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

MITCHELL PIERRE ROMERO, individually and on behalf of similarly situated individuals, *Plaintiff*, v. MINI STORAGE MAINTENANCE, LLC, an Illinois limited liability company, *Defendant.*	No. 2020-CH-03021 Hon. Alison C. Conlon

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

Plaintiff Mitchell Pierre Romero, by and through his 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 Mini Storage Maintenance, LLC. In support of this Motion, Plaintiff submits the following memorandum of law.

Dated: August 28, 2023

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

Counsel for Plaintiff and Class Counsel

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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 it will provide them with hundreds of dollars in cash payments with no need to submit a claim form. The Parties' Agreement has established a non-reversionary Settlement Fund of $109,500.00 to provide each Settlement Class Member with an equal, *pro rata* distribution of the Settlement Fund for having their biometrics collected by Defendant Mini Storage Maintenance, LLC ("Defendant") in alleged violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA"). In addition to the substantial financial benefit to the Settlement Class Members, the Settlement also provides significant non-monetary relief that will prevent the recurrence of the allegedly unlawful biometric collection and use practices at issue in this case.

The Court preliminarily approved the Settlement on July 10, 2023. Direct notice of the Settlement commenced on August 7, 2023. As of the filing of this Motion, no Settlement Class Member has objected to the Settlement or requested to be excluded.

With this Motion, Class Counsel request a fee of 34% of the total Settlement Fund, amounting to $37,230.00 – which is far less than their lodestar incurred prosecuting this three-year-old case – plus their litigation expenses. As explained in detail below, Class Counsel's requested fee award is justified given the excellent monetary and non-monetary relief provided under the Settlement, is consistent with Illinois law and fee awards granted in other cases in Illinois courts, and is also reasonable given the time Class Counsel have committed to resolving this litigation for the benefit of the Settlement Class Members.

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

Both Class Counsel and the Class Representative devoted significant time and effort to the prosecution of the Settlement Class Members' claims,[2] and their efforts have yielded an extraordinary benefit to the Class. The requested attorneys' fees and expenses 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 $37,905.50 and the agreed-upon Service Award of $7,500.00 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

[2] *See* Declaration of Evan M. Meyers ("Meyers Decl."), attached hereto as Exhibit 1, ¶ 14.

(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 supplier and installer of steel structures and roofing for the self-storage industry with operations in the state of Illinois. Plaintiff worked for Defendant and alleges that each time he clocked in and clocked out of work, he was required to provide his biometrics, *i.e.* scans of his fingers, in order to authenticate his identity for timekeeping purposes. Plaintiff has further alleged that in operating its timekeeping system Defendant has failed to comply with BIPA because Defendant: (1) failed to inform individuals prior to capturing their biometrics that it would be capturing such information; (2) failed to receive a written release for the capture of biometrics prior to such capture; (3) failed to inform the person whose biometrics were being captured of the specific purpose and length of term for which such biometrics are captured; (4) failed to establish a publicly available retention schedule and guidelines for permanently destroying biometrics; and (5) failed to obtain informed consent to disclose or disseminate the Class's biometrics to third parties. Defendant denies any violation of or liability under BIPA.

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

On March 11, 2020, Plaintiff filed this case in the Circuit Court of Cook County, where it was assigned to the Honorable Alison C. Conlon. On November 4, 2020, Defendant filed its

Answer. On December 7, 2020, the Court entered an Order directing Plaintiff and Defendant to engage in written discovery.

On December 15, 2020, Defendant's insurer, Scottsdale Insurance Company ("Scottsdale"), filed an action in the Circuit Court of Cook County captioned *Scottsdale Insurance Co. v. Mini Storage Maintenance, LLC and Mitchell Pierre Romero*, Case No. 2020-CH-07294, which was assigned to the Honorable Eve M. Reilly. On February 16, 2021, Plaintiff filed his Answer. On February 24, 2021, Defendant filed its Answer. On March 18, 2021, Scottsdale filed a Motion for Judgment on the Pleadings. On July 14, 2021, after briefing and oral argument, Judge Reilly denied Scottsdale's Motion for Judgment on the Pleadings. On August 13, 2021, Scottsdale filed a Motion to Reconsider. On January 26, 2022, after briefing and oral argument, Judge Reilly denied Scottsdale's Motion to Reconsider.

The Parties subsequently agreed to attempt to resolve the Litigation. On August 24, 2022, the Parties attended a settlement conference overseen by the Honorable Anna H. Demacopoulos. With the assistance of Judge Demacopoulos, the Parties agreed in principle to the terms of a class settlement.

Counsel for Plaintiff, Defendant, and Scottsdale expended significant efforts to reach and finalize a settlement, including but not limited to exchanging information regarding Defendant's timekeeping system, identifying potential class members, and participating in contentious, arm's-length negotiations. Only after months of negotiation over material settlement terms and the final form of the Settlement Agreement and notice plan were the Parties able to agree upon the terms of a settlement, which the Court preliminarily approved on July 10, 2023. Direct notice of the Settlement was sent to all Settlement Class Members by U.S. Mail on April 7, 2023.

III. THE SETTLEMENT

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

Class Counsel's prosecution of this litigation has culminated in this class-wide Settlement that provides excellent monetary relief to the Settlement Class Members. The Settlement establishes a non-reversionary $109,500.00 Settlement Fund (Agreement, ¶¶ 46(a)), and each class member will receive – without the need to submit a claim – an equal share of the fund after deductions of administration costs and the Court-approved attorneys' fees and Service Award. After deduction of those costs, it is estimated that each Settlement Class Member will receive approximately $650–750.

Defendant represents that is no longer using the finger scan timeclock that is the subject of the Litigation. (Settlement Agreement, ¶ 51). This non-monetary relief benefits both the Settlement Class Members and future employees of Defendant.

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

Under the Settlement Agreement's Notice Plan, which has already gone into effect, direct notice has been provided by U.S. Mail to the Settlement Class Members. (*See* Meyers Decl., ¶ 17). Finally, the Settlement Website is operational and makes available the detailed Long Form Notice (including a Spanish-language version), and all relevant case information to Settlement Class Members. 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 $37,230.00, which amounts to 34% of the Settlement Fund, plus $675.50 in reimbursable expenses.

(Agreement, ¶ 75). Such a request is at the low end of 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-fund] 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,[3] 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

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

unpredictable in its administration." *Ryan v. City of Chicago,* 274 Ill. App. 3d 913, 923 (1st Dist. 1995).

Conversely, the use of the percentage-of-the-recovery approach in common fund class settlements flows from, and is supported by, the fact that the percentage-of-the-recovery approach promotes early resolution of the matter, as it disincentivizes protracted litigation driven solely by counsel's efforts to increase their lodestar. *Brundidge*, 168 Ill.2d at 242. For this reason, a percentage-of-the-recovery method best aligns the interests of the class and its counsel, as class counsel are encouraged to seek the greatest amount of relief possible for the class rather than simply seeking the greatest possible amount of attorney time regardless of the ultimate recovery obtained for the class. Applying a percentage-of-the-recovery approach is also generally more appropriate in cases like this one because it best reflects the fair market price for the legal services provided by the class counsel. *See Ryan*, 274 Ill. App. 3d at 923 (noting that "a percentage fee was the best determinant of the reasonable value of services rendered by counsel in common fund cases") (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force*, 108 F.R.D. 237, 255–56 (3d. Cir. 1985); *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 Decl., ¶ 20); *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); *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) (Conlon, J.); *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); *Marzec v. Reladyne, LLC*, No. 2018-CH-14101 (Cir. Ct. Cook County, Ill. Dec. 15, 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 34% of the Settlement Fund—a percentage within the range found reasonable in similar cases.*

The requested fee award of $37,230.00 represents 34% of the Settlement Fund and is far less than Class Counsel's lodestar related to this litigation (Meyers Decl., ¶ 18). 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 35% or greater have been regularly awarded in numerous separate BIPA class action settlements in the Circuit Court of Cook County and other Illinois courts. *See Willoughby v. Lincoln Insurance Agency*, No. 22-CH-01917 (Cir. Ct. Cook Cnty., Ill. 2022) (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) (same); *Knobloch v. ABC Financial Services, LLC et al.*, No. 17-CH-12266 (Cir. Ct. Cook Cnty., Ill. 2021) (same); *Freeman-McKee v. Alliance Ground Int'l, LLC*, No. 17-CH-13636 (Cir. Ct. Cook Cnty., Ill. 2021) (same); *Prelipceanu v. Jumio Corp.*, No. 18-CH-15883 (Cir. Ct. Cook Cnty. Ill. 2020) (same); *Rogers v. CSX Intermodal Terminals, Inc.*, No. 19-CH-04168 (Cir. Ct. Cook Cnty. 2021) (attorneys' fee award of 38% of settlement fund in BIPA class settlement); *Gonzalez v. Silva Int'l, Inc.*, 20-CH-03514 (Cir. Ct. Cook Cnty., Ill. 2021) (attorneys' fee award of 35% of settlement fund in BIPA class settlement); *Draland v. Timeclock Plus, LLC*, No. 2019-CH-12769 (Cir. Ct. Cook County, Ill. 2021) (same); *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)); 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 34% of the Settlement Fund is reasonable considering the 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 three 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 Defendant did not collect data or information from Plaintiff and the Settlement Class Members that is covered by BIPA. If successful, this defense would likely result in Plaintiff and the proposed Settlement Class Members receiving no payment whatsoever.

This Settlement obviates the need for the time, expense, and motion practice required to

resolve Plaintiff's individual claims as well as the significant resources that would be expended through targeted class discovery and adversarial class certification briefing.

In the face of these obstacles and unknowns, Class Counsel succeeded in negotiating and securing a settlement which creates a $109,500.00 Settlement Fund and provides Settlement Class Members with the ability to receive hundreds of dollars in compensation. The Settlement's provision of excellent monetary relief to each valid claimant now, as opposed to years from now, or perhaps never, represents a truly excellent result.

3. *The substantial relief obtained for the Settlement Class Members further justifies the requested percentage of attorneys' fees.*

Despite the significant risks inherent in any litigation, and the particular risks presented in this litigation as discussed above, Class Counsel were able to obtain an outstanding result for the Settlement Class. As stated above, the Settlement Agreement provides for the creation of a $109,500.00 Settlement Fund, which will be split equally among the Settlement Class Members after Court-approved fees and costs.

The Settlement also provides for valuable non-monetary relief. Under the terms of the Settlement Agreement negotiated by Class Counsel, Defendant represents that it is no longer using the finger scan timeclock that is the subject of the Litigation. (Agreement, ¶ 51). This non-monetary relief further justifies the reasonableness of the attorneys' fees being sought here. *See Spano v. Boeing Co.*, No. 06-cv-743, 2016 WL 3791123, at *1 (S.D. Ill. Mar. 31, 2016) ("A court must also consider the overall benefit to the Class, including non-monetary benefits, when evaluating the fee request. . . . This is important so as to encourage attorneys to obtain meaningful affirmative relief") (citing *Beesley v. Int'l Paper Co.*, No. 06-cv-703, 2014 U.S. Dist. LEXIS 12037, at *5 (S.D. Ill. Jan 31, 2014)); Manual for Complex Litigation, Fourth, § 21.71, at 337 (2004)); *see also Hall v. Cole*, 412 U.S. 1, 5 n.7 (1973) (awarding attorneys' fees when relief is

obtained for the class "must logically extend, not only to litigation that confers a monetary benefit to others, but also litigation which corrects or prevents an abuse which would be prejudicial to the rights and interests of those others.").

Given the significant monetary compensation obtained for the Settlement Class Members and the non-monetary relief, an attorneys' fee award of 34% 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.

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

Class Counsel have expended $675.50 in reimbursable expenses related to filing fees and case administration. (Meyers Decl., ¶ 19). 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 $37,905.50.

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

The requested $7,500.00 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 case justify the $7,500.00 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 his time and effort in pursuing his own BIPA claim, 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., ¶¶ 21–24).

Plaintiff participated in the initial investigation of his 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 his name on this suit and opened himself 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 an employer. *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, his efforts and contributions to the litigation by assisting Class Counsel with their investigation and prosecution of this suit, and his 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., ¶ 23).

The $7,500.00 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 awards that are the same as or higher than the payment sought here. *Rapai*, 17-CH-14483, Jan. 26, 2022 Final Order and Judgment, ¶ 20 (Demacopoulos, J.) (awarding $12,500 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 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 award in BIPA class action); *Rogers*, 19-CH-04168, May 13, 2021 Final Order and Judgment, ¶ 21 (Cir. Ct. Cook Cnty., Ill.) (Walker, J.) (awarding $15,000 award in BIPA class action settlement). Compensating Plaintiff for the risks and efforts he 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 service awards in similar class action litigation well in excess of the agreed-upon $7,500.00 Service Award here. Moreover, no objection to the Service Award has been raised to date. Accordingly, a Service Award of $7,500.00 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 $37,905.50; and (ii) approving a Service Award in the amount of $7,500.00 to Plaintiff in recognition of his significant

efforts on behalf of the Settlement Class Members.

Dated: August 28, 2023

Respectfully submitted,

MITCHELL PIERRE ROMERO, individually and on behalf of similarly situated individuals

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

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

Counsel for Plaintiff
and Class Counsel

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on August 28, 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