Approval Date, the Settlement Administrator will create the Settlement Website (www.skyBIPAsettlement.com) that will include links to the Settlement Notice, the Settlement Agreement, the Claim Form, the Fee Application, Class Counsel's contact information, applicable deadlines, and orders of the Court pertaining to the settlement. Class Counsel and Sky Zone's Counsel shall jointly approve any additional content in advance of posting on the Settlement Website. Class Counsel shall provide to the Settlement Administrator, as soon as practicable after filing, Class Counsel's Fee Application and motion for payment of service awards to the

Class Representative, together with supporting memorandum and papers, which the Settlement Administrator will post on the Settlement Website within 5 days of receipt from Class Counsel. The Court finds that the posting of the Fee Application on the Settlement Website constitutes a reasonable manner of serving the motion pursuant to Rule 23(h).

10. No later than seven (7) days before the Final Approval Hearing (defined below), the Settlement Administrator shall provide the Court with a declaration showing that Notice was disseminated in accordance with this Order and the Settlement Agreement.

Claims

11. The Court approves the Claim Form attached to the Settlement Agreement. Any person on the Claims-Made Class List who qualifies for and wishes to receive the Award must submit to the Settlement Administrator a completed Claim Form on or before the close of the Claims Period. A Claim Form is timely if it is postmarked or electronically submitted on or before the last day of the Claims Period.

12. A properly completed Claim Form that is timely submitted is presumptively valid. The Settlement Administrator may contact any person to correct a defect in a submitted Claim Form for up to five (5) days after the Claims Period. A timely claim form submitted by a member of the Claims-Made Class that is submitted in response to a separate settlement agreement entered into between Plaintiff and Pathfinder Software, LLC, d/b/a CenterEdge Software, LLC ("CenterEdge") in the Action shall be deemed to constitute a validly submitted Claim Form with respect to this

Settlement Agreement, and such person shall be deemed a Claims-Made Class Participant hereunder without having to submit a separate or additional claim form, unless such person timely submits a request for exclusion for this Sky Zone Agreement.

Exclusions

13. Any person on the Class List may request to be excluded (or “opt out”) from the Settlement Agreement. A person who wishes to opt out of the Settlement Agreement must submit to the Settlement Administrator (by mail or email) a written Request for Exclusion, including the person’s present name, address, telephone number, and email, a clear and unequivocal statement that the person wishes to be excluded from the Settlement Agreement, and the actual or digital signature of the person or, only in the case of a person who is deceased or incapacitated, the signature of the person’s legally authorized representative. To be timely and valid, the Request for Exclusion must be postmarked or emailed on or before July 15, 2024. A Request for Exclusion shall apply only to the individual who submits the valid Request for Exclusion. No Request for Exclusion may be made on behalf of a group of persons. Any person who submits a Claim Form during the Claim Period shall be deemed to have waived his or her right to opt-out of the Settlement Agreement, regardless of whether the person has also submitted a Request for Exclusion.

14. Any person who properly and timely submits a Requests for Exclusion shall not: (a) be bound by any orders or judgments entered in the Action relating to the Settlement Agreement; (b) be entitled to relief under, or be affected by, the Settlement

Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement Agreement.

Objections

15. Any Settlement Class Members who have not timely filed a request for exclusion may object to the fairness, reasonableness, or adequacy of the Settlement Agreement, or to a Final Judgment being entered in accordance with the terms of the Settlement Agreement, or to the attorneys' fees and expense reimbursement sought by Class Counsel, or to the requested service award to the Class Representative. To object, Settlement Class Members must sign and file a written objection with the Court and serve the objection on Class Counsel and Sky Zone's Counsel on or before July 15, 2024.

16. The written statement of objection shall include: (i) the objector's name, address, telephone number, and email and, if represented by counsel, the name, address, and telephone number of his or her counsel; (ii) proof of membership in the Settlement Class, as well as all other materials the Settlement Class Member wants the Court to consider; (iii) a statement of each objection; (iv) a written brief detailing the specific basis for each objection, including any legal and factual support the objector wishes to bring to the Court's attention and any evidence the objector wishes to introduce in support of the objection; and (v) the objector's handwritten signature. If the objection is made through an attorney, the written objection must also include the identity of the Settlement Class Member represented by objector's counsel. No objection may be made on behalf of a group of Settlement Class Members.

17. Settlement Class Members, or their attorneys, intending to appear at the Final Approval Hearing must deliver to Class Counsel and Sky Zone's Counsel and have file-marked by the Court, on or before the Objection Deadline, a Notice of Intention to Appear. The Notice of Intention to Appear must: (i) state how much time the Settlement Class Member anticipates needing to present the objection; (ii) identify, by name, address, telephone number of each proposed testifying witness; (iii) summarize in detail the anticipated testimony of all such witnesses; (iv) identify all exhibits the Settlement Class Member intends to offer in support of the objection; and (v) attach complete copies of all such exhibits. Any Settlement Class Member who does not timely file and serve a notice of intention to appear shall not be permitted to appear, except for good cause shown.

18. To be valid, objections must be filed with the Clerk of Court, 750 Missouri Avenue, East St. Louis, IL 62201. Any objections made by a Settlement Class Member who is represented by counsel must be filed through the Court's CM/ECF system. 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.

19. Settlement Class Members who fail to file and serve timely written objections in compliance with the requirements above will be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement Agreement, Fee Application, or any payment identified herein or awarded by the Court.

20. The procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice

and the orderly presentation of any Settlement Class Member's objection to the Settlement, in accordance with the due process rights of all Settlement Class Members.

Final Approval Hearing

21. On August 21, 2024, at 10:00 a.m., this Court will hold a Final Approval Hearing on the fairness, adequacy, and reasonableness of the Settlement Agreement and Fee Application, and to determine whether Final Judgment approving the settlement and dismissing with prejudice all claims asserted in the Litigation against Sky Zone should be entered. The Final Approval Hearing may be postponed, adjourned, or rescheduled by order of the Court, and the Settlement Website shall be updated with any new Final Approval Hearing Date. No further notice to the Class Members is required.

Supplemental Filing Deadlines

22. Class Counsel shall file their Fee Application within sixty (60) days after the date of this Preliminary Approval Order.

23. The Motion for Final Approval shall be filed after the Opt-Out/Objection Deadline, and no later than fourteen (14) days prior to the Final Approval Hearing.

24. If any deadline set forth in this Order falls on a Saturday, Sunday or federal holiday, then such deadline shall extend to the next Court business day.

25. Summary of Major Dates and Deadlines:

<u>Activity</u>	<u>Deadline</u>
Settlement Website Goes Live	April 30, 2024 (7 days after the entry of this Order)
Settlement Notice Date	May 14, 2024 (21 days after the entry of this Order)
Class Counsel's Fee Application Deadline	June 24, 2024 (60 days after the entry of this Order)
Opt-Out Deadline	July 15, 2024 (60 days after the Settlement Notice)

	Date)
Objection/Notice of Intent to Appear Deadline	July 15, 2024 (60 days after the Settlement Notice Date)
Deadline for Submission of Claims Form	July 29, 2024 (75 days after Settlement Notice Date)
Motion for Final Approval	August 7, 2024 (14 days prior to Final Approval Hearing)
Final Approval Hearing	August 21, 2024 at 10:00 a.m.

26. Unless modified in this Order, the Court adopts and directs the parties to comply with all deadlines and obligations requiring action prior to the Final Approval Hearing set forth in the Settlement Agreement. Counsel for the parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the settlement that are not materially inconsistent with either this Order or the terms of the Settlement Agreement.

IT IS SO ORDERED.

DATED: April 23, 2024

s/ Mark A. Beatty
MARK A. BEATTY
United States Magistrate Judge