Hearing Date: No hearing scheduled
Location: <<CourtRoomNumber>>
Judge: Calendar, 15

FILED
5/1/2024 10:07 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2019CH00987
Calendar, 15
27515403

FILED DATE: 5/1/2024 10:07 PM 2019CH00987

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

ANNETTE WELLS and JOHNNIE TYLER, individually and on behalf of all others similarly situated, *Plaintiffs*, v. RELISH LABS LLC, *Defendant*.	Case No. 2019-CH-00987 Hon. Anna M. Loftus

PLAINTIFFS' MOTION & MEMORANDUM OF LAW IN SUPPORT OF APPROVAL OF ATTORNEYS' FEES, EXPENSES, & SERVICE AWARDS

Plaintiffs Annette Wells and Johnnie Tyler, by and through their attorneys, and pursuant to 735 ILCS 5/2-801, hereby move for an award of attorneys' fees and expenses for Class Counsel, as well as service awards for Plaintiffs as the Class Representatives in connection with the class action settlement with Defendant Relish Labs LLC. In support of this Motion, Plaintiffs submit the following memorandum of law.

Dated: May 1, 2024

Evan M. Meyers
Timothy P. Kingsbury
Jordan R. Frysinger
McGuire Law, P.C.
(Firm ID: 56618)
55 West Wacker Drive, 9th Fl.
Chicago, Illinois 60601
emeyers@mcpgpc.com
tkingsbury@mcgpc.com
frysinger@mcgpc.com
Tel: (312) 893-7002

Kasif Khowaja
The Khowaja Law Firm, LLC
(Firm ID: 58402)
8 S. Michigan Ave., 26th Fl.
Chicago, IL 60603
kasif@khowajalaw.com
Tel: (312) 356-3200

James X. Bormes
Law Office of James X. Bormes, P.C.
(Firm ID: 33422)
8 S. Michigan Ave., Suite 2600
Chicago, IL 60603
jxbormes@bormeslaw.com
Tel: (312) 201-0575

Counsel for Plaintiffs and Class Counsel

FILED DATE: 5/1/2024 10:07 PM 2019CH00987

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 2

A. BIPA 2

B. The Case And Procedural History 3

1. Plaintiffs' Allegations 3

2. Procedural History and the Parties' Settlement Negotiations 3

III. THE SETTLEMENT 5

A. The Settlement Class Members Receive Excellent Monetary And Non-Monetary Relief From The Settlement 5

B. Pursuant To The Settlement Administrator's Notice Plan, Direct Notice Has Been Sent To The Class Members 5

IV. ARGUMENT 6

A. The Court Should Award Class Counsel's Requested Attorneys' Fees 6

B. Class Counsel's Requested Fees Are Reasonable Under The Percentage-Of-The-Recovery Method Of Calculating Attorneys' Fees 9

1. ***The requested attorneys' fees of 40% of the settlement fund is a percentage well within the range found reasonable in similar cases.*** 9

2. ***The requested percentage of attorneys' fees is appropriate given the significant risks involved in continued litigation*** 10

3. The substantial relief obtained on behalf of the Settlement Class Members further justify the requested percentage of attorneys' fees 11

C. The Court Should Also Award Class Counsel's Requested Reimbursable Litigation Expenses 13

D. The Agreed-Upon Service Awards For Plaintiffs Are Reasonable And Should Be Approved 13

V. CONCLUSION 14

FILED DATE: 5/1/2024 10:07 PM 2019CH00987

TABLE OF AUTHORITIES

Cases

Baksinski v. Northwestern Univ.
231 Ill. App. 3d 7 (1st Dist. 1992) 6

Beesley v. Int'l Paper Co.,
No. 06-cv-703, 2014 U.S. Dist. LEXIS 12037 (S.D. Ill. Jan 31, 2014) 12

Boeing Co. v. Van Gemert,
444 U.S. 472 (1980) 6

Brundidge v. Glendale Federal Bank, F.S.B.,
168 Ill. 2d 235 (1995) 7

Court Awarded Attorney Fees, Report of the Third Circuit Task Force,
108 F.R.D. 237 (3d. Cir. 1985) 8

Fiorito v. Jones,
72 Ill.2d 73 (1978) 6

Glynn v. eDriving, LLC,
2019-CH-08517 (Cir. Ct. Cook Cnty., Ill. Dec. 14, 2020) 10

Gonzalez v. Silva Int'l, Inc.,
2020-CH-03514 (Cir. Ct. Cook County, Ill. June 24, 2021) 14

GMAC Mortg. Corp. of Pa. v. Stapleton,
236 Ill. App. 3d 486 (1st Dist. 1992) 13

Hall v. Cole,
412 U.S. 1 (1973) 12

Kaplan v. Houlihan Smith & Co.,
No. 12 C 5134, 2014 WL 2808801 (N.D. Ill. June 20, 2014) 13

Kirchoff v. Flynn,
786 F.2d 320, 324 (7th Cir. 1986) 10

Rapai v. Hyatt Corp.,
2017-CH-14483 (Cir Ct. Cook County, Ill. Jan. 26, 2022) 14

Retsky Family Ltd. P'ship v. Price Waterhouse LLP,
No. 97 C 7694, 2001 WL 1568856 (N.D. Ill. Dec. 10, 2001) 10

Rogers v. CSX Intermodal Terminal, Inc.,
No. 19-CH-04168 (Cir. Ct. Cook Cnty., Ill. May 13, 2021) 14

Ryan v. City of Chicago,
274 Ill. App. 3d 913 (1st Dist. 1995) 8

FILED DATE: 5/1/2024 10:07 PM 2019CH00987

Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.,
2016 IL App (2d) 150236 7

Skelton v. Gen. Motors Corp.,
860 F.2d 250, 252 (7th Cir. 1988) 7

Spano v. Boeing Co.,
No. 06-cv-743, 2016 WL 3791123 (S.D. Ill. Mar. 31, 2016) 12

Spicer v. Chicago Bd. Options Exch., Inc.,
844 F. Supp. 1226 (N.D. Ill. 1993) 13

Sutton v. Bernard,
504 F.3d 688 (7th Cir. 2007) 7

Svagdis v. Alro Steel Corp.,
No. 2017-CH-12566 (Cir. Ct. Cook Cnty., Ill.) 10

Wendling v. S. Ill. Hosp. Servs.,
242 Ill. 2d 261 (2011) 6

Statutes

740 ILCS 14/1 1

740 ILCS 14/15 4

Other Sources

5 Newberg on Class Actions § 15:65 (5th ed.) 7

Manual for Complex Litigation, Fourth, § 21.71, at 337 (2004) 12

FILED DATE: 5/1/2024 10:07 PM 2019CH00987

I. INTRODUCTION

The Settlement[1] that Class Counsel have achieved in this case is an exceptional result for Settlement Class Members, as the amount recovered is substantial and on the high end of BIPA settlements involving claims brought against employers utilizing biometric timekeeping technology. The Parties' Agreement has established a non-reversionary Settlement Fund of $1,195,575.00 to provide each valid claimant with an equal, *pro rata* distribution of the Settlement Fund for having their biometrics collected and used by Defendant Relish Labs LLC ("Defendant") in alleged violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA"). In addition to the substantial financial benefit made available to the Settlement Class Members, the Settlement also 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 March 11, 2024. Direct Notice of the Settlement commenced on April 10, 2024. As of the filing of this Motion, no Settlement Class Member has objected to the Settlement or requested to be excluded.

With this Motion, Class Counsel request a fee of 40% of the total Settlement Fund, amounting to $478,230.00, plus their litigation expenses. As explained in detail below, Class Counsel's requested fee award is justified given the outstanding relief provided under the Settlement, is consistent with Illinois law and fee awards granted in other cases in Illinois courts, and is also reasonable given the time Class Counsel have committed to resolving this litigation for the benefit of the Settlement Class Members.

[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 1 to Plaintiff's previously filed Motion for Preliminary Approval.

FILED DATE: 5/1/2024 10:07 PM 2019CH00987

Both Class Counsel and the Class Representative devoted significant time and effort to the prosecution of the Settlement Class Members' claims,[2] and their efforts have yielded an excellent benefit to the Class. The requested attorneys' fees and costs and Service Awards are amply justified in light of the investment, significant risks, and excellent results obtained for the Settlement Class Members in this five-year-old litigation, particularly given the substantial uncertainty regarding the state of BIPA when this Settlement was reached, and the continuous, ongoing shifts in the landscape of BIPA litigation. Plaintiffs and Class Counsel respectfully request that the Court approve attorneys' fees and reasonable expenses of $484,800.75 and the agreed-upon Service Awards of $6,500 each for Plaintiffs as Class Representatives.

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 which 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

[2] (*See* Declaration of Evan M. Meyers ("Meyers Decl."), attached hereto as Exhibit 1, ¶¶ 10–14; Declaration of James X. Bomes ("Bormes Decl."), attached hereto as Exhibit 2, ¶¶ 9, 13-15; Declaration of Kasif Khowaja ("Khowaja Decl."), attached hereto as Exhibit 3, ¶ 6).

FILED DATE: 5/1/2024 10:07 PM 2019CH00987

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 ICLS 14/15.

BIPA was enacted in large part to protect individuals' biometrics, provide them with a means of enforcing those statutory rights, and regulate the practice of collecting, using and disseminating such sensitive biometric information.

B. The Case and Procedural History

1. *Plaintiffs' Allegations*

Defendant is a Delaware limited liability company headquartered in Chicago that provides meal kit and food delivery services to consumers. Plaintiffs were employed by Defendant as line prep workers in 2017. Plaintiffs allege that while they worked for Defendant, Defendant required them to clock in and clock out of each work shift using their biometrics, *i.e.* scans of their fingers, in order to authenticate their identities. Plaintiffs further allege that even though their biometrics were captured, stored, and used, by Defendant, Plaintiffs were not provided with any written disclosures concerning Defendant's biometric collection practices and Defendant did not obtain their written consent, Defendant failed to establish a written, publicly-available biometric retention and destruction policy, and Defendant never obtained Plaintiffs' consent to disseminate their biometrics to its third-party timekeeping vendors. Thus, Plaintiffs allege that Defendant has violated their biometric privacy rights as afforded under BIPA.

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

Plaintiffs' lawsuit was filed on February January 24, 2019, in the Circuit Court of Cook County, Illinois. On April 10, 2019, Defendant filed a Motion to Dismiss, contending that: (1) BIPA claims are subject to a one-year limitations period such that Plaintiffs' claims are untimely;

FILED DATE: 5/1/2024 10:07 PM 2019CH00987

(2) Plaintiffs' claims are preempted by the Illinois Workers' Compensation Act; and (3) in light of a scrivener's error in the complaint's class definition identifying the start of the class period as January 24, 2019, Plaintiffs' class allegations should be stricken because they worked for Defendant in 2017. On June 8, 2020, the Court issued a Memorandum Opinion & Order denying Defendant's Motion except as to Plaintiffs' class definition, and directed Plaintiffs to file an amended complaint correcting the scrivener's error. Plaintiffs filed their operative Amended Class Action Complaint on June 10, 2020, asserting claims against Defendant under Sections 15(a), (b), and (d) of BIPA. 740 ILCS 14/15(a)-(b), (d). On June 19, 2020, Defendant moved to stay the case pending appellate decisions in *Tims v. Black Horse Carriers, Inc.* and *McDonald v. Symphony Bronzeville Park, LLC*. On June 26, 2020, the Court entered an Order staying the case.

On March 23, 2023, following the Illinois Supreme Court's resolutions of *Tims*, *McDonald*, and *Cothron v. White Castle System, Inc.*, the Court entered an Order lifting the stay. On May 1, 2023, Defendant filed its Answer. On May 12, 2023, the Court entered an Order directing the Parties to proceed with written discovery.

During discovery, the Parties agreed to attempt to resolve the Litigation through participation in a full-day mediation session overseen by the Honorable Thomas R. Allen (Ret.) of ADR Systems, a former Circuit Court Judge of the Circuit Court of Cook County, Chancery Division. On October 18, 2023, the Parties engaged in a full-day, arm's-length mediation session with Judge Allen. With the assistance of Judge Allen, the Parties negotiated a settlement in principle. Counsel for the Parties expended significant efforts to reach a settlement, including but not limited to exchanging information regarding Defendant's timekeeping system, identifying potential class members, and participating in contentious, arm's-length negotiations. The Parties continued negotiating certain terms over the following months and were ultimately able to agree

FILED DATE: 5/1/2024 10:07 PM 2019CH00987

upon the terms of a settlement that the Court preliminarily approved on March 11, 2024. Direct notice was disseminated to the Settlement Class Members by U.S. Mail on April 10, 2024.

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 $1,195,575.00 Settlement Fund (Agreement, ¶ 49(a)), and each valid claimant will be entitled to an equal share of the fund after deductions of administration costs and the Court-approved attorneys' fees and Service Awards. Although the per-claimant amount will necessarily depend on the number of valid claims ultimately filed, due to the size of the Settlement Fund it is conservatively estimated that each Settlement Class Member will receive a check for at least $1,500-2,000.[3]

The Settlement also provides valuable non-monetary relief to the Settlement Class. Defendant represents that it agrees to comply or remain compliant with all BIPA requirements going forward, including BIPA's consent and retention policy requirements. (Ex. 1, ¶ 67). This non-monetary relief benefits both the Settlement Class Members and future employees of Defendant.

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

Under the Settlement Agreement's Notice Plan, which has already gone into effect, direct notice has been provide by U.S. Mail to the Settlement Class Members. (Meyers Decl., ¶ 16). In addition, the Settlement Website is operational and makes available the Claim Form, detailed Long

[3] The Settlement Class is comprised of 839 individuals (Agreement, ¶ 45).

FILED DATE: 5/1/2024 10:07 PM 2019CH00987

Form Notice (including a Spanish-language version), and all relevant case information to Settlement Class Members, and permits the Settlement Class Members to submit claims online as well as requests for exclusion online if they so choose. To date, *no* Class Members have objected to the Settlement or elected to exclude themselves (*Id.*).

IV. ARGUMENT

A. The Court Should Award Class Counsel's Requested Attorneys' Fees.

Pursuant to the Settlement, Class Counsel seek attorneys' fees in the amount of $478,230.00, which amounts to 40% of the Settlement Fund, plus $6,570.75 in reimbursable expenses. (Agreement, ¶ 95). Such a request is within the range of fees approved in other class actions and is fair and reasonable in light of the work performed by Class Counsel and the 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

FILED DATE: 5/1/2024 10:07 PM 2019CH00987

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[.]" *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 58 (citing *Brundidge v. Glendale Federal Bank, F.S.B.*, 168 Ill. 2d 235, 243–44 (1995)). Here, Plaintiffs submit 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,[4] 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 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

[4] *See Langendorf v. Irving Trust Co.*, 244 Ill. App. 3d 70, 80 (1st Dist. 1992), abrogated on other grounds by 168 Ill. 2d 235.

FILED DATE: 5/1/2024 10:07 PM 2019CH00987

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-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). This approach also accurately reflects the contingent nature of the fees negotiated between Class Counsel and Plaintiffs, 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. (Bormes Decl., ¶ 11).

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 defendant – as here – created a monetary common fund. *See, e.g.,*

FILED DATE: 5/1/2024 10:07 PM 2019CH00987

Knobloch v. ABC Financial Services, LLC et al., No. 17-CH-12266 (Cir. Ct. Cook County, Ill. June 26, 2021) (Loftus, J.); *Rapai v. Hyatt Corp.*, No. 2017-CH-14483 (Cir. Ct. Cook County, Ill. Jan. 26, 2022); *Marzec v. Reladyne, LLC*, No. 2018-CH-14101 (Cir. Ct. Cook County, Ill. Dec. 15, 2022); *Marquez v. Bobak Sausage Co.*, No. 2020-CH-04259 (Cir. Ct. Cook County, Ill. Aug. 21, 2023).

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.

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 exceptional 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 40% of the settlement fund is a percentage within the range found reasonable in similar cases.*

The requested fee award of $478,230.00 represents 40% of the Settlement Fund. This percentage is within the range of attorneys' fee awards that courts, including this Court and other judges within the Circuit Court of Cook County, have found reasonable in other class action settlements. In fact, fee awards of 40% have been awarded in numerous separate BIPA class action settlements in the Circuit Court of Cook County and other Illinois courts. *See, e.g., Knobloch v. ABC Financial Services, LLC et al.*, No. 17-CH-12266 (Cir. Ct. Cook Cnty., Ill. 2021) (Loftus, J.)

FILED DATE: 5/1/2024 10:07 PM 2019CH00987

(awarding 40% of the BIPA class settlement fund in attorneys' fees); *Marquez v. Bobak Sausage Co.*, No. 2020-CH-04259 (Cir. Ct. Cook County, Ill. Aug. 21, 2023) (Reilly, J.) (same); *Willoughby v. Lincoln Insurance Agency*, No. 22-CH-01917 (Cir. Ct. Cook Cnty., Ill. 2022) (Cohen, J.) (same); *Rapai*, No. 17-CH-14483 (Cir. Ct. Cook Cnty., Ill. 2022) (Demacopoulos, J.) (same); *Bodie v. Capitol Wholesale Meats, Inc.*, 22-CH-000020 (Cir. Ct. DuPage Cnty., Ill. 2022); *Fick v. Timeclock Plus, LLC*, No. 2019-CH-12769 (Ill. Cir. Ct. Cook Cty. 2021) (Hall, J.); *Prelipceanu v. Jumio Corp.*, No. 18-CH-15883 (Cir. Ct. Cook Cnty. Ill. 2020) (Mullen, J.) (same); *Smith v. Pineapple Hospitality Grp.*, No. 18-CH-06589 (Cir. Ct. Cook Cnty., Ill. 2020) (Moreland, J.) (same); *Glynn v. eDriving, LLC*, No. 2019-CH-08517 (Ill. Cir. Ct. Cook Cty. 2020) (Walker, J.); *McGee v. LSC Commc's*, 17-CH-12818 (Cir. Ct. Cook Cnty., Ill. 2019) (Atkins, J.) (same); *Zhirovetskiy et al. v. Zayo Group LLC,* No. 17-CH-09323 (Cir. Ct. Cook Cnty., Ill., 2019) (Flynn, J.) (same); *Svagdis v. Alro. Steel Corp*, No. 17-CH-12566 (Cir. Ct. Cook Cnty., Ill., 2018) (Larsen, 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)). Thus, Plaintiffs' request of 40% of the Settlement Fund is reasonable and within the range of fees recently approved by courts in this Circuit in BIPA class action settlements

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

The Settlement in this case, which has now been pending for more than five years, represents an excellent result for the Settlement Class given that Defendant has expressed a firm denial of Plaintiffs' material allegations and has raised several defenses, including that Plaintiffs and the Settlement Class Members consented to Defendant's timekeeping practices and assumed any risks associated with using Defendant's timeclocks. Any of these defenses, if successful,

FILED DATE: 5/1/2024 10:07 PM 2019CH00987

would likely result in Plaintiffs and proposed Settlement Class Members receiving no payment whatsoever—a risk that is only increased over time by the ever-changing BIPA landscape.

In the face of these obstacles and unknowns, Class Counsel succeeded in negotiating and securing a settlement which creates a $1,195,575.00 Settlement Fund and provides valid claimants with the ability to receive substantially the same or greater recovery than their expected statutory damages under BIPA. The Settlement's provision of excellent monetary relief to each valid claimant now, as opposed to years from now, or perhaps never, represents a truly excellent result.

3. *The substantial relief obtained on behalf of the Settlement Class Members further justifies 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. As stated above, the Settlement Agreement provides for the creation of a $1,195,575.00 Settlement Fund, which will be split equally among valid claimants after Court-approved fees and costs. Although the Claims Deadline is not for another six weeks, the size of the Settlement Fund (valued at $1,425 per Class Member gross) makes it very likely that Class Members who file valid claims will receive at least $1,500 net—an outstanding result compared to other BIPA settlements recently approved in the Circuit Court of Cook County. *See, e.g.*, *Gutierrez v. Senior Lifestyle Corp.* No. 2017-CH-11314 (Cir. Ct. Cook Cnty., Ill. 2024) (finally-approved BIPA settlement created a $3,310,800 fund for 2,679 class members, or approximately $1,235 per class member gross); *LaPrade v. Indeck Power Equipment Co.*, 21-CH-00805 (Cir. Ct. Cook Cnty., Ill. 2023) (finally-approved BIPA settlement created a $66,825 fund for 66 class members, or approximately $1,000 per class member gross); *Cruz v. Jame Roll Form Products*, No. 21-CH-04132 (Cir. Ct. Cook Cnty., Ill. 2023) (finally-approved BIPA settlement created a $538,125 fund for 1,025 class members, or $525 per class member gross); *Woods v. Fleetpride,*

FILED DATE: 5/1/2024 10:07 PM 2019CH00987

Inc., No. 20-CH-07558 (Cir. Ct. Cook Cnty., Ill. 2023) (finally-approved BIPA settlement created a $72,250 fund for 85 class members, or $850 per class member gross).

Additionally, under the terms of the Settlement Agreement negotiated by Class Counsel, Defendant represents that it agrees to comply or remain compliant with all BIPA requirements going forward, including BIPA's consent and retention policy requirements. (Ex. 1, ¶ 67). This non-monetary relief obtained by Class Counsel further justifies the reasonableness of the attorneys' fees being sought here. *See Spano v. Boeing Co.*, No. 06-cv-743, 2016 WL 3791123, at *1 (S.D. Ill. Mar. 31, 2016) ("A court must also consider the overall benefit to the Class, including non-monetary benefits, when evaluating the fee request. . . . This is important so as to encourage attorneys to obtain meaningful affirmative relief") (citing *Beesley v. Int'l Paper Co.*, No. 06-cv-703, 2014 U.S. Dist. LEXIS 12037, at *5 (S.D. Ill. Jan 31, 2014)); Manual for Complex Litigation, Fourth, § 21.71, at 337 (2004)); *see also Hall v. Cole*, 412 U.S. 1, 5 n.7 (1973) (awarding attorneys' fees when relief is obtained for the class "must logically extend, not only to litigation that confers a monetary benefit to others, but also litigation which corrects or prevents an abuse which would be prejudicial to the rights and interests of those others.").

Given the significant monetary compensation obtained for the Settlement Class Members and the non-monetary relief, an attorneys' fee award of 40% 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]." *Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 59.[5]

[5] To the extent this Court nonetheless has any concerns as to the application of the percentage-of-the-recovery approach in awarding attorneys' fees and wishes to conduct a lodestar analysis, Class Counsel will submit their lodestars.

FILED DATE: 5/1/2024 10:07 PM 2019CH00987

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

Class Counsel have expended $6,570.75 in reimbursable expenses related to filing fees and case administration. (Meyers Decl., ¶ 15; Bormes, Decl. ¶ 10). 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, a request which Defendant does not oppose. Accordingly, this Court should award a total fee and expense award to Class Counsel of $484,800.75.

D. The Agreed-Upon Service Awards For Plaintiffs Are Reasonable And Should Be Approved.

The requested $6,500.00 Service Awards are reasonable compared to other service 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 service 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 service awards "are not atypical in class action cases . . . and serve to encourage the filing of class actions suits.").

Here, Plaintiffs' efforts and participation in prosecuting this five-year-old case justify the $6,500.00 Service Awards sought. Even though no award of any sort was promised to Plaintiffs prior to the commencement of the litigation or any time thereafter, Plaintiffs nonetheless contributed their time and effort in pursuing their own BIPA claim, as well as in serving as representatives on behalf of the Settlement Class Members—exhibiting a willingness to participate

FILED DATE: 5/1/2024 10:07 PM 2019CH00987

and undertake the responsibilities and risks attendant with bringing a representative action. (Bormes Decl., ¶¶ 11–15).

Plaintiffs 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, and provided feedback on a number of other filings including, most importantly, the Settlement Agreement. (*Id*., ¶ 12–13). Were it not for Plaintiffs' 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.*, ¶ 14).

Numerous courts that have granted final approval in similar class action settlements have awarded the greater service awards than those sought here. *See, e.g.*, *Rapai v. Hyatt Corp.*, 17-CH-14483 (Cir. Ct. Cook County, Ill.) (awarding $12,500 service award to BIPA class representative); *Rogers v. CSX Intermodal Terminal, Inc.*, No. 19-CH-04168 (Cir. Ct. Cook County, Ill.) (awarding $15,000 service award in BIPA class action); *Knobloch*, No. 17-CH-12266 (Cir. Ct. Cook County, Ill.) (Loftus, J.) (awarding $10,000 service award in BIPA class action); *Vo v. Luxottica of America, Inc.*, 19-CH-10946 (Cir. Ct. Cook County, Ill.) (same)*; Roach v. Wal-Mart, Inc.*, No. 19-CH-1107 (Cir. Ct. Cook Cnty, Ill.) (same); *Gonzalez v. Silva Int'l, Inc.*, No. 2020-CH-03514 (same).

Accordingly, Service Awards of $6,500.00 each are eminently justified by Plaintiffs' time and efforts in this case and should be approved.

V. CONCLUSION

For the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court enter an Order: (1) approving an award of attorneys' fees and expenses of $484,800.75; and (ii)

FILED DATE: 5/1/2024 10:07 PM 2019CH00987

approving Service Awards in the amount of $6,500.00 each to Plaintiffs in recognition of their significant efforts on behalf of the Settlement Class Members.

Dated: May 1, 2024

Respectfully submitted,

ANNETTE WELLS and JOHNNIE TYLER, individually and on behalf of all others similarly situated

By: /s/ Timothy P. Kingsbury
One of Plaintiffs' Attorneys

Evan M. Meyers
Timothy P. Kingsbury
Jordan R. Frysinger
McGUIRE LAW, P.C.
(Firm ID: 327349)
55 West Wacker Drive, 9th Fl.
Chicago, Illinois 60601
emeyers@mcpgpc.com
tkingsbury@mcgpc.com
jfrysinger@mcgpc.com
Tel: (312) 893-7002

Kasif Khowaja
THE KHOWAJA LAW FIRM, LLC
(Firm ID: 58402)
8 S. Michigan Ave., 26th Fl.
Chicago, IL 60603
kasif@khowajalaw.com
Tel: (312) 356-3200

James X. Bormes
LAW OFFICE OF JAMES X. BORMES, P.C.
(Firm ID: 28217)
8 S. Michigan Ave., Suite 2600
Chicago, IL 60603
jxbormes@bormeslaw.com
Tel: (312) 201-0575

Counsel for Plaintiffs and Class Counsel

FILED DATE: 5/1/2024 10:07 PM 2019CH00987

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on May 1, 2024, a copy of the foregoing *Plaintiffs' Motion & Memorandum of Law in Support of Approval of Attorneys' Fees, Expenses, & Service Awards* was filed electronically with the Clerk of Court, with a copy sent by electronic mail to all counsel of record.

/s/ Timothy P. Kingsbury