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

ROBERT FISCHER, STEPHANIE LUKIS, ALESSANDRA FISSINGER-FIGUEROA, ERIC CARVALHO, JOSE CAMACHO, RHONDA COTTA, ROGELIO RAMIREZ, JAKE WEBB, JAMES ANDERSON, THERESE BACKOWSKI, JUSTIN ROGALSKY, NATEEMA LEWIS, and NICHOLAS FIORITTO, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

INSTANT CHECKMATE LLC, TRUTHFINDER LLC, INTELIUS LLC, THE CONTROL GROUP MEDIA COMPANY, LLC, and PEOPLECONNECT, INC.,

Defendants.

Case No. 19-cv-04892

Hon. Manish S. Shah

PLAINTIFFS' MOTION FOR AND MEMORANDUM OF LAW
IN SUPPORT OF ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARDS

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I. INTRODUCTION

Plaintiffs brought this class action lawsuit against Defendants—operators of "people search" websites that provide certain background information on individuals—alleging that Defendants used tens of thousands of individuals' identities to solicit subscription purchases in violation of seven states' right of publicity statutes. The proposed Settlement resolves several cases that Class Counsel vigorously litigated independently across the country up until they were consolidated for settlement purposes in September 2023. The Settlement creates non-reversionary, state-specific settlement funds that total $10,102,897.

This is an exceptional result. When the first complaint was filed in 2019, the risks to Plaintiffs' case were high and success in any form was far from guaranteed: the only substantive opinion in a right-of-publicity action in this District against a "people search" website found that advertisements similar to the "free previews" at issue here did not violate the IRPA. *See Dobrowolski v. Intelius*, No. 17-cv-1406, 2017 WL 3720170 (N.D. Ill. Aug. 29, 2017). And the only decision on a motion for certification of an IRPA class was a victory for the defendant. *See Dancel v. Groupon, Inc.*, No. 18 C 2027, 2019 WL 1013562, at *1 (N.D. Ill. Mar. 4, 2019), *aff'd*, 949 F.3d 999 (7th Cir. 2019) (denying motion to certify IRPA class because whether any given username was sufficient to identify an individual presented individual inquiries that defeated predominance). Despite those significant risks, Plaintiffs and Class Counsel pressed forward.

This Settlement was achieved only after years of litigation before this Court—the case was previously presided over by Judge Feinerman—and across the country. Across the cases, Class Counsel defeated four motions to dismiss, motions for reconsideration, motions for leave to appeal various decisions, a motion for summary judgment, and conducted significant written and oral discovery. Moreover, Class Counsel succeeded in certifying two classes, and preparing

to litigate two pending appeals in the Additional Litigation not pending before this Court.[1] Only after Plaintiffs had advanced this Action past summary judgment and obtained class certification did meaningful settlement discussions progress. Even then, it took two rounds of mediation with the Honorable Sidney Schenkier (Ret.) of JAMS and months of subsequent negotiations before the Parties ultimately reached this landmark class-wide settlement.

The proposed Settlement encompasses one "Payment Class" and one "Injunction Class" for each state (the "Settlement Classes"). The monetary relief secured by the Agreement is excellent, creating non-reversionary settlement funds that together exceed $10.1 million.[2] (Settlement Agreement §§ 1.7, 1.13, 1.31, 1.36, 1.43, 1.51, 1.66.) Settlement Payment Class Members can submit a simple claim form to receive a *pro rata* portion of their respective settlement fund (after deducting notice and administration costs, incentive awards, and attorneys' fees). The Settlement also includes non-monetary relief: Defendants have agreed to stop displaying the name of any Settlement Payment Class Member or member of the Multistate Injunction Settlement Classes who has an address in Alabama, California, Illinois, Indiana, Nevada, Ohio, or South Dakota in the Defendants' directory on any page on the Websites that includes a subscription offer to Defendants' products or services. (*Id.* § 2.3.) Notably, individuals who are only members of a Multistate Injunction Settlement Class, but not a Settlement Payment Class—*i.e.*, individuals who are not eligible for a monetary payment in connection with the

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[1] Capitalized terms used in this motion are those used in the Class Action Settlement Agreement ("Settlement" or "Agreement") attached hereto as Exhibit 1.

[2] The proposed Settlement creates a $877,500 Alabama Settlement Fund for 3,900 class members, a $1,003,556 California Settlement Fund for 29,735 class members, a $6,245,148 Illinois Settlement Fund for 25,284 class members, a $106,695 Indiana Settlement Fund for 2,371 class members, a $119,205 Nevada Settlement Fund for 3,532 class members, a $1,727,888 Ohio Settlement Fund for 15,359 class members, and a $22,905 South Dakota Settlement Fund for 509 class members. As discussed below, these amounts are derived from a percentage of each state's right of publicity statute statutory damages.

Settlement—are not providing a release of any claims against Defendants. (*Id.* § 1.56.) This Settlement, which Plaintiffs and Class Counsel achieved through years'-long efforts in jurisdictions across the country, easily surpasses the market for settlements in this area and sets a high bar.

In light of this result, Class Counsel respectfully moves the Court to award 35% of each State-Specific Settlement Fund (less than the total amount paid in notice and administration costs and the proposed incentive awards, and accounting for Class Counsel's voluntary reduction in its request to account for excess Notice costs) as attorneys' fees and expenses for a collective fee award of $3,336,345.70. The "percentage-of-the-fund" method is appropriate to use to determine the reasonableness of the fee here. As required by the Seventh Circuit, the requested fee percentage accurately reflects the fee arrangement that Settlement Class Members would have entered into with Class Counsel had they made an *ex ante* bargain before heading into litigation, accounting for the risks of nonrecovery. *See In re Synthroid Mktg. Litig.*, 264 F.3d 712, 719 (7th Cir. 2001). Moreover, the requested fee award is well in line with common fund fee awards in similarly sized statutory privacy cases in this District. (*See* Exhibit 2, Chart 1.) And while not mandated, a lodestar cross-check further confirms the reasonableness of the fee request: Class Counsel spent over four years of time and effort litigating this case, the Additional Litigation, and its forerunners totaling $1,960,080 in appropriate hourly billings, which results in a modest lodestar multiplier of 1.7.

Plaintiffs' requested incentive awards—which range from $750-$10,000—are similarly reasonable. Incentive awards in class action settlements frequently exceed $10,000. *See In re Akorn, Inc. Secs. Litig.*, No. 1:15-cv-01944, dkt. 182 (N.D. Ill. June 5, 2018) (Feinerman, J.) (awarding three $10,000 incentive awards); Theodore Eisenberg & Geoffrey P. Miller, *Incentive*

Awards to Class Action Plaintiffs: An Empirical Study, 53 UCLA L. Rev. 1303, 1348 (2006) (finding that "[t]he average award per class representative was $15,992"). Plaintiffs' requested awards reflect their participation in this case, and are in line with, if not far less than what has been awarded in several similar privacy cases in this District. *See, e.g.*, *Bedford v. Lifespace Communities, Inc.*, No. 20-cv-04574, dkt. 31 (N.D. Ill. May 12, 2021) (incentive award of $10,000 in BIPA case).

As described below, Plaintiffs' requested fees and incentive awards are reasonable, in line with comparable settlements, and warrant the Court's approval.

II. BACKGROUND

A. Litigation History and the Work Performed for the Settlement Class.

Plaintiffs Fischer and Lukis originally filed their complaint against Defendant Instant Checkmate LLC in the Circuit Court of Cook County, Illinois. Instant Checkmate LLC ("Instant Checkmate") removed the case to this Court and moved to dismiss the action. After the matter was fully briefed, the Court (then through Judge Feinerman) denied Instant Checkmate's motion and allowed Plaintiffs' claims to proceed. (Dkt. 36.) Instant Checkmate then moved for (i) reconsideration of the Court's denial of the motion to dismiss, (dkt. 43); leave to appeal pursuant to 28 U.S.C. § 1292(b), (dkts. 44–45); and (iii) summary judgment, (dkts. 39–41). After additional briefing, the Court denied these motions in their entirety. (Dkts. 88–89.)

Along with this extensive motion practice related to the pleadings, the Parties conducted significant discovery. Fischer and Lukis issued written discovery, to which Instant Checkmate responded with thousands of pages of documents. (Declaration of Philip L. Fraietta in Support of Preliminary Approval, dkt. 268-2, ("Prelim. App. Decl.") ¶ 4.) Instant Checkmate issued its own written discovery to Fischer and Lukis, which they also answered. (*Id.*) As written discovery progressed, Class Counsel took and defended several depositions, including those of key

personnel in connection with the operation of the Websites, the data that Instant Checkmate maintained, and the display of individuals' information. (*Id.*)

Through this discovery, Plaintiffs obtained key information that paved the way to class certification, which they moved for at the close of discovery. (*Id.* ¶ 5.) Once the motion was fully briefed, the Court ultimately certified two classes. (Dkt. 193 at 31–32.) Instant Checkmate sought interlocutory review of the class certification order under Rule 23(f), which Fischer and Lukis opposed; the Seventh Circuit denied Instant Checkmate's petition. *In re Instant Checkmate LLC*, No. 22-8005 (7th Cir. May 13, 2022). Class Counsel and Instant Checkmate thereafter litigated the appropriate method of class notice. (Dkts. 203, 208.) In ruling on this dispute, the Court adopted Class Counsel's plan as to the Rule 23(b)(3) class and sustained Instant Checkmate's objections for the requirement of individual notice as to the Rule 23(b)(2) class, and appointed Simpluris as notice administrator.[3] (Dkt. 214.) Instant Checkmate later moved to decertify the "SEO Directory Class" certified in *Fischer*, citing supposed factual and legal developments since the class was certified; this motion remained pending at the time of settlement. (Dkts. 243-246.)

In tandem with the litigation and discovery efforts in *Fischer* described above, other Plaintiffs—also represented by Class Counsel—began filing and litigating their respective cases elsewhere in the country in a multi-front effort to determine whether Defendants violated several states' right-of-publicity laws.[4] (Prelim. App. Decl. ¶ 5.) This required Class Counsel to brief and

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[3] Notice to the certified classes was stayed pending the Parties' mediation efforts. (Dkt. 222).

[4] As explained in the Motion for Leave to Amend Complaint, the operative complaint consolidates the following cases into a single action before this Court which has overseen the first-filed suit (*Fischer v. Instant Checkmate*) since its inception, (dkt. 266): *Fissinger-Figueroa v. PeopleConnect, Inc.*, No. 22-cv-04184 (N.D. Ill.); *Backowski v. PeopleConnect, Inc.*, No. 21-cv-00115 (W.D. Wash.); *Camacho v. PeopleConnect, Inc.*, No. 22-cv-00209 (S.D. Cal.);

defeat Defendants' motions to dismiss, strike class allegation, and to compel arbitration, which Class Counsel did time and again. *See, e.g.*, *Camacho*, 22-cv-00209, dkt. 24 (S.D. Cal. July 18, 2022) (denying Defendants' motion to dismiss); *Camacho*, 21-cv-01954, dkt. 32 (S.D. Cal. July 18, 2022) (same); *Camacho*, 21-cv-01957, dkt. 31 (S.D. Cal. July 18, 2022) (same). In so doing, Class Counsel obtained decisions from multiple courts that rejected Defendants' arguments that Class Counsel's searching for Plaintiffs on the Websites automatically bound them to arbitration the dispute, or that Plaintiffs' pleadings were barred by Section 230 of the Communication Decency Act, the First Amendment, the Dormant Commerce Clause, or multiple exceptions to the right of publicity laws' applicability. Class Counsel also obtained a favorable ruling in *Knapke*, 38 F.4th 824 rejecting the type of arbitration arguments that Defendants made here and clearing the path for subsequent rulings in the Additional Litigation. With these victories in hand, Class Counsel began discovery into arbitrability in the Additional Litigation where the question had yet to be resolved. *See Backowski*, dkt. 38 (W.D. Wash. July 11, 2022) (ordering arbitration-related discovery). And where motions on the pleadings had been resolved in Plaintiffs' favor, Class Counsel prepared to litigate the pending appeals. *See Camacho,* 21-cv-01954, appeal docketed, No. 22-55735 (9th Cir. Aug. 3, 2022).

Camacho v. The Control Group Media Company, LLC, No. 21-cv-01957 (S.D. Cal.); *Camacho v. The Control Group Media Company, LLC*, No. 21-cv-01954 (S.D. Cal.); and *Ramirez v. The Control Group Media Company, LLC*, No. 22-cv-01128 (S.D. Cal.) (collectively, the "Additional Litigation"). These cases also encapsulated the claims involving the Websites that were litigated in motions to dismiss in *La Fronza v. Instant Checkmate*, No. 2021-cv-03025 (N.D. Ill.); *La Fronza v. Truthfinder*, No. 2021-cv-03026 (N.D. Ill.); *La Fronza v. PeopleConnect,* No. 2021-cv-03027 (N.D. Ill.); and *La Fronza v. PeopleConnect, Inc., et al.*, No. 2021-cv-00280 (N.D. Ill.)—all cases that were dismissed in light of the ongoing Additional Litigation. All of these cases also build on the outcome that Class Counsel achieved in *Knapke v. PeopleConnect, Inc.*, 38 F.4th 824 (9th Cir. Jun. 29, 2022), in which the Ninth Circuit rejected the defendant's arguments on the applicability of an arbitration clause, which would have equal relevance to this case.

In the wake of the Court's class certification ruling, Fischer, Lukis, and Instant Checkmate began exploring the possibility of settling the *Fischer* case in 2022. (Prelim. App. Decl. ¶ 6.) To facilitate these discussions, they agreed to seek the assistance of a third-party neutral, the Hon. Sidney Schenkier (ret.) of JAMS Chicago. (*Id.*) After exchanging mediation briefs setting forth their respective positions, the Parties attended a full-day, in-person mediation on October 27, 2022. (*Id.*) Despite multiple rounds of back-and-forth negotiations and productive discussions, the mediation was ultimately unsuccessful. (*Id.*) Nevertheless, Fischer, Lukis, and Instant Checkmate agreed to attend a follow-up mediation with Judge Schenkier on December 6, 2022. (*Id.* ¶ 7.) That mediation also failed to result in a negotiated resolution. (*Id.*) The Parties once more agreed to continue their settlement discussions in the months following the second mediation, which continued with the assistance of Judge Schenkier through multiple teleconferences. (*Id.*)

These original settlement discussions centered on the *Fischer* Action, and as part of those efforts, Class Counsel examined Instant Checkmate's finances, which demonstrated that obtaining complete relief for the certified class (which included virtually every Illinois resident) would not be viable at trial or in a settlement. (Prelim. App. Decl. ¶ 8.) Facing this limitation, Class Counsel turned to negotiating a resolution that would provide significant relief to the individuals whose profiles had resulted in a purchase,[5] while simultaneously avoiding an

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[5] Each of the statutes prohibit the use of an individual's identity for a commercial purpose without first obtaining his or her prior consent. *See* Ala. Code § 6-5-770, *et seq.* (the "ARPA"); Cal. Civ. Code § 3344, *et seq.* (the "CRPS"); 765 ILCS 1075/1, *et seq.* (the "IRPA"); Ind. Code § 32-36-1, *et seq.* ("InRPA"); Nev. Rev. Stat. § 597.790 (the "NRPS"); Ohio Rev. Code § 2731.01, *et seq.* (the "ORPA"); S.D. Codified Laws § 21-64, *et seq.* (the "SDRPS"). An "identity" includes attributes or indicia that serve to identify an individual to a reasonable person, and can include a name, photograph, likeness, or voice. Ala. Code § 6-5-771(1); Cal. Civ. Code § 3344(a); 765 ILCS 1075/5; Ind. Code Ann. § 32-36-1-6; Nev. Rev. Stat. Ann. § 597.790(1); Ohio Rev. Code Ann. §§ 2741.01(A), (C); S.D. Codified Laws § 21-64-1(2).

outcome that would preclude recovery and preserving the rights of every individual who will benefit from the injunctive relief to sue for monetary damages. (*Id.*)

To that end—and understanding that Instant Checkmate's sibling companies Truthfinder and Intelius and former owner of some of the Websites, PeopleConnect, Inc., were also facing suits in the Additional Litigation and interested in a potential resolution—the scope of the settlement negotiations changed. (Prelim. App. Decl. ¶ 9.) After receiving information about the size of the potential settlement classes in other states (focused on individuals whose identities had resulted in a purchase), Plaintiffs' counsel issued non-contingent settlement proposals for states with viable right of publicity claims, including Alabama, California, Illinois, Indiana, Nevada, Ohio, and South Dakota. (*Id.* ¶ 10) The demands represented static percentages of the statutory damages available under each state's right of publicity law. (*Id.*) Defendants could reject or accept any of these proposals on an individual basis. (*Id.*) The Parties then engaged in weeks of additional back-and-forth negotiations attempting to agree on the appropriate percentages of damages, and the resulting size of the State-Specific Settlement Funds. (*Id.*) The Parties concluded their negotiations and ultimately reached a binding memorandum of understanding that contained the material points of a settlement that would resolve all litigation regarding the Websites pending against Defendants. (*Id.*)

The Parties spent the next few months finalizing the fulsome written settlement agreement detailing all terms of the global settlement. (Prelim. App. Decl. ¶ 11.) This included an agreement to seek modification of the SEO Directory Class in the *Fischer* Action to align with the Illinois Injunction Settlement Class. (*Id.*) Plaintiffs then promptly moved for preliminary

approval of the class action settlement.[6] (Dkt. 268.) Class Counsel simultaneously filed an amended complaint that brought all litigation against Defendants related to the Websites before this Court, allowing the approval proceedings to efficiently proceed before one Court overseeing the longest-pending action. (Dkt. 273.) The Court granted leave to file the Second Amended Complaint, and granted preliminary approval to the Settlement on September 8, 2023. (Dkts. 271, 272.)

Since the Court preliminarily approved the Settlement, Class Counsel has diligently worked to fulfill the terms of the Preliminary Approval Order and then some: Class Counsel has consistently monitored the reach of and response to the Notice campaign and considered how to increase those figures beyond the methods strictly called for in the Settlement. (Declaration of Michael W. Ovca, attached as Exhibit 3 ("Ovca Decl.") ¶ 3.) For example, while reminder notices via email were already built into the Settlement Agreement, Class Counsel requested that the Administrator skip trace the email addresses associated with Settlement Payment Class Members in the Class List to determine whether there were additional or updated email addresses to which Notice could be sent. (*Id.*) After consulting with the Settlement Administrator and notifying Defendants, the Settlement Administrator carried out this process, which resulted in Notice reaching more than 40,000 new email addresses associated with the Settlement Payment Class Members. (*Id.*) Class Counsel has continued to monitor the reach of the Notice program and, as described in the concurrently filed Motion to Modify Dates in the Preliminary Approval

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[6] All Courts in which the Additional Litigation was originally filed have been apprised of the Settlement. *Fissinger-Figueroa*, No. 22-cv-04184, dkt. 32 (N.D. Ill., Sep. 14, 2023); *Backowski*, No. 21-cv-00115, dkt. 50 (W.D. Wash., Sep. 15, 2023), *Camacho*, No. 21-cv-01954, dkt. 46 (S.D. Cal., Sep. 14, 2023) (also including *Camacho*, No. 22-cv-00209 (S.D. Cal.) and *Camacho*, No. 21-cv-01957 (S.D. Cal.), which were consolidated therein); *Ramirez*, No. 22-cv-01128, dkt. 34 (S.D. Cal., Sep. 14, 2023).

Order, (dkt. 274), Class Counsel proposes to send additional Notice to the Settlement Payment Classes via U.S. Mail to maximize the success of the Notice campaign and to make sure as many class members as possible may participate in the Settlement. (*Id.* ¶ 4.)

At the final approval hearing, Class Counsel will present the instant motion for attorneys' fees, expenses, and incentive awards along with the forthcoming final approval motion. All of these dates and related orders will be posted to the Settlement Website and included, as appropriate, in reminder notices sent to the Settlement Class.

B. The Settlement Secures Excellent Relief for the Settlement Class.

As detailed in Plaintiffs' motion for preliminary approval, the result obtained here is outstanding. Under the Settlement's terms, Defendants have agreed to provide substantial monetary and prospective relief to individuals across seven states: Alabama, California, Indiana, Illinois, Ohio, and South Dakota. For those whose name was searched on Defendants' Websites and resulted in the purchase of a subscription to one of Defendants' products, Defendants have agreed to create non-reversionary State-Specific Settlement Funds corresponding with each state's Settlement Payment Class—collectively totaling more than $10.1 million. The Settlement Funds represent a static percentage of each states' statutory damages for each class member (4.5% per class member), save for Illinois, which had the most advanced litigation and is 24.7% of the state's statutory damages per class member.

Those who submit valid Claim Forms will receive a *pro rata* portion of their respective State-Specific Settlement Fund, after the deduction of notice and administration costs, incentive awards, and attorneys' fees. In light of the fact that Class Counsel expects to see a substantial increase in claims rates after they and the Administrator undertake additional Notice efforts, an estimate of per-claimant take home would be inaccurate based on a snapshot of the current numbers. (*See* Mot. to Extend Deadline, dkt. 274.) But Class Counsel do not estimate Settlement

Payment Class Members taking home less than their prior estimate at preliminary approval; if anything, it would be more. (*See* Preliminary Approval, dkt. 268, at 38.)

For individuals whose identities are in Defendants' databases, but whose display did not result in a subscription purchase, Defendants have agreed to the creation of Multistate Injunction Settlement Classes. Defendants will stop using these individuals' names in connection with any offers for subscriptions or other purchases on the Websites, putting a stop to the conduct that led to the lawsuits. Importantly, any Multistate Injunction Settlement Class Members who are not Settlement Payment Class Members will receive these benefits without releasing Defendants from monetary damages claims relating to any alleged use of their identities.

As discussed further below, this is an extraordinary result. In addition to changing Defendants' practices on each of these websites, the monetary relief provided is the strongest for right of publicity settlement yet for a case of this size, and Plaintiffs achieved that result only after litigating into the face of existential risks to the case. Class Counsel's fee award should be approved.

III. THE REQUESTED ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARDS ARE REASONABLE AND SHOULD BE APPROVED.

Rule 23 authorizes courts to "award reasonable attorney's fees . . . that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). In common fund settlements like this one, the attorneys' fee award is typically made as a share of the fund. The "common fund doctrine" is "based on the notion that not one plaintiff, but all those who have benefitted from litigation should share its costs." *Florin v. Nationsbank of Georgia, N.A.*, 34 F.3d 560, 563 (7th Cir. 1994) (citation omitted). By awarding fees payable from the common fund created for the benefit of the entire class, the court spreads litigation costs proportionately among those who will benefit from the fund. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

Class Counsel took this case on a contingent basis despite the high risks of non-recovery at the outset. (Ovca Decl. ¶ 5.) Now that Class Counsel has achieved the results that they did for the Settlement Classes and created a strong precedent for future right-of-publicity class action settlements, they respectfully request that they be awarded a reasonable attorneys' fee award calculated using the percentage-of-the-fund methodology. Specifically, after deducting the amount of notice and administration costs and the proposed incentive award from the Settlement Funds, and voluntarily reducing its fee request by the cost of Notice above the estimate contemplated in the Settlement, Class Counsel requests that the Court award them 35% of each Settlement Fund in attorneys' fees and expenses, or $3,336,345 in total.[7] *Gehrich v. Chase Bank USA, N.A*., 316 F.R.D. 215, 238 (N.D. Ill. 2016) (explaining that total notice and administration expenses must be deducted from the fund before calculating attorneys' fees). The requested fee amounts are inclusive of the $28,036.75 in costs fronted by Class Counsel—i.e., Class Counsel is not requesting costs separately. (*See* Ovca Decl. ¶ 9; Declaration of Philip L. Fraietta ("Fraietta

[7] This collective amount breaks down as follows: Fee from Alabama Settlement Fund, $296,350.32 (35% of $877,500 less $15,635.52 in notice and administration costs and a $5,000 incentive award to Plaintiff Camacho, then less $3,552.24 in extra notice costs); fee from California Settlement Fund, $281,649.73 (35% of $1,003,556 less $119,210.85 in notice and administration costs and $750 incentive awards to each of Plaintiffs Cotta, Ramirez, and Webb, then less $27,083.58 in extra notice costs); fee from Illinois Settlement Fund, $2,119,594.13 (35% of $6,245,148 less $101,366.31 in notice and administration costs and $10,000 incentive awards to each of Plaintiffs Fischer and Lukis, and $1,000 incentive awards to each of Plaintiffs Fissinger-Figueroa and Carvalho, then less $23,029.47 in extra notice costs); fee from Indiana Settlement Fund, $31,506.71 (35% of $106,695 less $9,505.60 in notice and administration costs and a $1,000 incentive award to Plaintiff Anderson, then less $2,159.58 in extra notice costs); fee from Nevada Settlement Fund, $33,286.13 (35% of $119,205 less $14,160.17 in notice and administration costs and a $750 incentive award to Plaintiff Fioritto, then less $3,217.06 in extra notice costs); fee from Ohio Settlement Fund, $567,469.77 (35% of $1,727,888 less $61,575.90 in notice and administration costs and $2,500 incentive awards to each of Plaintiffs Backowski and Rogalsky, then less $13,989.46 in extra notice costs); fee from South Dakota Settlement Fund, $6,488.91 (35% of $22,905 less $2,040.64 in notice and administration costs and a $1,000 incentive award to Plaintiff Lewis, then less $463.61 in extra notice costs).

Decl."), attached as Exhibit 4, ¶ 16; Declaration of Roberto Costales ("Costales Decl."), attached as Exhibit 5, ¶ 19.) The requested fee amount is well in line with what other courts in this District have found a hypothetical *ex ante* bargain to be in cases brought under privacy statutes, including the IRPA settlements preceding this one. *See, e.g.*, *Krause v. RocketReach, LLC*, No. 21-cv-01938, dkt. 97 (N.D. Ill. Sept. 12, 2023) dkt. 97 ¶ 14 (awarding 35% of common fund in IRPA case); *Butler v. Whitepages Inc.*, No. 19-cv-04871 (N.D. Ill., Sept. 29, 2022) dkt. 277 ¶ 15 (awarding 35% of common fund in IRPA case). The reasonableness of the instant fee request is confirmed by a lodestar crosscheck: 35% of the fund reflects only a modest 1.7 multiplier on the total value of Class Counsel's uncompensated time and expenses litigating the Action, Additional Litigation, and precursor cases, and negotiating the Settlement.

A. Percentage-of-the-Fund Should Be Used to Determine Fees Here.

In the Seventh Circuit, district courts may choose one of two methods for awarding attorneys' fees in common fund cases: (1) percentage-of-the-fund or (2) lodestar approach. *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 500 (N.D. Ill. 2015). Under the percentage-of-the-fund approach, "plaintiffs' attorneys . . . petition the court to recover its fees" as a percentage of the total fund. *Florin,* 34 F.3d at 563. In contrast, the lodestar approach requires district courts to determine the reasonable value of the services rendered and increase that amount by a multiplier that factors in various considerations. Under the lodestar approach, the court first determines a "reasonable hourly rate allowable for each attorney . . . involved in the case." *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 974 (7th Cir. 1991). Then, the court multiplies "the hours reasonably expended by the reasonable hourly rates" to produce the lodestar. (*Id.*) Finally, the court increases the lodestar by a multiplier that accounts for other relevant considerations, such as the attorneys' amount of risk in bringing the case or the complexity of the issues. (*See id.*) (holding that courts should consider from an *ex ante* perspective "what size risk the attorney

assumed at the outset by taking this type of case").

While the Court has discretion over whether to use the percentage-of-the-fund or lodestar approach, courts typically select a method by looking "to the calculation method most commonly used in the marketplace at the time such a negotiation would have occurred." *Kolinek*, 311 F.R.D. at 501. The normal practice in consumer class actions "is to negotiate a fee arrangement based on a percentage of the plaintiffs' ultimate recovery." (*Id.*) Therefore, the percentage-of-the-fund approach best mirrors typical contingency agreements, and "the vast majority of courts in the Seventh Circuit" use it in common fund cases. *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 WL 6606079, at *7 (S.D. Ill. Dec. 16, 2018) (quotation omitted); *T.K. Through Leshore v. Bytedance Tech. Co.*, No. 19-CV-7915, 2022 WL 888943, at *24 (N.D. Ill. Mar. 25, 2022), appeal dismissed, No. 22-1686, 2022 WL 19575674 (7th Cir. Aug. 22, 2022); *see also* Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. EMPIRICAL L. STUD. 811, 814 (2010) ("Most federal judges chose to award fees by using the highly discretionary percentage-of-the-settlement method.").

A percentage-of-the-fund, contingent approach is what the class would have negotiated with Class Counsel at the outset in a hypothetical *ex ante* bargain; in fact, it has been used to determine a reasonable fee award in virtually every class action settlement under a privacy statute in both federal and state courts in the District, including the right of publicity settlements in *Krause* and *Butler*. *See, e.g.*, *Krause*, No. 21-cv-1938, dkt. 97 ¶ 14 (N.D. Ill. Sept. 12, 2023); *Butler*, No. 19-cv-04871, dkt. 277 ¶ 15 (N.D. Ill., Sept. 29, 2022); *Davis v. Heartland Emp. Servs., LLC*, No. 19-cv-00680, dkt. 130 (N.D. Ill. Oct. 25, 2021) (BIPA settlement with $5,418,000 fund); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483 (N.D. Ill. 2015) (TCPA settlement with $11 million fund); (*see also* Exhibit 2, Charts 1 & 2.) The lodestar method, on the other

hand, would have "required a level of monitoring the class members were not interested in or capable of providing," while the percentage approach best "align[s] the incentives of the class[es] and [their] counsel." *In re Cap. One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 795 (N.D. Ill. 2015). Consequently, this Court should apply the percentage-of-the-recovery method here.

B. A 35% Fee Award Is Appropriate Here.

In determining what a reasonable attorneys' fee award is, the Seventh Circuit has instructed that "the measure of what is reasonable is what an attorney would receive from a paying client in a similar case." *Montgomery v. Aetna Plywood, Inc.,* 231 F.3d 399, 408 (7th Cir. 2000). "[I]n consumer class actions . . . the presumption should . . . be that attorneys' fees awarded to class counsel should not exceed a third or at most a half of the total amount of money going to class members and their counsel." *Gehrich*, 316 F.R.D. at 235 (citing *Pearson v. NBTY, Inc.*, 772 F.3d 778, 782 (7th Cir. 2014)); *see also* 5 Willaim Rubenstein, NEWBERG ON CLASS ACTIONS § 15.83 (5th ed.) (noting that, generally, "50% of the fund is the upper limit on a reasonable fee award from any common fund"). Against that presumption, courts consider the benefit achieved for the class, the fee awards made in similar cases, the risks that the particular case presented, the quality of the legal work provided, the anticipated work necessary to resolve the litigation, and the stakes of the case. *See Redman v. RadioShack Corp.*, 768 F.3d 622, 633 (7th Cir. 2014) ("[T]he central consideration is what class counsel achieved for the members of the class"); *Taubenfeld v. AON Corp.*, 415 F.3d 597, 600 (7th Cir. 2005) ("[A]ttorneys' fees from analogous class action settlements are indicative of a rational relationship between the record in this similar case and the fees awarded by the district court."); *see also In re Synthroid*, 264 F.3d at 721.

The Settlement here is only the third of its kind, and sets a high water mark for future

right-of-publicity settlements. Just as 35% percent of the funds created in previous right of publicity settlements have been awarded in fees, that same percentage is appropriate as a fee award here. *See Krause*, No. 21-cv-01938, dkt. 97 ¶ 14 (N.D. Ill. Sept. 12, 2023); *Butler*, No. 19-cv-04871, dkt. 277 ¶ 15 (N.D. Ill., Sept. 29, 2022). The appropriateness of a 35% fee award here is further justified by (1) the substantial risk that Class Counsel took on in accepting the case, (2) the excellent relief Class Counsel ultimately obtained for the Settlement Classes, and (3) the comparison against Class Counsel's actual lodestar.

1. This case presented serious obstacles to recovery, and Class Counsel litigated the case mindful of the high possibility that the class might recover nothing.

In a hypothetical *ex ante* negotiation, it would be apparent to the client that a 35% contingent fee would be appropriate considering the significant risk Class Counsel took on in litigating a case mired in issues of, at the time, first impression. (Ovca Decl. ¶ 5.) Class Counsel navigated these risks successfully, defeating motions to dismiss here and across the country, and obtaining class certification over Instant Checkmate's (repeated) opposition. But there were, and remain, risks with these cases. First, there were significant headwinds at the time of filing. As discussed above, the only on-point opinion disposed of a similar case against a "people search" website at the pleading stage. *See Dobrowolski*, 2017 WL 3720170 at *1. While Plaintiffs remained confident in their claims after defeating the motion to dismiss and motion for summary judgment in the *Fischer* Action, a merits argument might succeed at summary judgment were litigation to proceed in the Additional Litigation—as it recently did, in an IRPA case. *See, e.g.*, *Bonilla v. Ancestry.com Operations Inc.*, No. 628 F. Supp. 3d 812 (N.D. Ill. Sept. 16, 2022), *reconsideration denied*, No. 20 C 7390, 2023 WL 3602801 (N.D. Ill. May 23, 2023). And past the merits arguments, maintaining class certification in *Fischer* or securing it in the Additional Litigation was far from certain. Indeed, to the end, Defendants in this action were seeking to

decertify the classes in *Fischer*. Should Plaintiffs have gotten all the way to trial, appellate review of all the decisions to date and potentially dispositive issues in the case—statutory exceptions, First Amendment, Communications Decency Act, or Dormant Commerce Clause—would each have presented their own risks (and in light of the substantial liability, would have been all but inevitable).

Aside from the merits, the Classes could face serious obstacles in actually recovering post-trial what could be substantial damages against Defendants. *See, e.g.*, *Wakefield v. ViSalus, Inc*., 51 F.4th 1109, 1123 (9th Cir. 2022) (vacating denial of post-trial motion challenging constitutionality of $925 million damages award in TCPA case, remanding for further consideration); *Golan v. FreeEats.com, Inc.*, 930 F.3d 950 (8th Cir. 2019) (statutory award in TCPA class action of $1.6 billion reduced to $32 million); *but see United States v. Dish Network L.L.C.*, 954 F.3d 970, 980 (7th Cir. 2020), *cert. dismissed*, 141 S. Ct. 729 (2021) (statutory award of $280 million for violating various telemarketing statues over 65 million times did not violate due process). Furthermore, it is not unprecedented for legislation to be amended while a class action is pending in a way that threatens the class's entire recovery. *See Perlin v. Time Inc.*, 237 F. Supp. 3d 623, 629–30 (E.D. Mich. 2017) (evaluating the retroactive effect of legislative amendment on pending class action).

Class Counsel accepted this case understanding that a single loss on any of these fronts would decimate the Settlement Classes'—and Class Counsel's—ability to get paid. In light of those risks, 35% of the fund in attorneys' fees is appropriate. *See Krause*, No. 21-cv-01938, dkt. 97 (N.D. Ill., Sept. 12, 2023); *Butler*, No. 19-cv-04871, dkts. 266, 277 (N.D. Ill, Aug. 11, 2022 and Sept. 29, 2022); *In re Capital One Tel. Consumer Protection Act Litig*, 80 F. Supp. 3d at

805–06 (in TCPA case, adding 6% risk premium to 30% baseline attorneys' fee based on risk of non-payment when case was filed); *Kolinek*, 311 F.R.D. at 502 (same).

2. Class Counsel achieved an excellent result for the Settlement Class.

Given the uncertain legal landscape and the possibility that the Settlement Classes would recover nothing at all, the relief secured by Class Counsel is exceptionally strong. The Court should appropriately consider the actual result achieved—both as a function of the quality of Class Counsel's work, and because litigants often consider the ultimate degree of success in determining a fee schedule. *See Americana Art China Co., Inc. v. Foxfire Printing & Packaging, Inc.*, 743 F.3d 243, 247 (7th Cir. 2014).

As explained in Plaintiffs' motion for preliminary approval, the Settlement's per-person relief excels compared to other statutory privacy cases which settle for pennies on the dollar or no monetary relief at all. *See, e.g.*, *In re Google Referrer Header Privacy Litig.*, 869 F.3d 737, 740 (9th Cir. 2017), *vacated on other grounds by Frank v. Gaos*, 139 S. Ct. 1041 (2019) (approving *cy pres*-only fund without any payments to class members); *In re Google LLC St. View Elec. Commun. 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 the Electronic Communications Privacy Act); *Adkins v. Facebook, Inc.*, No. 18-cv-05982-WHA, dkts. 350, 369 (N.D. Cal., May 6, 2021 and July 13, 2021) (approving settlement for injunctive relief only, in class action arising out of Facebook data breach, and granting $6.5 million in attorneys' fees and costs). This case is a leading participant in the new trend of statutory privacy cases returning significant money to the class.

Indeed, the Settlement is a substantial step forward compared against its predecessors: the size of the State-Specific Settlement Funds here dwarfs the prior settlements, and compares

favorably even on a per-person basis (not per-claimant basis), irrespective of its larger total size. *Krause* created a settlement fund for its IRPA claimants amounting to $1,596,300 fund for 26,605 IRPA class members, or $60 per person. *Krause*, No. 21-cv-01938, dkts. 94, 97 (N.D. Ill., Aug. 21, 2023 and Sept. 12, 2023). *Butler* created an IRPA settlement fund amounting to $1,208,440 settlement of 30,211 IRPA class members, or $40 per person. *Butler*, No. 19-cv-04871, dkts. 272, 277 (N.D. Ill., Sept. 7, 2022 and Sept. 29, 2022). Here, by contrast, the Illinois Settlement Fund is multiples higher—$6,245,148 covering 25,284 class members, or $247 per person—and accounts for the *Fischer* litigation's posture, which included certified classes for IRPA claimants. The Settlement also creates a $1,727,888 fund for 15,359 Ohio Settlement Payment Class Members, or $113 per class member, which is in line with *Butler*'s creation of a $2,864,200 fund for 27,802 Ohio class members, or $103 per class member. And the California Settlement Fund, which amounts to funding based on $34 per class member, far outstrips previous California right of publicity settlements. *See Fraley v. Facebook, Inc.*, 966 F. Supp. 2d 939, 943–44 (N.D. Cal. 2013), *aff'd sub nom Fraley v. Batman*, 638 Fed. App'x 594, 597 (9th Cir. 2016) (approving settlement fund that resulted in $15 to each claiming class member due to low claims rate, but would have resulted in only *cy pres* relief had every class member submitted a claim). While the final claims rate and net payments will be included in Plaintiffs' final approval papers when those amounts are known, payments will be in line with, if not exceed, the relative payouts in the *Butler* and *Krause* settlements. *See Butler*, No. 19-cv-04871, dkts. 272, 277 (N.D. Ill., Sept. 7, 2022 and Sept. 29, 2022) ($95 to each IRPA claimant and $380 to each ORPA claimant); *Krause*, No. 21-cv-01938, dkts. 94, 97 (N.D. Ill., Aug. 21, 2023 and Sept. 12, 2023) (approximately $300 to each IRPA claimant).

While courts have not had occasion to consider class-wide right of publicity settlements with "people-search" providers like Defendants under Alabama, Indiana, Nevada, or South Dakota law, the per-person amounts for those states are based on a higher percentage of statutory damages (here, 4.5%) than in the first IRPA and ORPA settlement in *Butler*, No. 19-cv-04871, dkts. 272-1, 277 (N.D. Ill., Sept. 7, 2022 and Sept. 29, 2022) (per-person damages for purposes of calculating funds was 4% of statutory damages under the respective laws).

Finally, aside from the monetary relief, the non-monetary benefits created by the Settlement further support a 35% fee award. The Multistate Injunction Settlement Classes are entitled to key injunctive relief aimed at remedying the underlying unlawful conduct. Specifically, Defendants must stop using class members' names in connection with any offer to purchase a subscription or service on the Websites. (Settlement Agreement § 2.3.) Critically, members of the Multistate Injunction Settlement Classes who are not Settlement Payment Class Members—that is, they were not searched in a way that led to a subscription purchase and are not eligible for a monetary payment under the Settlement—are excluded from the release. (*Id.* § 1.56.) Thus, they will receive these injunctive benefits from the Settlement while retaining any claims they may have against Defendants.

Ultimately, the monetary and non-monetary relief recovered on behalf of the Settlement Class warrants approving the requested 35% of the net Settlement Fund.

3. A lodestar cross-check confirms the reasonableness of the requested fees.

While the Settlement Classes would not likely have agreed to calculate fees using the lodestar method, and the Court need not perform a lodestar "cross-check" to confirm the reasonableness of the fee award, analyzing the fee award under the lodestar method further confirms its reasonableness. *See Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th

Cir. 2011) ("[C]onsideration of a lodestar check is not an issue of required methodology.") (citing *Cook v. Niedert*, 142 F.3d 1004, 1013 (7th Cir. 1998) ("[W]e have never ordered the district judge to ensure that the lodestar result mimics that of the percentage approach.")).

A lodestar analysis is properly based on Class Counsel's current hourly rates. *See Pickett v. Sheridan Health Care Ctr.*, 813 F.3d 640, 647 (7th Cir. 2016). The rates charged by Class Counsel correlate to their respective experience and are consistent with rates of attorneys with similar backgrounds and experience practicing in the Chicago legal market. Class Counsel's rates have been consistently approved by courts in the Seventh Circuit, as well as in federal courts across the country. *See In re Facebook Biometric Info. Priv. Litig*., 522 F. Supp. 3d 617, 633 (N.D. Cal. 2021) (finding Edelson PC's hourly rates reasonable for their experience and locality); *id.* at dkt. 499-3 at ¶ 33 (Declaration of Professor William B. Rubenstein finding that "the hourly rates [Edelson PC] utilize are entirely consistent with the rates judges in [the Northern District of California] explicitly approved in overseeing class action settlements in 2019, and the average, or blended, hourly rate—while above the median—appropriately reflects the level of lawyering required for a case of this magnitude"); *Barnes v. Aryzta, LLC*, No. 1:17-cv-07358, 2019 WL 277716, at *4 (N.D. Ill. 2019) (finding Edelson PC's rates "reasonable given the market rate that hourly clients are willing to pay, judicial approval of their rates, and their level of reputation and expertise in the area"); *Goodman v. Hangtime, Inc.*, No. 14-cv-01022, dkt. 124 (N.D. Ill. Sept. 29, 2015) (granting Edelson PC's fee request in full, the reasonableness of which was demonstrated under the lodestar method); *Perez v. Rash Curtis & Assocs.*, No. 16-cv-03396, 2020 WL 1904533, at *20 (N.D. Cal. Apr. 17, 2020) (finding Bursor & Fisher, P.A.'s rates are "within the reasonable range" for "complex, high-stakes litigation"); *Farias v. R.R. Donnelley & Sons Co.*, No. 20-cv-07468, dkt. 38 (N.D. Ill. July 20, 2022)

(approving Bursor & Fisher, P.A.'s fee request in full, which was supported by lodestar); *Wright v. Southern New Hampshire University*, 561 F. Supp. 3d 211, 214 (D.N.H. Sept. 22, 2021) (approving Bursor & Fisher, P.A's motion for attorneys' fees, which was supported by lodestar). Class Counsel's experience and expertise in consumer class action litigation is further detailed in their attached declarations and Firm Resumes. (*See* Exhibit 3-A attached to the Ovca Decl.; Exhibit 4-A to the Fraietta Decl; *see generally* Costales Decl.)

Class Counsel performed substantial work in this Action, the Additional Litigation, and the related cases preceding the Settlement,[8] totaling 3,210.4 attorney and staff hours. The individuals primarily responsible for the case, along with their years of experience, rates and hours worked are provided in the Declarations of Michael W. Ovca, Philip L. Fraietta, and Roberto Costales.[9] (Ovca Decl. ¶ 8; Fraietta Decl. ¶ 13; *see generally* Costales Decl.) As those declarations demonstrate, the value of Class Counsel's services to the class amounts to $1,960,080.00 through the present.[10] (Ovca Decl. ¶ 8; Fraietta Decl. ¶ 13; *see generally* Costales

[8] Besides the Additional Litigation, which was pending at the time the Settlement was reached, the Settlement resolves the claims involving the Websites that were litigated through the motion to dismiss stage in *La Fronza v. Instant Checkmate*, No. 2021-cv-03025 (N.D. Ill.); *La Fronza v. Truthfinder*, No. 2021-cv-03026 (N.D. Ill.); *La Fronza v. PeopleConnect,* No. 2021-cv-03027 (N.D. Ill.); and *La Fronza v. PeopleConnect, Inc., et al.*, No. 2021-cv-00280 (N.D. Ill.), all of which laid the groundwork for the instant Settlement.

[9] While Class Counsel from the East End Trial Group performed work reviewing and approving the operative complaint with Plaintiffs, reviewing and approving the Settlement documents, and participating in the Settlement and approval process, Class Counsel is not including their time here as an exercise of billing discretion.

[10] Class Counsel will supply detailed billing records for *in camera* review upon request. For the sake of clarity, Class Counsel Edelson PC and Bursor & Fisher, P.A have kept contemporaneous billing records, and Class Counsel Beaumont Costales LLC have reconstructed their time records as set forth in the Costales Decl. Additionally, the attorney and staff time spent on this fee petition and its supporting documents has been excluded from Class Counsel's submitted lodestar. *Spicer v. Chicago Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1247 (N.D. Ill. 1993) ("As we have noted in our past opinions determining fee awards, we do not feel that it is appropriate to compensate attorneys for the time spent preparing the fee petition and supporting documentation.").

Decl.) Class Counsel has also incurred unreimbursed expenses of $28,036.75, which are encompassed in the attorneys' fee request—i.e., Class Counsel are not seeking expenses separately. (Ovca Decl. ¶ 9; Fraietta Decl. ¶ 16; Costales Decl. ¶ 19.)

Calculating Class Counsel's base lodestar amount is only one part of the inquiry, however, in determining a reasonable fee award under this approach. The base lodestar amount is increased by a "multiplier . . . designed to reflect the fact that, no matter how many hours were invested, there was, at the outset, the possibility of no recovery." *Harman*, 945 F.2d at 976. A multiplier, accordingly, should be added to reflect the risk that Class Counsel faced in undertaking the litigation, which is discussed above. (*See id.*) Typically, courts apply a risk multiplier of between 1 and 4. *See Id.*; 5 William B. Rubenstein, NEWBERG ON CLASS ACTIONS § 15:87 (5th ed.)*; see, e.g., In re National Collegiate Athletic Association Student-Athlete Concussion Injury Litigation*, 332 F.R.D. 202 at 225 (N.D. Ill., 2019) (1.5); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 598 (N.D. Ill. 2011) (approving a lodestar multiplier of approximately 2.5); *In re Lawnmower Engine Horsepower Mktg. & Sales Pracs. Litig.*, 733 F. Supp. 2d 997, 1015 (E.D. Wis. 2010) (2.07).

Here, Class Counsel requests a total of $3,336,345.70 in attorney fees, which amounts to a multiplier on their base lodestar of just 1.7. This multiplier is on par with multipliers awarded in similar cases and thus confirms the reasonableness of the 35% of the common fund requested. The Court should approve Class Counsel's fee request.

IV. THE COURT SHOULD APPROVE THE REQUESTED INCENTIVE AWARDS.

The Settlement Agreement also provides for incentive awards in the following amounts, subject to Court approval, from their respective State-Specific Settlement Fund in recognition of Plaintiffs' efforts as Class Representatives: Alabama, $5,000; California, $750; Illinois, $10,000 to the Illinois Injunction Settlement Class Representatives Fischer and Lukis, and $1,000 to each

of the Illinois Injunction Settlement Class Representative Fissinger-Figueroa and the Illinois Settlement Payment Class Representative Carvalho; Indiana, $1,000; Nevada, $750; Ohio, $2,500; South Dakota, $1,000. (Settlement Agreement § 8.3.). Incentive awards are appropriate in class actions to compensate individuals for stepping up to protect the interests of a broader class, spending their own time to achieve benefits for the class as a whole. *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998).

Here, the Class Representatives' participation was critical to the case's ultimate resolution, and they request only modest service awards that reflect their contributions to the case.[11] Plaintiffs Fischer and Lukis, in particular, expended significant time and effort helping Class Counsel investigate their IRPA claims, providing information to Class Counsel to prepare the Complaint, reviewing that complaint before filing, participating in offensive and defensive discovery, siting for depositions, securing class certification in the *Fischer* Action, and conferring with Class Counsel throughout the four-year litigation. (Ovca Decl. ¶¶ 12–14.) Each of the Plaintiffs in the Additional Litigation also diligently participated in their respective cases, including by helping Class Counsel investigate their right of publicity claims, assisting in the preparation of and reviewing the complaints before filing, and reviewing and approving the Settlement Agreement before signing it. (*Id.* ¶ 13.) As a direct result of the Class Representatives' participation, Class Counsel was able to secure substantial monetary relief for the Settlement Classes, which is readily available for class members to take advantage of, as evidenced by the hundreds of claims already submitted. (*Id.* ¶ 14.) The Class Representatives

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[11] None of the Plaintiffs' retention agreements nor their participation in this Action were in any way predicated on receiving any benefit based on their involvement. Plaintiffs were not promised anything in exchange for their service as named plaintiffs or putative class representatives. (Ovca Decl. ¶ 15.)

were also willing to attach their names to this high-profile litigation against Defendants, subjecting themselves to "scrutiny and attention" which is "certainly worth some remuneration." *Schulte*, 805 F. Supp. 2d at 601.

As a monetary matter, the Class Representatives' requested incentive awards are eminently reasonable. All but two of the requested awards mirror the statutory damage amounts available under the right of publicity statutes that the Class Representatives are invoking and are readily approvable. *See Krause*, No. 21-cv-01938, dkt. 97 ¶ 15 (N.D. Ill. Sept. 12, 2023) (approving incentive award in amount of IRPA statutory damages limit). The two exceptions—requests for $10,000 awards for the Illinois Injunction Settlement Class Representatives Fischer and Lukis in recognition of their additional involvement through successfully certifying two classes in the lead case—are also in line with incentive awards routinely approved in this District in similar litigation. *See Davis*, No. 1:19-cv-00680, dkt. 130 (N.D. Ill., Oct. 25, 2021) ($10,000 service award in BIPA case); *In re Akorn, Inc. Securities Litigation*, No. 1:15-cv-01944, dkt. 182 (N.D. Ill. June 5, 2018) (awarding three $10,000 incentive awards in securities case); *Nistra v. Reliance Trust Company*, No. 1:16-cv-04773, dkt. 291 (N.D. Ill. June 19, 2020) ($25,000 incentive award in ERISA case). Because Plaintiffs' requests are modest and reflect their efforts in representing the Settlement Classes, they should be approved. *See Butler*, No. 19-cv-04871, dkts. 266, 277 (N.D. Ill., Aug. 11, 2022 and Sept. 29, 2022).

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully requests that this Court enter an order (1) granting Class Counsel's requested fee awards in the amount of 35% of each the Settlement Fund, after deducting notice and administration costs and the proposed incentive awards, and accounting for Class Counsel's voluntary reduction based on increased Notice costs, for a total fee of $3,336,345.70; (2) awarding incentive awards as follows: $5,000 to Plaintiff Jose

Camacho, $750 to Plaintiff Rhonda Cotta, $750 to Plaintiff Rogelio Ramirez, $750 to Plaintiff Jacob Webb, $10,000 to Plaintiff Robert Fischer, $10,000 to Plaintiff Stephanie Lukis, $1,000 to Plaintiff Alessandra Fissinger-Figueroa, $1,000 to Eric Carvalho, $1,000 to Plaintiff James Anderson, $750 to Plaintiff Nicholas Fioritto, $2,500 to Plaintiff Therese Backowski, $2,500 to Plaintiff Justin Rogalsky, $1,000 to Plaintiff Nateema Lewis; and (3) providing such other and further relief as the Court deems reasonable and just.[12]

Respectfully Submitted,

Dated: November 17, 2023

By: /s/ Michael Ovca
One of Plaintiffs' Attorneys

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[12] In connection with their final approval motion and supporting papers, Plaintiffs will submit a proposed final approval order that will allow for the Court to fill in any award of attorneys' fees and incentive awards.

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