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CHANCERY COURT OF COOK COUNTY, ILLINOIS

Halina Mrozek, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

EPAY Systems, Inc.,

Defendant.

No. 2024CH04688

Hon. Lynn Weaver Boyle

**PLAINTIFF'S MOTION AND MEMORANDUM OF LAW IN SUPPORT OF
APPROVAL OF ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARDS**

Plaintiff Halina Mrozek, by and through her attorneys, and pursuant to 735 ILCS 5/2-801 *et seq.*, hereby moves for an award of attorneys' fees and expenses for Class Counsel, as well as an incentive award for Plaintiff as the Class Representative in connection with the class action settlement with Defendant EPAY Systems, Inc. ("EPAY" or "Defendant"). In support of this Motion, Plaintiff submits the following memorandum of law.

I. INTRODUCTION

The Settlement¹ that Class Counsel have achieved in this case is an exceptional result for Settlement Class Members. The Parties' Agreement has established a Settlement Fund of \$1,526,250.00 to provide each Settlement Class Member with an equal, *pro rata* distribution of the Settlement Fund for having their biometrics collected by Defendant EPAY in alleged violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA"). In addition to the substantial financial benefit to the Settlement Class Members, the Settlement also

¹ Unless otherwise indicated, capitalized terms have the same meaning as those terms are used in the Settlement Agreement ("Agreement"), which is attached as Exhibit A to Plaintiff's previously filed Motion for Preliminary Approval.

provides significant non-monetary relief designed to prevent the recurrence of the allegedly unlawful biometric collection and use practices at issue in this case.

The Court preliminarily approved the Settlement on July 8, 2025. Direct Notice of the Settlement commenced on August 7, 2025. As of the filing of this Motion, hundreds of claims have been submitted, no Settlement Class Member has objected to the Settlement, and there have been no requests for exclusion.

By way of this Motion, Class Counsel request a fee of 38% of the total Settlement Fund, amounting to \$579,975.00, plus their litigation expenses in the amount of \$2,224.58. As explained in detail below, Class Counsel's requested fee award is justified given the excellent monetary and non-monetary relief provided under the Settlement, is consistent with Illinois law and fee awards granted in other BIPA cases in this Court and other Illinois courts, and is also reasonable given the time Class Counsel have committed to resolving this litigation for the benefit of the Settlement Class Members.

Both Class Counsel and the Class Representative devoted significant time and effort to the prosecution of the Settlement Class Members' claims, and their efforts have yielded an excellent benefit to the Class. The requested attorneys' fees and costs and Incentive Award are amply justified in light of the investment, significant risks, and excellent results obtained for the Settlement Class Members in this litigation, particularly given the substantial uncertainty regarding the state of BIPA when this Settlement was reached, which occurred after Senate Bill 2979 was passed on August 2, 2024 (limiting BIPA damages), and the continuous, ongoing shifts in the landscape of BIPA litigation. Plaintiff and Class Counsel respectfully request that the Court approve attorneys' fees of \$579,975.00 and reasonable expenses of \$2,224.58 and an Incentive Award of \$7,500.00 for the Class Representative.

II. BACKGROUND

A. BIPA

BIPA is an Illinois statute that provides individuals with certain protections for their biometric information. To effectuate its purpose, BIPA requires private entities that seek to use biometric identifiers (*e.g.*, fingerprints and handprints) and biometric information (any information gathered from a biometric identifier that is used to identify an individual) to:

- (1) Inform the person whose biometrics are to be collected in writing that their biometrics will be collected or stored;
- (2) Inform the person whose biometrics are to be collected in writing of the specific purpose and the length of term for which such biometrics are being collected, stored and used;
- (3) Receive a written release from the person whose biometrics are to be collected allowing the capture and collection of their biometrics; and
- (4) Make publicly available a retention schedule and guidelines for permanently destroying the collected biometrics.

740 ILCS 14/15.

BIPA was enacted in large part to protect individuals' privacy interests in biometric data (the biometric information and biometric identifiers described above).

B. The Case Procedural History

1. *Plaintiff's Allegations*

Plaintiff's Complaint alleges that she was required to scan her fingerprints using EPAY's biometric timekeeping device when she began and ended work each day in Chicago, Illinois so

that Plaintiff's employer could track her time. (Compl. ¶ 33.) Fingerprints are classified as biometric information and/or biometric identifiers pursuant to BIPA. (*Id.* ¶ 34.) The conversion of fingerprints into mathematical algorithms is similarly classified as biometric information subject to BIPA. (*Id.* ¶ 34.) Each time Plaintiff scanned her fingerprints using EPAY's biometric timekeeping device, EPAY stored Plaintiff's biometric information and/or biometric identifiers in its employee database. (*Id.* ¶ 35.) Plaintiff also alleges that: (1) she was never informed of the specific purpose or length of time for which EPAY collected, stored, used, and/or disseminated her biometric information and/or biometric identifiers; (2) she has never been informed of any biometric data retention policy developed by EPAY, nor has she ever been informed whether EPAY will ever permanently delete her biometric information and/or biometric identifiers; and (3) she has never been provided with, nor signed, a written release permitting EPAY to collect, store, use or disseminate her biometric data. (*Id.* ¶¶ 36-38.) Plaintiff contends that EPAY's failures in this regard constitute clear BIPA violations (740 ILCS 14/15(a), (b)).

Based on the discovery exchanged in this case, Plaintiff continues to believe that these allegations are accurate. EPAY, for its part, has denied any violation of BIPA.

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

This action was initiated in the Chancery Division of the Circuit Court of Cook County, Illinois on May 17, 2024, and, after an agreed-upon extension of time to respond to the Complaint, Defendant filed its Answer on July 26, 2024. (*See* Compl.; Answer to Compl.) Plaintiff issued discovery requests to Defendant on July 31, 2024, to which Defendant responded on August 28, 2024.

Plaintiff also issued deposition notices to Defendant on September 11, 2024, and Defendant served discovery requests on Plaintiff. On September 12, 2024, Plaintiff issued a

discovery deficiency letter to Defendant and the parties held a 201(k) conference on September 20, 2024.

In an attempt to explore the potential for an early resolution, on October 28, 2024 and November 4, 2024, the parties participated in two mediations led by the Honorable Arlander Keys (Ret.), a mediator at JAMS. Despite progress being made, ultimately, neither mediation session resulted in an agreement.

On November 14, 2024, Plaintiff filed a motion for appointment of interim class counsel, which this Court granted on November 21, 2024, appointing Jaszczuk P.C. and Consumer Law Advocate, PLLC as Interim Co-Lead Class Counsel. (*See Plaintiff's Motion for Appointment of Interim Class Counsel and Memorandum of Law in Support; Order dated November 21, 2024.*)

In February 2025, Plaintiff issued notices to depose Defendant's witnesses on February 21 and February 24, 2025. However, on February 20, 2025, the Parties attended a settlement conference with this Court. Unlike the two prior mediations, this time, with the assistance of this Court, the Parties were able to reach a resolution and agreed in principle to a class action settlement.

In the weeks that followed, the Parties worked on finalizing the terms of the settlement and executed a final settlement agreement in March 2025. Plaintiff then filed a Motion for Preliminary Approval on March 21, 2025. (*See Plaintiff's Motion for Preliminary Approval of Class Action Settlement.*) For Plaintiff and her counsel, however, the work was not done. For instance, in order to obtain the names and addresses of class members, Plaintiff's counsel proceeded to serve subpoenas to 21 of Defendant's customers. Numerous conversations and communications ensued with counsel for the various customers, and Plaintiff's counsel ultimately had to file two motions for a rule to show cause against subpoena recipients. (*See*

Plaintiff's Motion for Rule to Show Cause Against Blue Chip 2000 Commercial Cleaning, Inc.; Plaintiff's Motion for Rule to Show Cause Against MSA Security.) Due to the significant work that needed to be done to locate potential class members, the preliminary approval hearing was continued to May 2025, and then again to July 2025. (*See* Orders dated April 15, 2025 and May 14, 2025.)

Once the efforts to obtain class member information were nearly complete, Plaintiff filed an Amended Motion for Preliminary Approval on May 21, 2025. (*See* Plaintiff's Amended Motion for Preliminary Approval of Class Action Settlement.) A hearing on the Amended Motion took place on July 8, 2025, and at that time this Court granted preliminary approval to the Settlement. (*See* Order dated July 8, 2025.) Pursuant to the Court's July 8 Order, direct notice was disseminated to the Settlement Class Members on August 7, 2025.

III. THE SETTLEMENT

A. The Settlement Class Members Receive Excellent Monetary And Non-Monetary Relief Under The Settlement.

Class Counsel's prosecution of this litigation has culminated in this class-wide Settlement that provides exceptional monetary relief to the Settlement Class Members. The Settlement establishes a \$1,526,250.00 Settlement Fund (Agreement, ¶¶ 40, 52), and each valid claimant will receive an equal share of the fund after deduction of administration costs and the Court-approved attorneys' fees, costs and incentive award. (*Id.*, ¶ 52.) If all class members were to make a claim (an extremely rare, if not unheard of, result), each Settlement Class Member would receive around \$1,500 in cash benefits. If, on the other hand, about 20% to 25% of Settlement Class Members submit claims (in line with typical BIPA settlements), each class member will likely receive around \$6,000, if not more. This is an exceptional result for Class Members.

Moreover, as a result of the Agreement, Defendant has taken specific steps to comply with BIPA and will continue to take steps to remain compliant with BIPA in the future. (Agreement, ¶ 74.)

B. Pursuant to the Settlement Agreement’s Notice Plan, Direct Notice Has Been Sent To The Class Members.

Under the Settlement Agreement’s Notice Plan, which has already gone into effect, a first round of direct notice has been provided by U.S. Mail to the Settlement Class Members. (Agreement, ¶ 58.) In addition, the Settlement Website is operational and makes available the detailed Long Form Notice and all relevant case information to Settlement Class Members, and permits Settlement Class Members to make claims online if they so choose. To date, no Class Members have objected to the Settlement, and no Class Members have elected to exclude themselves. **Exhibit A** (Matthew Peterson Declaration, ¶ 4.)

IV. ARGUMENT

A. Class Counsel’s Requested Attorneys’ Fees

Class Counsel seek attorneys’ fees in the amount of \$579,975.00, which represents 38% of the Settlement Fund, plus \$2,224.58 in reimbursable expenses. (Agreement, ¶ 55.) A 38% request is consistent with the attorneys’ fees percentage awarded in Cook County and Chicagoland counties in recent BIPA class action settlements. *See Velazquez v. NCS Pearson, Inc.*, No. 2022-CH-00280 (Cir. Ct. Cook Cty., July 8, 2025) (Moreland, J.) (awarding 38% of common fund plus costs); *Gray v. Verificent Technologies*, No. 2018-CH-16054 (Cir. Ct. Cook Cnty., July 5, 2024) (Reilly, J.) (awarding 40% of common fund plus costs); *King v. Peoplenet Corporation*, No. 2021-CH-01602 (Cir. Ct. Cook Cnty., August 10, 2023) (Atkins, J.) (awarding 38% of common fund plus costs); *Aspel v. Incode Technologies Inc.*, No. 23LA59 (Cir. Ct. Grundy Cnty., Nov. 27, 2024) (approving \$1,520,000.00 in attorneys’ fees, 38% of a \$4,000,000 settlement, plus \$744.50 in costs); *McGowan v. Veriff, Inc.*, No. 2021L001202 (Cir. Ct. DuPage

Cnty., May 10, 2023) (approving \$1,520,000.00 in attorneys' fees, 38% of a \$4,000,000 settlement, plus \$13,489.27 in costs).

Moreover, unlike in the cited cases, Plaintiff's counsel here faced the additional task of subpoenaing and negotiating with 21 separate law firms and corporate legal departments (and bringing two motions for rule to show cause) in order to obtain and formulate the class list. In light of these unique challenges, Class Counsel's request for 38% is not only consistent with precedent, but also justified by the additional efforts required in this case.

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

In cases where, as here, a class action settlement results in the creation of a settlement fund, “[t]he Illinois Supreme Court has adopted the approach taken by the majority of Federal courts on the issue of attorney fees[.]” *Baksinski v. Northwestern Univ.*, 231 Ill. App. 3d 7, 13 (1st Dist. 1992) (citing *Fiorito v. Jones*, 72 Ill.2d 73 (1978)). That is, where “an equitable fund has been created, attorneys for the successful plaintiff may directly petition the court for the reasonable value of those of their services which benefited the class.” *Id.* at 14 (citing *Fiorito*, 72 Ill.2d 73). This rule “is based on the equitable notion that those who have benefited from

litigation should share in its costs.” *Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007) (citing *Skelton v. Gen. Motors Corp.*, 860 F.2d 250, 252 (7th Cir. 1988)).

In deciding an appropriate fee in such cases, “a trial judge has discretionary authority to choose a percentage[-of-the-recovery] or a lodestar method[.]” *Fauley v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 58 (citing *Brundidge v. Glendale Federal Bank, F.S.B.*, 168 Ill. 2d 235, 243–44 (1995)). Under the percentage-of-the-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. Alternatively, when applying the lodestar approach, the attorneys’ fees to be awarded are calculated by determining the total amount of hours spent by counsel in order to secure the relief obtained for the class at a reasonable hourly rate, multiplied by a “weighted” “risk multiplier” that takes into account various factors such as “the contingency nature of the proceeding, the complexity of the litigation, and the benefits that were conferred upon the class members.” *Id.* at 240.

Here, Plaintiff submits that the Court should apply the percentage-of-the-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. *Fauley*, 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,² it misaligns the interests of Class Counsel and the Settlement Class Members. 5 Newberg on Class Actions § 15:65 (5th ed.) (“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

² See *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 923 (1st Dist. 1995).

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").

For this reason, 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*, 274 Ill. App. 3d at 923.

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-recovery 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-recovery 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, 255–56 (3d. Cir. 1985)); *Sutton*, 504 F.3d at 693 (directing district court on remand to consult the market for legal services so as to arrive at a reasonable percentage of

the common fund recovered). This approach also accurately reflects the contingent nature of the fees negotiated between Class Counsel and Plaintiff, who agreed *ex ante* that up to 38% 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. *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 is 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 Illinois state courts (where the vast majority of BIPA class actions are pending) where the defendant – as here – created a monetary common fund.

However, even under a lodestar cross-check, the requested fee here is reasonable given that, by the time this matter concludes, Class Counsel's combined lodestar in this matter may approach the amount of the requested fee with little or no multiplier. As noted, unlike many other BIPA cases, Plaintiff here could not simply obtain the class list from the Defendant. Instead, Class Counsel was required to pursue subpoenas and motions to compel and engage in protracted negotiations with 21 different law firms and corporate legal departments to identify class member names and addresses. This was a burdensome and time-consuming process that occurred only after the substantial hours already devoted to achieving the settlement.

B. 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.

1. *The requested attorneys’ fees of 38% of the settlement fund is a percentage well within the range found reasonable in similar cases.*

The requested fee award of \$579,975.00 represents 38% of the Settlement Fund. As discussed above, Illinois courts have repeatedly approved attorney fee awards at both the 38% and 40% levels in BIPA settlements, including in Cook County. *See, e.g., Velazquez*, No. 2022-CH-00280 (Cir. Ct. Cook Cnty.); *Gray*, No. 2018-CH-16054 (Cir. Ct. Cook Cnty.); *King*, No. 2021-CH-01602 (Cir. Ct. Cook Cnty.); *Aspel*, No. 23LA59 (Cir. Ct. Grundy Cnty.); *McGowan*, No. 2021L001202 (Cir. Ct. DuPage Cnty.).

That pattern confirms that the 38% request here is squarely in line with prevailing practice and, if anything, conservative compared to the many Cook County cases awarding 40%, which include: *Freeman-McKee v. Alliance Ground Int’l, LLC*, No. 17-CH-13636 (Cir. Ct. Cook Cnty., June 15, 2021) (Demacopoulos, J.) (same); *Prelipceanu v. Jumio Corp.*, No. 18-CH-15883 (Cir. Ct. Cook Cnty., July 21, 2020) (Mullins, J.) (same); *McGee v. LSC Commc’s*, No. 17-CH-12818 (Cir. Ct. Cook Cnty., Aug. 7, 2019) (Atkins, J.) (same); *Heidelberg v. Forman Mills Inc.*, No. 2020-CH-4079 (Cir. Ct. Cook Cnty., Aug. 22, 2023) (Chupack, J.) (same);

Marquez v. Bobak Sausage Co., No. 2020-CH-4259 (Cir. Ct. Cook Cnty., Aug. 21, 2023) (Reilly, J.) (same); *Sekura v. L.A. Tan Enters.*, No. 2015-CH-16694 (Cir. Ct. Cook Cnty., Dec. 1, 2016) (Garcia, J.) (same); *Svagdis v. Alro Steel Corp.*, No. 2017-CH-12566 (Cir. Ct. Cook Cnty., Jan. 14, 2019) (Larsen, J.) (same); *Zhirovetskiy v. Zayo Group, LLC*, No. 2017-CH-09323 (Cir. Ct. Cook Cnty., Apr. 8, 2019) (Flynn, J.) (same); *Zepeda v. Intercontinental Hotels Group, Inc.*, No. 2018-CH-2140 (Cir. Ct. Cook Cnty., Dec. 5, 2018) (Atkins, J.) (same); *Smith v. Pineapple Hospitality Grp.*, No. 2018-CH-06589 (Cir. Ct. Cook Cnty., Jan. 22, 2020) (Moreland, J.) (same); *Williams v. Swissport USA, Inc.*, No. 2019-CH-00973 (Cir. Ct. Cook Cnty., Nov. 12, 2020) (Moreland, J.) (same); *Glynn v. eDriving, LLC*, No. 2019-CH-08517 (Cir. Ct. Cook Cnty., Dec. 14, 2020) (Walker, J.) (same); *Fick v. Timeclock Plus, LLC*, No. 2019-CH-12769 (Cir. Ct. Cook Cnty., Apr. 8, 2021) (Hall, J.) (same); *Knobloch v. ABC Financial Services, LLC*, No. 2017-CH-12266 (Cir. Ct. Cook Cnty., June 25, 2021) (Loftus, J.) (same); *Sharrieff v. Raymond Management Co., Inc., et al.*, No. 2018-CH-01496 (Cir. Ct. Cook Cnty., Aug. 1, 2019) (Cohen, J.).

40% awards are common in Cook County outside the BIPA context as well – for example, in consumer privacy class action settlements. *See Richardson v. Ikea North America Servs.*, No. 21-CH-5392 (Cir. Ct Cook Cnty., August 3, 2023) (Colon, J.) (awarding 40% (or \$9,700,000) of \$24,250,000 common fund in privacy class action under FACTA); *Martin v. Safeway, Inc.*, 20-CH-5480 (Cir. Ct Cook Cnty., May 4, 2022) (Reilly, J.) (awarding 40% (or \$8,000,000) of \$20,000,000 fund in privacy class action under FACTA); *Donahue v. Everi Holdings, Inc.*, No. 2018-CH-15419 (Cir. Ct. Cook Cnty., Dec. 3, 2020) (Atkins, J.) (same); *Nicholas v. iHeartMedia Inc.*, No. 2016-CH-02455 (Cir. Ct. Cook Cnty., Aug. 11, 2016) (Atkins, J.) (TCPA class case granting fee award of 40% of settlement fund).

For class counsel who seek less than 40% in order to provide a greater recovery to the class, 38% is also a common award in BIPA cases. *See, e.g., Rogers v. CSX Intermodal Terminals, Inc.*, No. 19-CH-04168 (Cir. Ct. Cook Cnty., May 13, 2021) (Walker, J.) (attorneys' fee award of 38% of settlement fund in BIPA class settlement); *Vo v. Luxottica of America, Inc.*, No. 19-CH-10946 (Cir. Ct. Cook Cnty., June 8, 2022) (Mullins, J.) (same); *Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97-cv-7694, 2001 WL 1568856, at *4 (N.D. Ill. Dec. 10, 2001) (noting that a "customary contingency fee" ranges "from 33 1/3% to 40% of the amount recovered") (citing *Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986)); *Meyenburg v. Exxon Mobil Corp.*, No. 05-cv-15, 2006 WL 2191422, at *2 (S.D. Ill. July 31, 2006) ("33 1/3% to 40% (plus the cost of litigation) is the standard contingent fee percentages in this legal marketplace for comparable commercial litigation"); Herbert Newberg & Alba Conte, *Newberg on Class Actions* § 15.83 (William B. Rubenstein ed.; 5th ed.) (noting that fifty percent of the fund appears to be an approximate upper limit on fees and expenses). Thus, the request for 38% of the Settlement Fund here is well within the range of attorneys' fees recently approved by numerous courts as reasonable in BIPA class settlements.

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

The Settlement in this case represents an excellent result for the Settlement Class given that Defendant has expressed a firm denial of Plaintiff's material allegations and the intent to raise numerous legal defenses including, among many others, that it did not actually store fingerprints. Many of these defenses, if successful, would result in the Plaintiff and the proposed Settlement Class Members receiving no payment whatsoever. Some of those defenses include that Defendant fully or substantially complied with BIPA's requirements, and that Plaintiff and the Settlement Class Members expressly or impliedly consented to the collection of their alleged

biometric data. Additionally, a decision on the question of whether the BIPA amendment applied retroactively to this case, which would have limited the recovery to just one scan, as opposed to each time a class member scanned in and out, was also a risk both sides had to account for in negotiations.

Taking these realities into account, and recognizing the risks involved in any litigation, the relief afforded to each Settlement Class Member here represents a truly excellent result for the Settlement Class where such Settlement Class Members could ultimately be found to have no valid claims against Defendant.

The Settlement also obviates the need for the time, expense, and motion practice required to resolve Plaintiff's individual claim as well as the significant resources that would be expended through targeted class discovery and adversarial class certification briefing. In the face of these obstacles and unknowns, Class Counsel succeeded in negotiating and securing a settlement on behalf of Settlement Class, which creates a \$1,526,250.00 Settlement Fund and will likely provide valid claimants with several thousand dollars in cash benefits – each.

3. *The substantial benefits obtained on behalf of the Settlement Class Members further justify the requested percentage of attorneys' fees.*

Despite the significant risks inherent in any litigation, and the particular risks presented in this litigation as discussed above, Class Counsel were able to obtain an outstanding result for the Settlement Class. Although the claims deadline is not until October 6, 2025, over 134 claims have already been submitted, and there have been no objections or exclusions. *See Exhibit A* (Peterson Decl., ¶ 4). This reflects the Settlement Class Members' predictably positive reaction to the Settlement.

In addition to the monetary compensation that Class Counsel have obtained for the Settlement Class Members, the Settlement also resulted in EPAY changing its BIPA-related practices. This amounts to non-monetary relief obtained by Class Counsel for Class Members that further justifies the reasonableness of the attorneys' fees being sought here. *See Clarke v. Lemonade, Inc. et al.*, 2022LA000308 (Cir. Ct. DuPage Cnty., Aug. 25, 2022) (Cerne, J.) (factoring value of injunctive relief into approval of class counsel's fee request); *Spano v. Boeing Co.*, No. 06-cv-743, 2016 WL 3791123, at *1 (S.D. Ill. Mar. 31, 2016) ("A court must also consider the overall benefit to the Class, including non-monetary benefits, when evaluating the fee request. This is important so as to encourage attorneys to obtain meaningful affirmative relief") (citing *Beesley v. Int'l Paper Co.*, No. 06-cv-703, 2014 U.S. Dist. LEXIS 12037, at *5 (S.D. Ill. Jan 31, 2014)); Manual for Complex Litigation, Fourth, § 21.71, at 337 (2004)); *see also Hall v. Cole*, 412 U.S. 1, 5 n.7 (1973) (awarding attorneys' fees when relief is obtained for the class "must logically extend, not only to litigation that confers a monetary benefit to others, but also litigation which corrects or prevents an abuse which would be prejudicial to the rights and interests of those others").

Given the significant monetary compensation obtained for the Settlement Class Members as well as Defendant's practice changes, an attorneys' fee award of 38% of the Settlement Fund, plus expenses, is reasonable and fair compensation—particularly, as discussed above, in light of the uncertainty and fluid nature of the relevant law, the "substantial risk in prosecuting this case under a contingency fee agreement" and the "defenses asserted by [Defendant]." *Fauley*, 2016 IL App (2d) 150236, ¶ 59.

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

Class Counsel has expended \$2,224.58 in reimbursable expenses related to filing fees, service fees (including multiple subpoenas) and case administration. **Exhibit A** (Peterson Decl., ¶ 3); **Exhibit B** (Martin Jaszczuk Declaration ¶ 4). Courts regularly award reimbursement of the expenses counsel incurred in prosecuting the litigation. *See, e.g., Kaplan v. Houlihan Smith & Co.*, No. 12-cv-5134, 2014 WL 2808801, at *4 (N.D. Ill. June 20, 2014) (awarding expenses “for which a paying client would reimburse its lawyer”); *Spicer v. Chicago Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1256 (N.D. Ill. 1993) (detailing and awarding expenses incurred during litigation). Therefore, Class Counsel request the Court approve as reasonable the incurred expenses, which total \$2,224.58.

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

The requested \$7,500.00 Incentive Award is reasonable compared to other incentive awards granted to class representatives in similar class actions. Because a named plaintiff is essential to any class action, “[i]ncentive awards are justified when necessary to induce individuals to become named representatives.” *Spano*, 2016 WL 3791123, at *4 (approving incentive awards of \$25,000 and \$10,000 for class representatives) (internal citation omitted); *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 497 (1st Dist. 1992) (noting that incentive awards “are not atypical in class action cases . . . and serve to encourage the filing of class actions suits.”).

Here, Plaintiff's efforts and participation in prosecuting this case justify the \$7,500.00 Incentive Award sought. Even though no awards of any sort were 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, as well as in serving as representative on

behalf of the Settlement Class Members—exhibiting a willingness to participate and undertake the responsibilities and risks attendant with bringing a representative action. Plaintiff participated in the initial investigation of her claims and provided information to Class Counsel to aid in preparing the initial pleadings, reviewed the pleadings prior to filing, consulted with Class Counsel on numerous occasions, attended mediation, and reviewed and provided feedback on a number of other filings including the Settlement Agreement. Were it not for Plaintiff’s willingness to bring this action on a class-wide basis against her employer’s vendor (which many individuals might fear would cost them their job) and her efforts and contributions to the litigation through settlement, the substantial benefits to the Settlement Class Members afforded under the Settlement Agreement would not exist.

Numerous courts that have granted final approval in similar class action settlements have awarded significantly higher incentive awards than the \$7,5000 award sought here. *See, e.g., Aspel v. Incode Technologies Inc.*, No. 23LA59 (Cir. Ct. Grundy Cnty., Nov. 27, 2024) (awarding \$10,000); *McGowan v. Veriff, Inc.*, No. 2021L001202 (Cir. Ct. DuPage Cnty., May 10, 2023) (awarding \$10,000); *McRapai v. Hyatt Corp.*, 17-CH-14483 (Cir. Ct. Cook Cnty., Jan. 26, 2022) (Demacopoulos, J.) (awarding \$12,500 incentive award to BIPA class representative); *Rogers v. CSX Intermodal Terminal, Inc.*, No. 19-CH-04168 (Cir. Ct. Cook Cnty., May 13, 2023) (Walker, J.) (awarding \$15,000 incentive award in BIPA class action); *Vo v. Luxottica of America, Inc.*, 19-CH-10946 (Cir. Ct. Cook Cnty., June 8, 2022) (Mullen, J.) (awarding \$10,000 incentive award in BIPA class action).

Accordingly, an Incentive Award of \$7,500.00 to Plaintiff is eminently justified given the time and effort expended by Plaintiff in this case.

V. CONCLUSION

For the foregoing reasons, Plaintiff and Class Counsel respectfully request that the Court enter an Order: (1) approving an award of attorneys' fees in the amount of \$579,975.00 and expenses in the amount of \$2,224.58; and (ii) approving an Incentive Award of \$7,500 to Plaintiff in recognition of her significant effort on behalf of the Settlement Class Members.

Dated: September 15, 2025

Respectfully submitted,

/s/ Martin W. Jaszczuk

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/s/ Matthew T. Peterson

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Attorneys for Plaintiff and the Class

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be filed via the Court's electronic filing system on September 15, 2025.

/s/ Martin W. Jaszczuk

Hearing Date: No hearing scheduled
Location: <<CourtRoomNumber>>
Judge: Calendar, 13

FILED
9/15/2025 3:00 PM
Mariyana T. Spyropoulos
CIRCUIT CLERK
COOK COUNTY, IL
2024CH04688
Calendar, 13
34451541

FILED DATE: 9/15/2025 3:00 PM 2024CH04688

-EXHIBIT A-

CHANCERY COURT OF COOK COUNTY, ILLINOIS

Halina Mrozek, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

EPAY Systems, Inc.,

Defendant.

No. 2024CH04688

Hon. Lynn Weaver Boyle

**DECLARATION OF MATTHEW PETERSON IN SUPPORT OF PLAINTIFF'S
MOTION FOR ATTORNEYS' FEES, EXPENSES AND INCENTIVE AWARDS**

1. I am the owner of Consumer Law Advocate, PLLC ("CLA"). My firm, referred to as Plaintiff's Counsel or Class Counsel, represents Halina Mrozek in this action (the "Action"). I am submitting this declaration in support of Plaintiff's Motion for Attorneys' Fees, Expenses & Incentive Awards. I have personal knowledge of these matters set forth below based on my active participation in all aspects of the prosecution and settlement of this litigation.

2. CLA is a law firm that only litigates plaintiff side class actions in state and federal courts. Particularly, class actions involving consumer protection and data privacy.

3. CLA has incurred \$110.00 in reimbursable expenses for serving subpoenas on EPAY's customers.

4. After notice was issued in this action, to date, 134 claims have been submitted and there have been no objections or exclusions from the settlement.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Executed this 15th day of September 2025, in Chicago, Illinois.

/s/ Matthew T. Peterson
Matthew Peterson

Hearing Date: No hearing scheduled
Location: <<CourtRoomNumber>>
Judge: Calendar, 13

FILED
9/15/2025 3:00 PM
Mariyana T. Spyropoulos
CIRCUIT CLERK
COOK COUNTY, IL
2024CH04688
Calendar, 13
34451541

FILED DATE: 9/15/2025 3:00 PM 2024CH04688

-EXHIBIT B-

CHANCERY COURT OF COOK COUNTY, ILLINOIS

Halina Mrozek, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

EPAY Systems, Inc.,

Defendant.

No. 2024CH04688

Hon. Lynn Weaver Boyle

**DECLARATION OF MARTIN JASZCZUK IN SUPPORT OF PLAINTIFF’S MOTION
FOR ATTORNEYS’ FEES, EXPENSES AND INCENTIVE AWARDS**

1. I am the CEO of Jaszczuk P.C. (“Jaszczuk P.C.”). My firm, referred to as Plaintiff’s Counsel or Class Counsel, represents Halina Mrozek in this action (the “Action”). I am submitting this declaration in support of Plaintiff’s Motion for Attorneys’ Fees, Expenses & Incentive Awards. I have personal knowledge of the matters set forth below based on my active participation in all aspects of the prosecution and settlement of this litigation.

2. Jaszczuk P.C. is a law firm that concentrates its practice on complex litigation, including class actions, in state and federal courts.

3. The class administrator retained to administer the present settlement has informed me that, as of September 15, 2025, there have been no objections to the settlement, no requests for exclusion from the settlement, and 134 claims have been received.

4. Jaszczuk P.C. has incurred \$2,114.58 in reimbursable expenses in this action, broken down as follows:

Date	Description	Bill Amt/ Sell Price
05/20/2024	Cook County filing fee for complaint.	\$620.94
05/21/2024	Cook County filing fee for motion for class cert and Rule 222.	\$4.00
05/23/2024	Cook County filing fee for appearance of counsel.	\$260.31
05/24/2024	Invoice #17553488 from ABC Legal for serving summons.	\$210.00
05/29/2024	Cook County filing fee for affidavit of service.	\$4.00
11/14/2024	Cook County filing fee for motion to appoint interim class counsel.	\$4.00
11/14/2024	Cook County filing fee for notice of motion to appoint interim class counsel.	\$4.00
12/10/2024	Cook County filing fee for unopposed motion to reschedule.	\$4.00
03/07/2025	Subpoena sent to UG2 via UPS overnight.	\$26.81
03/07/2025	Subpoena sent to Prestige Maintenance USA via UPS overnight.	\$21.85
03/07/2025	Subpoena sent to MSA Security via UPS overnight.	\$26.81
03/07/2025	Subpoena sent to Midway Group via UPS overnight.	\$26.81
03/07/2025	Subpoena sent to Midway Corporate via UPS overnight.	\$26.81
03/07/2025	Subpoena sent to Liberty Staffing via UPS overnight.	\$21.85
03/07/2025	Subpoena sent to ISS Facility Services via UPS overnight.	\$26.81
03/07/2025	Subpoena sent to Integrated Maintenance via UPS overnight.	\$26.81
03/07/2025	Subpoena sent to Express Employment Professionals via UPS overnight.	\$21.85
03/07/2025	Subpoena sent to Blue Chip 2000 Commercial Cleaning via UPS overnight.	\$18.39
03/07/2025	Subpoena sent to Blue Chip 2000 Commercial Cleaning via UPS, returned.	\$21.85
03/10/2025	Subpoena sent to Harvard Services via UPS overnight.	\$63.57
03/11/2025	Subpoena sent to Blue Chip 2000 Commercial Cleaning with corrected address via UPS overnight.	\$31.11
03/24/2025	Cook county filing fee for motion for preliminary approval of class action settlement.	\$4.00
03/31/2025	Invoice 21303468 from ABC Legal for process service of subpoena to PMUSA.	\$150.00
03/31/2025	Invoice 21303406 from ABC Legal for process service of subpoena to Harvard Services.	\$150.00
03/31/2025	Invoice 21303456 from ABC Legal for process service of subpoena to Liberty Staffing.	\$150.00
03/31/2025	Invoice 21303438 from ABC Legal for process service of subpoena to Integrated Maintenance.	\$160.00
04/11/2025	Cook County filing fee for motion for rule to show cause against Blue Chip.	\$4.00
04/11/2025	Cook County filing fee for motion for rule to show cause against MSA.	\$4.00
05/07/2025	Cook County filing fee for our reply in support of motion for rule to show cause.	\$4.00
05/22/2025	Cook county filing fee for amended motion for preliminary approval.	\$4.00
05/22/2025	Cook county filing fee for notice of motion re amended motion for preliminary approval.	\$4.00
06/16/2025	Cook county filing fee for joint motion to withdraw subpoena.	\$4.00
06/16/2025	Cook county filing fee for notice of motion.	\$4.00
	TOTAL	\$2,114.58

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Executed this 15th day of September 2025, in Chicago, Illinois.

/s/ Martin Jaszczuk
Martin Jaszczuk