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

SHARENA KING, individually and on behalf of similarly situated individuals, *Plaintiff*, v. PEOPLENET CORPORATION, a Delaware corporation, *Defendant.*	)	No. 2021-CH-01602 Hon. David B. Atkins

PLAINTIFF'S MOTION & MEMORANDUM OF LAW IN SUPPORT OF APPROVAL OF ATTORNEYS' FEES, EXPENSES, & SERVICE AWARD

Plaintiff Sharena King, by and through her attorneys, and pursuant to 735 ILCS 5/2-801, hereby moves for an award of attorneys' fees and expenses for Class Counsel, as well as a service award for Plaintiff as the Class Representative in connection with the class action settlement with PeopleNet Corporation. In support of this Motion, Plaintiff submits the following memorandum of law.

Dated: June 12, 2023

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I. INTRODUCTION

The Settlement[1] that Class Counsel have achieved in this case is an excellent result for Settlement Class Members, as the estimated per-claimant amount recovered here is substantial and on the high end of BIPA settlements involving claims brought against vendors of biometric timekeeping technology. The Parties' Agreement has established a *non-reversionary* Settlement Fund of $4,750,000.00 to provide each Settlement Class Member who files a valid, timely claim with an equal, *pro rata* distribution of the Settlement Fund for having their biometrics collected by Defendant PeopleNet Corporation ("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 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 21, 2023. Direct notice of the Settlement commenced on May 22, 2023. As of the filing of this Motion, hundreds of claims have already been submitted with six weeks remaining before the Claims Deadline. To date, no Settlement Class Member has objected to the Settlement and no Settlement Class Member has requested exclusion.

With this Motion, Class Counsel request a fee of 38% of the total Settlement Fund, amounting to $1,805,000.00, plus their litigation expenses.[2] As explained in detail below, Class Counsel's requested fee award is justified given the exceptional monetary and non-monetary relief provided under the Settlement, is consistent with Illinois law and fee awards granted in other cases

[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.

[2] This amount is *less* than the 40% contemplated under the Settlement Agreement. (Agreement, ¶ 98).

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.

Both Class Counsel and the Class Representative devoted significant time and effort to the prosecution of the Settlement Class Members' claim, and their efforts have yielded an extraordinary benefit to the Class. The requested attorneys' fees and costs and Service Award are amply justified in light of the investment, significant risks, and excellent results obtained for the Settlement Class Members, 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. Plaintiff and Class Counsel respectfully request that the Court approve attorneys' fees and reasonable expenses of $1,812,746.81 and the agreed-upon Service Award of $10,000.00 for Plaintiff as Class Representative.

II. BACKGROUND

A. BIPA

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

collected allowing the capture and collection of their biometrics; and

(4) Make available to the public a retention schedule and guidelines for permanently destroying biometrics. 740 ILCS § 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. *Plaintiff's Allegations*

Defendant is a technology company that provides workforce management and cloud-based timekeeping solutions for clients in Illinois. Plaintiff has alleged that Defendant collected, stored, and used her biometric data through a biometric-enabled timeclock Defendant provided to her employer so that her employer could track her work hours. Plaintiff has further alleged that in so doing Defendant has failed to comply with BIPA because Defendant: (1) failed to inform individuals prior to capturing alleged biometric data that it would be capturing such information; (2) failed to receive a written release for the capture of alleged biometric data prior to such capture; (3) failed to inform the person whose alleged biometric data was being captured of the specific purpose and length of term for which such alleged biometric data was captured; and (4) failed to make publicly available a retention schedule and guidelines for permanently destroying alleged biometric data. Defendant denies any violation of or liability under BIPA, and further denies that it is subject to BIPA as a technology provider that plays no active role in its customers' use of Defendant's workforce management solutions in their respective workplaces.

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

Plaintiff initiated this action in the Circuit Court of Cook County, Illinois on April 2, 2021. On May 21, 2021, Defendant removed the lawsuit to the U.S. District Court for the Northern District of Illinois, where the case was assigned to Hon. Manish S. Shah.

On June 28, 2021, Defendant moved to dismiss Plaintiff's claims for lack of personal jurisdiction and failure to state a claim. Plaintiff moved to remand her claims to the state court under Sections 15(a) and 15(c) of BIPA, 740 ILCS 14/15(a),(c), for lack of federal Article III standing. On October 28, 2021, following full briefing on Defendant's Motion to Dismiss and Plaintiff's Motion to Remand, Judge Shah issued a Memorandum Opinion and Order denying Defendant's Motion to Dismiss in its entirety, granting Plaintiff's Motion to Remand, and severing and remanding Plaintiff's Section 15(a) and 15(c) claims to the Circuit Court of Cook County. Defendant filed its Answer in federal court on November 18, 2021.

After filing its Answer, Defendant then moved to stay both the federal and state court actions, requesting that Judge Shah stay Plaintiff's federal Section 15(b) claim remaining in federal court pending the Illinois Supreme Court's resolution of *McDonald v. Symphony Bronzeville Park, LLC* and the Seventh Circuit's resolution of *Cothron v. White Castle Systems, Inc.*, and requesting that this Court stay Plaintiff's Section 15(a) and (c) claims pending *McDonald*. On January 14, 2022, this Court granted Defendant's Motion to Stay. On January 21, 2022, Judge Shah held a hearing and granted Defendant's federal motion in part, staying all class discovery pending the Seventh Circuit's decision in *Cothron*, but permitting individual merits discovery to proceed.

On March 28, 2022, Plaintiff moved for leave to file an amended complaint in federal court. Plaintiff's Motion was granted, and she filed her First Amended Complaint on March 31, 2022. Plaintiff then moved to lift the stay of class discovery in federal court on May 5, 2022.

Thereafter, in an effort to reach an early resolution to what was already – and what was going to be – highly-contested litigation, on August 10, 2022, the Parties participated in a formal, full-day mediation session with the Honorable Mary Anne Mason (Ret.) of JAMS Chicago, a former Justice of the Illinois Appellate Court. Due to the Parties' strong disagreement over many settlement terms, the Parties failed to reach a settlement. Over the following weeks, the Parties continued to negotiate with Justice Mason's assistance and reached a settlement in principle on September 15, 2022.[3] Counsel for Plaintiff and for Defendant expended significant efforts to reach a settlement, including but not limited to exchanging formal mediation submissions, exchanging information regarding Defendant's alleged biometric timekeeping technology, identifying potential class members, and participating in arm's-length negotiations. The Parties continued negotiating certain terms over the following months even after reaching an agreement in principle and were ultimately able to agree upon the terms of a settlement which the Court preliminarily approved on March 21, 2023. Notice of the Settlement commenced on May 22, 2023.

III. THE SETTLEMENT

A. The Settlement Provides Settlement Class Members With Exceptional Monetary And Non-Monetary Relief.

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 non-reversionary $4,750,000.00[4] Settlement Fund (Agreement, ¶ 53(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 award. Although the per-claimant amount will necessarily depend on the number of valid claims ultimately filed, due to the size of the Settlement

[3] On November 11, 2022, Plaintiff's claim under Section 15(b) of BIPA was remanded to this Court by stipulation.
[4] The Settlement Class comprises 25,186 individuals (Agreement, ¶ 45).

Class it is conservatively estimated that valid claimants will receive at least $500, though they are likely to receive substantially more.

The Settlement also provides valuable prospective relief to the Settlement Class. Defendant represents that it no longer authorizes its clients in Illinois to use biometric functionality in connection with Defendant's timekeeping equipment and agrees that, if Defendant authorizes its clients in Illinois to use biometric functionality in connection with Defendant's timekeeping equipment in the future, Defendant will take commercially reasonable steps to ensure that it fully complies with BIPA. (*Id*., ¶ 72). This additional relief benefits both the Settlement Class Members and future Illinois workers who use Defendant's timekeeping equipment.

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

Under the Settlement Agreement's Notice Plan, which has already gone into effect, direct notice via U.S. Mail and supplemental media notice through the Google Display Network and Yahoo Audience Network has been provided to the Settlement Class Members. (*See* Declaration of Evan M. Meyers ("Meyers Decl.,"), attached hereto as Exhibit 1, ¶ 18). Finally, the Settlement Website is operational and makes available the Claim Form, detailed Long Form Notice (including a Spanish-language version), and all relevant case information to Settlement Class Members, and permits Class members to submit claims online. To date, no Class Members have opted out or objected to the Settlement. (*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 $1,805,000.00, which amounts to 38% of the Settlement Fund, plus $7,746.81 in reimbursable expenses. (Agreement, ¶ 98). 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 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)). Under the percentage-of-the-recovery approach, the attorneys' fees awarded are "based upon a percentage of the amount recovered on behalf of the plaintiff class." *Brundidge*, 168 Ill. 2d at 238. Alternatively, when applying the lodestar approach, the attorneys' fees to be awarded are calculated by determining the total amount of hours spent by

counsel in order to secure the relief obtained for the class at a reasonable hourly rate, multiplied by a "weighted" "risk multiplier" that takes into account various factors such as "the contingency nature of the proceeding, the complexity of the litigation, and the benefits that were conferred upon the class members." *Id.* at 240.

Here, Plaintiff submits that the Court should apply the percentage-of-the-recovery approach—the approach used in the vast majority of common fund class actions, including BIPA class actions. It is settled law in Illinois that the Court need not employ the lodestar method in assessing a fee petition. *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,[5] 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 unpredictable in its administration." *Ryan v. City of Chicago,* 274 Ill. App. 3d 913, 923 (1st Dist. 1995).

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

Conversely, the use of the percentage-of-the-recovery approach in common fund class settlements flows from, and is supported by, the fact that the percentage-of-the-recovery approach promotes early resolution of the matter, as it disincentivizes protracted litigation driven solely by counsel's efforts to increase their lodestar. *Brundidge*, 168 Ill.2d at 242. For this reason, a percentage-of-the-recovery method best aligns the interests of the class and its counsel, as class counsel are encouraged to seek the greatest amount of relief possible for the class rather than simply seeking the greatest possible amount of attorney time regardless of the ultimate recovery obtained for the class. Applying a percentage-of-the-recovery approach is also generally more appropriate in cases like this one because it best reflects the fair market price for the legal services provided by the class counsel. *See Ryan*, 274 Ill. App. 3d at 923 (noting that "a percentage fee was the best determinant of the reasonable value of services rendered by counsel in common fund cases") (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force*, 108 F.R.D. 237, 255–56 (3d. Cir. 1985); *Sutton*, 504 F.3d at 693 (directing district court on remand to consult the market for legal services so as to arrive at a reasonable percentage of the common fund recovered). This approach also accurately reflects the contingent nature of the fees negotiated between Class Counsel and Plaintiff, who agreed *ex ante* that up to 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. (Meyers Declaration, ¶ 21); *see also In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 795 (N.D. Ill. 2015) (applying the percentage-of-the-recovery approach and noting that class members would typically negotiate fee arrangement based on percentage method rather than lodestar).

Class Counsel are not aware of any BIPA class action settlements involving a monetary common settlement fund where a court relied on the lodestar method to determine attorneys' fees.

In fact, to Class Counsel's knowledge, the percentage-of-the-recovery method has been used to determine a reasonable fee award in *every* BIPA class action settlement in the Circuit Court of Cook County where the defendant – as here – created a monetary common fund. *See, e.g., Sekura v. L.A. Tan Enters., Inc.*, No. 2015-CH-16694 (Cir. Ct. Cook Cnty., Ill. Dec. 1, 2016); *Zepeda v. Kimpton Hotel & Rest.*, No. 2018-CH-02140 (Cir. Ct. Cook Cnty., Ill. Dec. 5, 2018); *Taylor v. Sunrise Senior Living Mgmt., Inc.*, No. 2017-CH-15152 (Cir. Ct. Cook Cnty., Ill. Feb. 14, 2018); *Svagdis v. Alro Steel Corp.*, No. 2017-CH-12566 (Cir. Ct. Cook Cnty., Ill.); *Williams v. Swissport USA, Inc.*, No. 2019-CH-00973 (Cir. Ct. Cook Cnty., Ill.); *Collier, et. al. v. Pete's Fresh Market 2526 Corporation, et. al.*, No. 2019-CH-05125 (Cir. Ct. Cook Cty., Ill. Dec. 8, 2020); *Glynn v. eDriving, LLC,* No. 2019-CH-08517 (Cir. Ct. Cook Cnty., Ill. Dec. 14, 2020); *Kusinski v. ADP, LLC,* No. 2017-CH-12364 (Cir. Ct. Cook Cnty., Ill. Feb. 10, 2021) (Atkins, J.); *Draland v. Timeclock Plus, LLC*, 2019-CH-12769 (Cir. Ct. Cook Cnty., Ill. Apr. 8, 2021); *Rogers v. CSX Intermodal Terminal, Inc.*, No. 19-CH-04168 (Cir. Ct. Cook Cnty., Ill. May 13, 2021); *Freeman-McKee v. Alliance Ground Int'l, LLC,* No. 2017-CH-13636 (Cir. Ct. Cook County, Ill. June 15, 2021); *Salkauskaite v. Sephora USA, Inc.*, No. 2018-CH-14379 (Cir. Ct. Cook County, Ill. June 23, 2021); *Gonzalez v. Silva Int'l, Inc.*, No. 2020-CH-03514 (Cir. Ct. Cook County, Ill. June 24, 2021); *Williams v. Inpax Shipping Solutions, Inc.*, No. 2018-CH-02307 (Cir. Ct. Cook County, Ill. Sept. 1, 2021); *Roberts v. Paramount Staffing, Inc.*, No. 2017-CH-15522 (Cir. Ct. Cook County, Ill. Sept. 3, 2021); *Roberts v. Paychex, Inc.*, No. 2019-CH-00205 (Cir. Ct. Cook County, Ill. Sept 10, 2021; *Rapai v. Hyatt Corp.*, No. 2017-CH-14483 (Cir Ct. Cook County, Ill. Jan. 26, 2022); *Baldwin v. Metrostaff Inc.*, No. 2019-CH-04285 (Cir. Ct. Cook County, Ill. May 3, 2022).

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 excellent relief for the Settlement Class Members and in the context of such an excellent result, and weighed against the risk of continuing, protracted litigation, Class Counsel's fee request is fair.

1. *The requested attorneys' fees amount to 38% of the Settlement Fund—a percentage within the range found reasonable in similar cases.*

The requested fee award of $1,805,000.00 represents 38% of the Settlement Fund. This percentage is within the range of attorneys' fee awards that courts, including numerous judges within the Circuit Court of Cook County, have found reasonable in other class action settlements. In fact, fee awards of 38% or greater have been awarded in numerous separate BIPA class action settlements in the Circuit Court of Cook County and other Illinois courts. *See, e.g., Willoughby v. Lincoln Insurance Agency*, No. 22-CH-01917 (Cir. Ct. Cook Cnty., Ill. 2022) (Cohen, J.) (awarding 40% of the BIPA class settlement fund in attorneys' fees); *Rapai v. Hyatt Corp.*, No. 17-CH-14483 (Cir. Ct. Cook Cnty., Ill. 2022) (Demacopolous, J.); *Knobloch v. ABC Financial Services, LLC et al.*, No. 17-CH-12266 (Cir. Ct. Cook Cnty., Ill. 2021) (Loftus, J.); *Freeman-McKee v. Alliance Ground Int'l, LLC*, No. 17-CH-13636 (Cir. Ct. Cook Cnty., Ill. 2021) (Demacopoulos, J.); *Prelipceanu v. Jumio Corp.*, No. 18-CH-15883 (Cir. Ct. Cook Cnty. Ill. 2020) (Mullen, J.); *Smith v. Pineapple Hospitality Grp.*, No. 18-CH-06589 (Cir. Ct. Cook Cnty., Ill.

2020) (Moreland, J.); *McGee v. LSC Commc's*, 17-CH-12818 (Cir. Ct. Cook Cnty., Ill. 2019) (Atkins, J.); *Zhirovetskiy,* No. 17-CH-09323 (Cir. Ct. Cook Cnty., Ill., 2019) (Flynn, J.); *Svagdis*, No. 17-CH-12566 (Cir. Ct. Cook Cnty., Ill., 2018) (Larsen, J.); *Zepeda*, No. 18-CH-02140 (Cir. Ct. Cook Cnty., Ill. 2018) (Atkins, J.); *Bodie v. Capitol Wholesale Meats, Inc.*, 22-CH-000020 (Cir. Ct. DuPage Cnty., Ill. 2022); *Rogers v. CSX Intermodal Terminals, Inc.*, No. 19-CH-04168 (Cir. Ct. Cook Cnty. 2021) (Horan, J.) (attorneys' fee award of 38% of settlement fund in BIPA class settlement); *Vo v. Luxottica of America, Inc.*, No. 19-CH-10946 (Cir. Ct. Cook Cnty. 2022) (Mullen, J.) (same); *see also Willis v. iHeartMedia Inc.*, No. 16-CH-02455, August 11, 2016 Final Judgment and Order of Dismissal, at 5 (awarding attorneys' fees and costs of 40% of an $8,500,000 common fund in a TCPA class settlement); *Retsky Family Ltd. P'ship v. Price Waterhouse LLP,* No. 97-cv-7694, 2001 WL 1568856, at *4 (N.D. Ill. Dec. 10, 2001) (noting that a "customary contingency fee" ranges "from 33 1/3% to 40% of the amount recovered") (citing *Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986)); *Meyenburg v. Exxon Mobil Corp.,* No. 05-cv-15, 2006 WL 2191422, at *2 (S.D. Ill. July 31, 2006) ("33 1/3% to 40% (plus the cost of litigation) is the standard contingent fee percentages in this legal marketplace for comparable commercial litigation"); Herbert Newberg & Alba Conte, Newberg on Class Actions § 15.83 (William B. Rubenstein ed.; 5th ed.) (noting that fifty percent of the fund appears to be an approximate upper limit on fees and expenses). Thus, Plaintiff's request of 38% of the Settlement Fund is reasonable and well 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 two years, represents an excellent result for the Settlement Class, especially given that Defendant has

expressed a firm denial of Plaintiff's material allegations and demonstrated the intent to raise several defenses, including that Plaintiff and the Settlement Class Members consented to the collection of their alleged biometric data, that the information and data collected by Defendant does not constitute biometric identifiers or biometric information under BIPA, and that the alleged collection of Plaintiff's and other Settlement Class Members' purported biometric data by Defendant occurred outside Illinois. Any of these defenses, if successful, would likely result in Plaintiff and many of the proposed Settlement Class Members receiving no payment whatsoever. Further still, in addition to any defenses on the merits Defendant has and will raise, absent this Settlement Plaintiff would also otherwise be required to prevail on a class certification motion, which would be highly contested and for which success would certainly not be guaranteed.

In the face of these obstacles and unknowns, Class Counsel succeeded in negotiating and securing a settlement on behalf of Settlement Class which creates a $4,750,000.00 Settlement Fund and provides valid claimants with the ability to receive what may be greater 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 monetary and non-monetary relief obtained on behalf of the Settlement Class Members further justify the requested percentage of attorneys' fees.*

Despite the significant risks inherent in any litigation, and the particular risks presented in this litigation as discussed above, Class Counsel were able to obtain an outstanding result for the Settlement Class. As stated above, the Settlement Agreement provides for the creation of a $4,750,000.00 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 makes it very likely that Class Members who file valid claims will receive an amount approximating, if not substantially more than, $500—an outstanding result compared to other BIPA settlements involving vendors of timekeeping technology that provided substantially less monetary compensation per class member. *See, e.g., Kusinski*, No. 2017-CH-12364 (Cir. Ct. Cook Cnty. Feb. 10, 2021) (Atkins, J.) ($25 million fund for approximately 320,000 class members); *Figueroa v. Kronos Incorporated*, No. 19-cv-01306, Dkt. 380 (N.D. Ill. Dec. 20, 2022) ($15,276,227 fund for 81,910 class members (though the parties estimated at preliminary approval that there were 171,643 class members)); *Thome v. Novatime Tech., Inc.*, No. 19-cv-6256, Dkt. 90 (N.D. Ill. Mar. 8, 2021) ($4.1 million fund for 62,000 class members, and assignment of insurance policy).

In addition to the monetary compensation that Class Counsel have obtained for the Settlement Class Members, the Settlement also provides valuable non-monetary relief. Under the terms of the Settlement Agreement negotiated by Class Counsel, Defendant represents that it no longer allows its clients in Illinois to use biometric functionality in connection with Defendant's timekeeping equipment and agrees that, if Defendant authorizes its clients in Illinois to use biometric functionality in connection with Defendant's timekeeping equipment in the future, Defendant will take commercially reasonable steps to ensure that it fully complies with BIPA. (Agreement, ¶ 72).

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 outstanding monetary compensation obtained for the Settlement Class Members and the non-monetary benefits, an attorneys' fee award of 38% of the Settlement Fund plus expenses is reasonable and fair compensation—particularly, as discussed above, in light of the uncertainty and fluid nature of the relevant law, the "substantial risk in prosecuting this case under a contingency fee agreement" and the "defenses asserted by [Defendant]." *Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 59.[6]

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

Class Counsel have expended $7,746.81 in reimbursable expenses related to filing fees and case administration. (Meyers Decl., ¶ 20). 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 $1,812,746.81.

[6] 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 respective lodestars.

D. The Agreed-Upon Service Award For Plaintiff Is Reasonable And Should Be Approved.

The requested $10,000.00 Service Award is reasonable compared to other 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 awards of $25,000 and $10,000 for class representatives) (internal citation omitted); *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 497 (1st Dist. 1992) (noting that incentive awards "are not atypical in class action cases . . . and serve to encourage the filing of class actions suits.").

Here, Plaintiff's efforts and participation in prosecuting this two-year-old case justify the $10,000.00 Service Award sought. Even though no award of any sort was promised to Plaintiff prior to the commencement of the litigation or any time thereafter, Plaintiff nonetheless contributed her time and effort in pursuing her own BIPA claims, as well as in serving as a representative on behalf of the Settlement Class Members—exhibiting a willingness to participate and undertake the responsibilities and risks attendant with bringing a representative action. (Meyers Decl., ¶¶ 22-23).

Plaintiff participated in the initial investigation of her claim 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*.).

Further, agreeing to serve as the Class Representative meant that Plaintiff publicly placed her name on this suit and opened herself to "scrutiny and attention" which, in and of itself, "is certainly worthy of some type of remuneration," particularly in the context of a lawsuit against one of her employer's vendors. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 600–01 (N.D.

Ill. 2011). Were it not for Plaintiff's willingness to pursue this action on a class-wide basis, her efforts and contributions to the litigation by assisting Class Counsel with their investigation and prosecution of this suit, and her continued participation and monitoring of the case up through settlement, the substantial benefit to the Settlement Class Members afforded under the Settlement Agreement would simply not exist. (Meyers Decl., ¶ 24).

The $10,000.00 Service Award requested for Plaintiff is well in line with the average service award granted in class actions. Indeed, many courts that have granted final approval in BIPA class action settlements have granted higher incentive awards than the payment sought here. *See, e.g., Rogers*, 19-CH-04168, May 13, 2021 Final Order and Judgment, ¶ 21 (Cir. Ct. Cook Cnty., Ill.) (Walker, J.) (awarding $15,000 incentive award in BIPA class action settlement); *Rapai*, 17-CH-14483, Jan. 26, 2022 Final Order and Judgment, ¶ 20 (Demacopoulos, J.) (awarding $12,500 incentive award in BIPA class action); *Roach v. Wal-Mart, Inc.*, No. 19-CH-1107, June 16, 2021 Final Approval Order, ¶ 14 (Cir Ct. Cook Cnty, Ill.) (Meyerson, J.) (awarding $10,000 incentive award in BIPA class settlement); *Gonzalez v. Silva Int'l, Inc.*, No. 2020-CH-03514, June 24, 2021 Final Order and Judgment, ¶ 19 (Cir. Ct. Cook Cnty., Ill.) (Conlon, J.) (awarding $10,000 incentive award in BIPA class action). Compensating Plaintiff for the risks and efforts she undertook to benefit the Settlement Class Members is reasonable under the circumstances of this case, especially in light of the exceptional results obtained. As shown above, courts have regularly approved awards in similar class action litigation of at least $10,000.00. Moreover, no objection to the Service Award has been raised to date. Accordingly, a Service Award of $10,000.00 to Plaintiff is reasonable, justified by Plaintiff's time and effort in this case, and should be approved.

V. CONCLUSION

For the foregoing reasons, Plaintiff and Class Counsel respectfully request that the Court

enter an Order: (1) approving an award of attorneys' fees and expenses of $1,812,746.81; and (ii) approving a Service Award in the amount of $10,000.00 to Plaintiff in recognition of her significant efforts on behalf of the Settlement Class Members.

Dated: June 12, 2023

Respectfully submitted,

SHARENA KING, individually and on behalf of similarly situated individuals

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

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on June 12, 2023, a copy of the foregoing *Plaintiff's Motion & Memorandum of Law in Support of Approval of Attorneys' Fees, Expenses, & Service Award* was filed electronically with the Clerk of Court, with a copy sent by Electronic Mail to all counsel of record.

/s/ Timothy P. Kingsbury