Firm No. 64324

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

JASMINE CHATMAN, individually and on behalf of others similarly situated, Plaintiff, v. HARMONY NURSING & REHABILITATION CENTER, INC., Defendant.	Case No.: 2020-CH-02234 Hon. David B. Atkins Calendar 16

PLAINTIFF'S UNOPPOSED MOTION FOR ATTORNEYS' FEES AND COSTS

AND INCENTIVE AWARD

I. INTRODUCTION

Plaintiff Jasmine Chatman ("Chatman" or Plaintiff) brought this class action lawsuit alleging Harmony Nursing & Rehabilitation Center, Inc. ("Harmony" or "Defendant") violated the Illinois' Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1 *et seq.* Specifically, Plaintiff alleged that through the use of a fingerprint-scanning timeclock, Defendant collected biometric identifiers and/or biometric information from their employees without complying with BIPA's requirements regarding retention and destruction policies, and without providing the requisite notice and obtaining informed consent prior to the collection of the biometric data. *See, e.g.,* Complaint at ¶ 4.

The Plaintiff sought relief on behalf of herself and a class of individuals in the form of injunctive relief, statutory damages, and attorneys' fees and costs, as well as certification of a class. Complaint at ¶ 36-43. The putative class was defined as:

> All persons whose fingerprint was collected, captured, or received by Harmony in Illinois at any time from five years before the date of Plaintiff's original complaint to the date the class is certified. The following people are excluded from the Class: (1) any judge presiding over the action and their families and staff; (2) Defendant and its owners, officers, directors, parents, subsidiaries, successors, predecessors; and (3) Plaintiff's and Defendant's counsel and their staffs.

Complaint at ¶ 31.

As the Court is well aware, BIPA litigation has exploded in the past few years, and class actions in the employment context have been brought frequently and litigated extensively before this Court and others. Settlements in these cases are now similarly frequent and can be assessed against a well-established landscape.

The Parties reached a Settlement which was preliminarily approved by the Court on February 23, 2023. Under the terms of the Settlement, Defendant will create a cash fund of consisting of

$275,000 or just over $1,033 for each of the 266 class members on a gross basis. The fund will be used to pay administration costs, and, if approved by the Court, incentive awards to the named Plaintiff and attorney's fees and costs. The balance of the fund will then be distributed *pro rata* to each class member, without the need to file a claim form. Total recovery per class member will be just over $667. Any checks not cashed within 90 days will become void, and any remaining funds will be distributed *cy pres* to Lucy Parsons Lab, a Chicago digital privacy non-profit.

This amount is in the top tier of settlements in leading employment BIPA class actions that, like this one, send checks directly to all class members. *E.g.*, *Torres v. Phoenix Converting, Inc.,* 2021-CH-00083 (Cir. Ct. Cook Cnty.) (fund constituting $1,100 per person with direct checks sent to all class members for approximately $525.00); *Brown v. Moran Foods, LLC*, 2019-CH-02576 (Cir. Ct. Cook Cnty.) (fund constituting $1,100 per person with direct checks sent to all class members for approximately $625.00); *Edmond v. DPI Specialty Foods*, 2018-CH-09573 (Cir. Ct. Cook Cty.) (fund constituting $1,000 per person with direct checks sent to all class members for $604.65); *Watts v. Aurora Chicago Lakeshore Hosp. LLC*, 2017-CH-12756 (Cir. Ct. Cook Cty.) (fund constituting $1,000 per person with direct checks sent to all class members for $612.13). Moreover, these settlements dwarf many other comparable privacy class action settlements, which often settle for no monetary relief to the class, or indirect relief via *cy pres*. *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 Electronic Communications Privacy Act); *Adkins v. Facebook, Inc.*, No. 18-cv-05982-WHA, dkt. 314 (N.D. Cal. Nov. 15, 2020) (preliminary approval settlement for injunctive relief only, in class action

arising out of Facebook data breach). In the BIPA context, results have been mixed, with some settlements providing no cash and just credit monitoring, *e.g.*, *Carroll v. Crème de la Crème, Inc.*, 2017-CH-01624 (Cir. Ct. Cook Cty. Jun. 6, 2018), or needlessly required a claim form with unused settlement funds to revert fully to the defendant, *e.g.*, *McGee v. LSC Commc'ns*, 2017-CH-12818 (Cir. Ct. Cook Cty.) ($750 per claimant, with unclaimed funds reverting); *Marshall v. Lifetime Fitness, Inc.*, 2017-CH-14262 (Cir. Ct. Cook Cty.) ($270 per claimant with credit monitoring, with unclaimed funds reverting). This settlement—which provides a substantial, direct check to the entire class—is an excellent example of BIPA employer settlements that provide superior relief to the class.

Class Counsel and the Class Representatives have devoted significant time and effort over the last 36 months on behalf of the Settlement Class Members' claims, and their efforts have yielded an outstanding benefit to the Class. With this Motion, Class Counsel request a fee and expense award of $80,000 – just under 30% of the total Settlement Fund obtained for the Settlement Class and Incentive Awards of $7,500 the two Class Representative, as provided for in the Settlement Agreement. Defendant has agreed to not challenge either the fee request up to this amount nor the incentive awards.

The requested attorneys' fees, costs and Incentive Awards are amply justified in light of the investment, significant risks, and excellent results obtained for the Settlement Class Members, particularly given the continued uncertainty over the state of BIPA litigation; are consistent with Illinois law and fee awards and incentive awards granted in other cases in Illinois courts, including other BIPA class actions; and warrant Court approval.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. ILLINOIS' BIOMETRIC INFORMATION PRIVACY ACT

When first enacted in 2008, BIPA was unique in the Nation—both for its prescience in identifying the inevitable increase in the use (and potential for abuse) of biometric technology as well as its strict requirements for private companies that chose to implement such technology. Recognizing the "very serious need" to protect Illinois citizens' biometric data—which includes retina scans, fingerprints, voiceprints, and scans of hand or face geometry—the Illinois legislature unanimously passed BIPA in 2008 to provide individuals recourse when companies fail to appropriately handle their biometric data in accordance with the statute. 740 ILCS 14/5. Thus, BIPA makes it unlawful for any private entity to "collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifier or biometric information, unless it first:

> (1) informs the subject . . . in writing that a biometric identifier or biometric information is being collected or stored;
>
> (2) informs the subject . . . in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; and
>
> (3) receives a written release executed by the subject of the biometric identifier or biometric information . . . ."

740 ILCS 14/15(b). This is the "informed consent regime," that the Seventh Circuit has described as the "heart of BIPA." *Bryant v. Compass Grp. USA, Inc.,* 958 F.3d 617 (7th Cir. 2020), *as amended on denial of reh'g and reh'g en banc* (June 30, 2020) (describing the Illinois Supreme Court's decision *Rosenbach v. Six Flags Ent. Corp.*, 2019 IL 123186).

BIPA also establishes standards for how private companies must handle Illinois consumers' biometric identifiers and biometric information. For example, BIPA requires companies to develop and comply with a written policy establishing a retention schedule and guidelines for permanently destroying biometric date. 740 ILCS 14/15(a). BIPA also requires entities in possession of biometric data to store and/or transmit that data using a "reasonable standard of care" in that entity's industry and with the same or greater level of care the entity uses with other confidential and sensitive information. 740 ILCS 14/15(e).

Moreover, to enforce the statute, BIPA provides a civil private right of action and allows for the recovery of statutory damages in the amount of $1,000 for negligent violations—or $5,000 for willful violations—plus costs and reasonable attorneys' fees. 740 ILCS 14/20. The private right of action and the statutory damages are "integral" to the implementation of the Act. *Rosenbach v. Six Flags Ent. Corp*., 2019 IL 123186, ¶ 37.

B. Plaintiff's Allegations and Defendant's Fingerprint Timeclock System.

Plaintiff is former employee of Defendant and worked at Defendant's Foster Avenue location in or around 2017. Complaint at ¶¶ 22-24. At the start of their employment, Plaintiff was required to scan their fingerprints into a time clock. *Id.* at ¶ 23. At the beginning and end of each workday, and before and after taking breaks, Plaintiff was required to clock in and out by having their fingerprints scanned on the same machine. *Id.* at ¶ 26.

Plaintiff alleges that she never received the requisite disclosures nor signed a consent form before having their face scanned in violation of 740 ILCS §14/15(b). *Id.* at ¶ 29. Plaintiff alleges she never received nor was made aware of any policy regarding the retention and

destruction of their biometric date, and thus that Defendant failed to create and comply with such a policy in violation of 740 ILCS §14/15(a). *Id.* at ¶¶ 27-28.

Defendant denies that biometric identifiers or information was ever obtained by their time clock or that it has engaged in any wrongdoing or violated BIPA in any way.

C. Litigation, Negotiation, and Settlement.

On February 24, 2020, Plaintiff filed a class action lawsuit in the Circuit Court of Cook County, Chancery Division, naming Harmony Nursing & Rehabilitation the sole Defendant. The case was assigned to Judge David B. Atkins and captioned *Chatman v. Harmony Nursing & Rehabilitation*, 2020-CH-02234.

In response, Defendant moved to dismiss the Complaint under 735 ILCS 5/2-619(a)(9) on May 1, 2020. The motion was fully briefed by the parties. Judge Atkins denied Defendant's motion on July 16, 2021. Defendant then filed their Answer and Affirmative Defenses on August 18, 2021. The Parties issued and responded to written discovery, including interrogatories, requests for production, and requests to admit.

In January of 2022, the Parties began to discuss resolution on a class basis. The Parties requested a settlement conference before Judge Atkins, which took place on May 11, 2022. Both sides prepared settlement position papers before the conference. At the settlement conference, and with the aid of Judge Atkins, the Parties were able to come to an agreement on the basic terms of a class settlement.

The Parties signed a term sheet on September 30, 2022, reflecting that Defendant would establish a non-reversionary settlement fund of $275,000 based on an estimated class size of 250 individuals, with the costs of administration and any approved attorneys' fees and costs and

incentive awards being paid out of the fund with the remainder distributed *pro rata* to each Class Member without requiring a claim form.

In lieu of injunctive relief, the Defendant has represented that they have either complied with BIPA's informed consent requirements (by utilizing a compliant, informed written consent form), and/or no longer use any biometric time-clock.

Defendant has provided documents regarding the time clock device at issue, an affidavit regarding class size and the method for determining the same, and the written consent form Defendant implemented in 2019. Further. Defendant has since confirmed the size of the Proposed Class at 266 individuals.

III. RELIEF TO CLASS MEMBERS

The terms of the Settlement are set forth in the Stipulation of Class Action Settlement, and are briefly summarized here:

A. Class Definition.

The Settlement Class includes:

> All persons whose fingerprint was collected, captured, or received by Harmony in Illinois during the Class Period.

The Class Period is February 22, 2015, through the date of preliminary approval of this Class Settlement.

The following people are excluded from the Class: (1) any judge presiding over the action and their families and staff; (2) Defendant and its owners, officers, directors, parents, subsidiaries, successors, predecessors; (3) Plaintiff's and Defendant's counsel and their staffs; and (4) any employee who provided their written, informed consent to have their fingerprint

collected, captured, or received by Harmony during the Class Period and prior to having their fingerprint collected, captured or received by Harmony.

B. Settlement Payments.

The Settlement provides that Defendant will satisfy their monetary obligations by paying into a Settlement Fund $275,000 (Two-Hundred and Seventy-Five Thousand Dollars). Settlement Agreement at ¶ 55. Defendant has represented that there are 266 Settlement Class Members. From the Settlement Fund, payment of Settlement Administration Expenses, costs, attorneys' fees and any incentive award will be made. *Id.* The Settlement Administrator will then distribute the fund *pro rata* directly to Class Members without the need for a claims process. *Id*. Assuming the Court grants a Fee and Cost award of $80,000 and incentive award of $7,500, and with an estimated cost of administration of $10,000, the minimum amount class members will receive is approximately $667.

Any checks not cashed after 90 days will be void and after 120 days, any remaining non-cashed check funds will be distributed *cy pres* (and subject to Court approval) to Lucy Parsons Lab, NFP, a Chicago-based digital privacy advocacy group. *Id.*

C. Injunctive and Prospective Relief.

Since 2019, Defendant has implemented a BIPA-compliant written consent form and received consent from all current employees and receives consent from all new hires prior to their use of the time clock. Settlement Agreement ¶¶ 11, 57. Defendant will comply with any and all requirements under BIPA for the destruction and retention of any biometric data that may be in their possession. *Id.* Defendant will also not transfer or otherwise disseminate any biometric data without first obtaining informed written consent from any affected employee. *Id.*

IV. ARGUMENT & AUTHORITY

A. THE COURT SHOULD AWARD CLASS COUNSEL'S REQUESTED ATTORNEYS' FEES.

1. The Percentage-of-the-Fund Method Should be Used Instead of the Lodestar

Pursuant to the Settlement, Class Counsel seek attorneys' fees and expenses in the amount of $80,000, which amounts to just under 30% of the Settlement Fund. Such a request is well within the range of fees approved in other class actions and is fair and reasonable in light of the work performed by Class Counsel and the outstanding recovery secured on behalf of the Settlement Class Members.

Attorneys who, by their efforts, create a common fund for the benefit of a class, are entitled to reasonable compensation for their services. *See Wendling v. S. Ill. Hosp. Servs*., 242 Ill. 2d 261, 265 (2011) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)) ("a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole.").

In cases where, as here, a class action settlement results in the creation of a settlement fund, "[t]he Illinois Supreme Court has adopted the approach taken by the majority of Federal courts on the issue of attorney fees[.]" *Baksinski v. Northwestern Univ*., 231 Ill. App. 3d 7, 13 (1st Dist. 1992) (citing *Fiorito v. Jones*, 72 Ill.2d 73 (1978)). That is, where "an equitable fund has been created, attorneys for the successful plaintiff may directly petition the court for the reasonable value of those of their services which benefited the class." *Id*. at 14 (citing *Fiorito*, 72 Ill.2d 73). This rule "is based on the equitable notion that those who have benefited from litigation should share in its costs." *Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007) (citing *Skelton v. Gen. Motors Corp*., 860 F.2d 250 (7th Cir. 1988)).

In deciding an appropriate fee in such cases, "a trial judge has discretionary authority to choose a percentage[-of-the-recovery] or a lodestar method[.]" *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 58 (citing *Brundidge v. Glendale Federal Bank, F.S.B.*, 168 Ill. 2d 235 (1995)). Under the percentage-of-the-recovery approach, the attorneys' fees awarded are "based upon a percentage of the amount recovered on behalf of the plaintiff class." *Brundidge*, 168 Ill. 2d at 238. Under the lodestar approach, the attorneys' fees to be awarded are calculated by determining the total amount of hours spent by counsel in order to secure the relief obtained for the class at a reasonable hourly rate, multiplied by a "weighted" "risk multiplier" that takes into account various factors such as "the contingency nature of the proceeding, the complexity of the litigation, and the benefits that were conferred upon the class members." *Id.* at 240.

Here, Plaintiff submits that the Court should apply the percentage-of-the-recovery approach—the approach used in the vast majority of common fund class actions, including BIPA class actions. It is settled law in Illinois that the Court need not employ the lodestar method in assessing a fee petition. *Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 59. This is because the lodestar method is disfavored, as it not only adds needless work for the Court and its staff, it misaligns the interests of Class Counsel and the Settlement Class Members. 5 Newberg on Class Actions (5th ed.) § 15:65 ("Under the percentage method, counsel have an interest in generating as large a recovery for the class as possible, as their fee increases with the class's take. By contrast, when class counsel's fee is set by an hourly rate, the lawyers have an incentive to run up as many hours as possible in the litigation so as to ensure a hefty fee, even if the additional hours are not serving the clients' interests in any way").

The lodestar method has been long criticized by Illinois courts as "increas[ing] the workload of an already overtaxed judicial system . . . creat[ing] a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law . . . le[ading] to abuses such as lawyers billing excessive hours … not provid[ing] the trial court with enough flexibility to reward or deter lawyers so that desirable objectives will be fostered . . . [and being] confusing and unpredictable in its administration." *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 923 (1st Dist. 1995).

Conversely, the use of the percentage-of-the-recovery approach in common fund class settlements flows from, and is supported by, the fact that the percentage-of-the-fund approach promotes early resolution of the matter, as it disincentivizes protracted litigation driven solely by counsel's efforts to increase their lodestar. *Brundidge*, 168 Ill.2d at 242. For this reason, a percentage-of-the-fund method best aligns the interests of the class and its counsel, as class counsel are encouraged to seek the greatest amount of relief possible for the class rather than simply seeking the greatest possible amount of attorney time regardless of the ultimate recovery obtained for the class. Applying a percentage-of-the-recovery approach is also generally more appropriate in cases like this one because it best reflects the fair market price for the legal services provided by the class counsel. *See Ryan*, 274 Ill. App. 3d at 923 (noting that "a percentage fee was the best determinant of the reasonable value of services rendered by counsel in common fund cases") (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force*, 108 F.R.D. 237 (3d. Cir. 1985); *Sutton*, 504 F.3d at 693 (directing district court on remand to consult the market for legal services so as to arrive at a reasonable percentage of the common fund recovered).

This approach also accurately reflects the contingent nature of the fees negotiated between Class Counsel and Plaintiff, who agreed ex ante that up to 40% of any settlement fund plus reimbursement of costs and expenses would represent a fair award of attorneys' fees from a fund recovered for the Class. (Ex. A, Drew Dec. at ¶ 15); *see also In re Capital One Tel. Consumer Prot. Act Litig*., 80 F. Supp. 3d 781, 795 (N.D. Ill. 2015) (applying the percentage-of-the-recovery approach and noting that class members would typically negotiate fee arrangement based on percentage method rather than lodestar).

Class Counsel are not aware of any BIPA class action settlements involving a monetary common settlement fund where a court relied on the lodestar method to determine attorneys' fees. In fact, to Class Counsel's knowledge, the percentage-of-the-recovery method has been used to determine a reasonable fee award in every BIPA class action settlement in the Circuit Court of Cook County (where the majority of BIPA class actions are pending) where the defendant – as here – created a monetary common fund. *See, e.g Collier, et. al. v. Pete's Fresh Market 2526 Corporation, et. al.*, No. 2019CH-05125 (Cir. Ct. Cook Cty., Ill. Dec. 8, 2020); *Glynn v. eDriving, LLC*, 2019-CH-08517 (Cir. Ct. Cook Cnty., Ill. Dec. 14, 2020); *Kusinski v. ADP, LLC,* 2017-CH-12364 (Cir. Ct. Cook Cnty., Ill. Feb. 10, 2021); *Draland v. Timeclock Plus, LLC*, No. 2019-CH-12769 (Cir. Ct. Cook Cnty., Ill. Apr. 8, 2021); *Rogers v. CSX Intermodal Terminal, Inc.*, No. 19-CH-04168 (Cir. Ct. Cook Cnty., Ill. May 13, 2021); *Freeman-McKee v. Alliance Ground Int'l, LLC*, 2017-CH-13636 (Cir. Ct. Cook County, Ill. June 15, 2021); *Salkauskaite v. Sephora USA, Inc*., 2018-CH-14379 (Cir. Ct. Cook County, Ill. June 23, 2021); *Gonzalez v. Silva Int'l, Inc*., 2020-CH-03514 (Cir. Ct. Cook County, Ill. June 24, 2021).

Accordingly, the Court should adopt and apply the percentage-of-the-recovery approach here. Under this approach, as set forth more fully below, Class Counsel's requested attorneys' fees are eminently reasonable.

2. Class Counsel's Requested Fees Are Reasonable Under the Percentage-Of-The-Recovery Method of Calculating Attorneys' Fees.

When assessing a fee request under the percentage-of-the-recovery method, courts often consider the magnitude of the recovery achieved for the Settlement Class Members and the risk of non-payment in bringing the litigation. *See Ryan*, 274 Ill. App. 3d at 924 (affirming district court's attorney fee award due to the contingency risk of pursuing the litigation, and the "hard cash benefit" obtained). As set forth below, this Settlement provides excellent relief for the Settlement Class Members and in the context of such an excellent result, and weighed against the risk of continuing, protracted litigation, Class Counsel's fee request is fair.

a. The requested attorneys' fees of under 30% of the settlement fund is in the range found in similar cases.

The requested fee award of $80,000 represents just under 30% of the Settlement Fund. As an absolute dollar amount, the requested fees are dwarfed by nearly every other award due to the small class size here (and thus smaller common fund size). While the amount of work certainly scales with the size of the class, there is nonetheless a baseline of required hours and costs no matter the size of the class. Regardless, this percentage is well within the range of attorneys' fee awards that courts, including numerous judges within the Circuit Court of Cook County, have found reasonable in other class action settlements. In fact, fee awards of 35% or higher – including multiple 40% fee awards – have been recently awarded in numerous BIPA class action settlements in the Circuit Court of Cook County. *See, e.g., Zepeda v. Kimpton Hotel &*

Restaurant Group, LLC et al., No. 18-CH-02140 (Cir. Ct. Cook Cnty. 2018) (attorneys' fee award of 40% of settlement fund in BIPA class settlement); *Zhirovetskiy v. Zayo Group, LLC*, No. 17-CH09323 (Cir. Ct. Cook Cnty., Ill., 2019) (same); *McGee v. LSC Commc's*, 17-CH-12818 (Cir. Ct. Cook Cnty., Ill. 2019) (same); *Smith v. Pineapple Hospitality Grp.*, No. 18-CH-06589 (Cir. Ct. Cook Cnty., Ill. 2020) (same); *Prelipceanu v. Jumio Corp.*, No. 18-CH-15883 (Cir. Ct. Cook Cnty. Ill. 2020) (same); *Freeman-McKee v. Alliance Ground Int'l, LLC*, No. 17-CH-13636 (Cir. Ct. Cook Cnty., Ill. 2021) (same); *Knobloch v. ABC Financial Services, LLC et al*., No. 17-CH-12266 (Cir. Ct. Cook Cnty., Ill. 2021); *see also, e.g., Rogers v. CSX Intermodal Terminals, Inc*., 19-CH04168 (Cir. Ct. Cook Cnty. 2021) (attorneys' fee award of 38% of settlement fund in BIPA class settlement); *Gonzalez v. Silva Int'l, Inc.*, 20-CH-03514 (Cir. Ct. Cook Cnty., Ill. 2021) (attorneys' fee award of 35% of settlement fund in BIPA class settlement); *Draland v. Timeclock Plus, LLC*, No. 2019-CH-12769 (Cir. Ct. Cook County, Ill. 2021) (same); *Williams v. Swissport USA, Inc.,* No. 19-CH-00973 (Cir. Ct. Cook County, Ill. 2020) (same); *Glynn v. eDriving, LLC*, No. 2019-CH-08517 (Cir. Ct. Cook County, Ill. 2020) (same); *see also,* Herbert Newberg & Alba Conte, Newberg on Class Actions § 15.83 (William B. Rubenstein ed.; 5th ed.) (noting that fifty percent of the fund appears to be an approximate upper limit on fees and expenses).

Thus, Plaintiff's request of under 30% of the Settlement Fund, $80,000, is well within the range of attorneys' fees recently approved by courts in this Circuit as reasonable in BIPA class action settlements, and in fact slightly lower than each of them.

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

The Settlement in this case also represents an excellent result for the Settlement Class given that Defendant has expressed a firm denial of Plaintiff's material allegations and has raised several defenses, most notably: that the information and data collected by Defendant does not constitute biometric identifiers or biometric information under BIPA. This particular defense, if sustained, would be an absolute bar to recovery.

However, in order for Defendant to mount such a defense and Plaintiff to defend against it, both parties would require expert witnesses and testimony, as well as additional discovery to clarify the technology at issue and whether it, in fact, does obtain biometric information or identifiers. Expert witnesses, testimony, and discovery are not only time-consuming, but expensive for both parties and resource-intensive for the Court.

In the face of this defense, Class Counsel succeeded in negotiating and securing a settlement on behalf of Settlement Class, which creates a $275,000 Settlement Fund for 266 Class Members and does not require any claim forms – checks will be mailed directly to Class Members.

c. The substantial monetary relief obtained on behalf of the Settlement Class Members further justifies the requested percentage of attorneys' fees.

Despite the significant risks inherent in any further litigation, Class Counsel were able to obtain a Settlement Fund of $275,000 for the Settlement Class of 266 individuals – Members will receive a check for just over $667, without having to send in any claim form.

Given the significant monetary compensation obtained for the Settlement Class Members, an attorneys' fee award of 30% of the Settlement Fund plus expenses is reasonable and fair compensation—particularly, as discussed above, in light of the significant uncertainty in the

relevant law, the "substantial risk in prosecuting this case under a contingency fee agreement" and the "defenses asserted by [Defendant]." *Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 59. Moreover, the $80,000 requested *includes* all litigation expenses as well.

B. THE INCENTIVE AWARD FOR PLAINTIFF IS REASONABLE AND SHOULD BE APPROVED.

The Settlement Agreement also provides for an Incentive Award of $7,500 to the named Plaintiff, Jasmine Chatman, for serving as the class representatives and agreeing to prosecute this action in her own name despite the risk and stigma associated with commencing a lawsuit in the employment context, which includes inherent reputational risks vis-à-vis current and future employers and coworkers. *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 600–01 (N.D. Ill. 2011) (noting that class representatives open themselves to "scrutiny and attention" by adding their name to public lawsuits, which, in and of itself, "is certainly worthy of some type of remuneration"). Because a named plaintiff is essential to any class action, "[i]ncentive awards are justified when necessary to induce individuals to become named representatives." *Spano v. Boeing Co*., No. 06cv-743, 2016 WL 3791123, at *4 (S.D. Ill. Mar. 31, 2016) (approving incentive awards of $25,000 and $10,000 for class representatives) (internal citation omitted); *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486 (1st Dist. 1992) (noting that incentive awards "are not atypical in class action cases . . . and serve to encourage the filing of class actions suits.").

Here, the Plaintiff's efforts and participation in prosecuting this case justify the $7,500 Incentive Award sought. Even though no award of any sort was promised to Plaintiff prior to the commencement of the litigation or any time thereafter, Plaintiff nonetheless contributed her time and effort in pursuing her own BIPA claims and served as representatives on behalf of the

Settlement Class Members, exhibiting a willingness to participate and undertake the responsibilities and risks attendant with bringing a representative action. (Drew Dec. at ¶¶ 16–19). Plaintiff participated in the initial investigation of their claims and provided documents and information to Class Counsel to aid in preparing the initial pleadings, reviewed the pleadings prior to filing, consulted with Class Counsel on numerous occasions, searched for and provided documents during discovery and provided feedback on various filings including, most importantly, the Settlement Agreement. *Id.* The Plaintiff made herself readily available for numerous phone calls to discuss the case and responded promptly to requests to review and sign documents. Were it not for Plaintiff's willingness to bring this action on a class-wide basis and their efforts and contributions to the litigation up through settlement, the substantial benefit to the Settlement Class Members afforded under the Settlement Agreement would not exist. *Id.* at ¶ 18.

Numerous courts that have granted final approval in similar class action settlements have awarded the same or significantly higher incentive awards than the $7,500 award per representative sought here. *See, e.g., Gonzalez v. Silva Int'l, Inc*., No. 2020-CH-03514 (June 24, 2021 Final Order and Judgment, ¶ 19 (awarding $10,000 incentive award in BIPA class action); *Rogers v. CSX Intermodal Terminals, Inc.*, No. 2019-CH-04168, May 13, 2021 Final Order and Judgment, ¶ 21 (awarding $15,000 incentive award in BIPA class action); *Glynn v. eDriving, LLC*, No. 2019-CH-08517, Dec. 11, 2020 Final Order and Judgment, ¶ 20 (same); *Williams v. Swissport USA Inc.*, 2019-CH-00973, Final Order and Judgment, ¶ 19 (same); *Zhirovetskiy*, No. 2017-CH-09323, April 18, 2019 Final Order and Judgment, ¶ 20 (awarding $10,000 incentive award in BIPA class action); *Seal v. RCN Telecom Services, LLC,* 2016-CH-07033, February 24, 2017 Final Order and Judgment, ¶ 20 (Cir. Ct. Cook Cnty., Ill.) (awarding $10,000 incentive

awards to each of two named plaintiffs); *Aranda v. Caribbean Cruise Line, Inc.*, No. 12 C 4069, 2017 WL 1369741, at *10 (N.D. Ill. Apr. 10, 2017) (awarding $10,000 to each class representative); *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11-CV-4462, 2015 WL 1399367, at *6 (N.D. Ill. Mar. 23, 2015) (awarding $25,000 incentive award). Accordingly, an Incentive Award of $7,500 for the named Plaintiff is well justified by the time and effort she has expended in this case and should be approved.

V. CONCLUSION

For the foregoing reasons, Plaintiff Jasmine Chatman, and Class Counsel respectfully request that this Court enter an order:

(i) approving an award of attorneys' fees and expenses of $80,000;

(ii) approving Incentive Awards in the amount of $7,500 to the Class Representative in recognition of her significant efforts on behalf of the Settlement Class Members, and;

(iii) any other relief the Court finds proper or necessary.

Submitted: March 20, 2023

s/ Michael Drew

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