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

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| LAQUANDERIA ROBERTS, individually and on behalf of all similarly situated individuals,<br><br>*Plaintiff*,<br><br>v.<br><br>PARAMOUNT STAFFING, INC., an Illinois corporation,<br><br>*Defendant.* | No. 2017-CH-15522<br><br>Hon. Allen P. Walker |

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

Plaintiff, Laquanderia Roberts, 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 an incentive award for Plaintiff as the Class Representative in connection with the class action settlement with Defendant Paramount Staffing, Inc. ("Defendant"). Defendant does not object to the relief sought herein. In support of this Motion, Plaintiff submits the following memorandum of law.

Dated: July 1, 2021

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# TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**STATUTES**



**OTHER AUTHORITY**

## I. INTRODUCTION

The Class Action Settlement[1] that Class Counsel has achieved in this case is an exceptional result for Settlement Class Members. It establishes a Settlement Fund of $1,500,000.00 (One Million Five Hundred Thousand Dollars) to provide each Settlement Class Member who files a valid, timely claim with an estimated cash payment of several hundred dollars for having their biometrics collected by Defendant in alleged violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA"). Direct Notice of the Settlement was sent to Settlement Class Members on June 10, 2021 and, as of the filing of this Motion, no Settlement Class Member has objected to the proposed Settlement and only seven Class Members have requested exclusion from the Settlement Class.

Both Class Counsel and the Class Representative have devoted significant time and effort – over the span of more than 3 ½ years – on behalf of the Settlement Class Members' claims, and their efforts have yielded an outstanding benefit to the Class. With this Motion, Class Counsel request a fee of 35% of the total Settlement Fund obtained for the Settlement Class, amounting to $525,000.00, plus their litigation expenses, and an Incentive Award of $10,000.00 for the Class Representative, as provided for in the Settlement Agreement. The requested attorneys' fees, costs and Incentive Award are amply justified in light of the investment, significant risks, and excellent results obtained for the Settlement Class Members, particularly given the continued uncertainty over the state of BIPA litigation, are consistent with Illinois law and fee awards and incentive awards granted in other cases in Illinois courts, including other BIPA class actions, and warrant Court approval.

[1] Unless otherwise indicated, capitalized terms have the same meaning as those terms are used in the Settlement Agreement ("Agreement"), which is attached hereto as Exhibit 1.

## 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)[2] to:

(1) inform the person whose biometrics are to be collected in writing that his 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) publish a publicly available retention schedule and guidelines for permanently destroying the collected biometrics. 740 ICLS 14/15.

BIPA was enacted in large part to protect the privacy rights of individuals, to provide them with a means of enforcing their rights, and to regulate the practice of collecting, using, and disseminating such sensitive and irreplaceable information.

### B. The Case and Procedural History

#### 1. *Plaintiff's allegations*

Defendant is a logistics and industrial staffing provider in Illinois. Plaintiff has alleged that Defendant collected and used her biometric data through a Biometric Timekeeping System that it used to track her work hours while she worked for Defendant. 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 their biometrics that it will be capturing such information; (2) failed

[2] "Biometric identifiers" and "biometric information" are collectively referred to herein as "biometrics."

to receive a written release for the capture of biometrics prior to such capture; (3) failed to inform the person whose biometrics are being captured of the specific purpose and length of term for which such biometrics are captured; and (4) failed to establish a publicly available retention schedule and guidelines for permanently destroying biometrics. Defendant denies any violation of or liability under BIPA.

2. *Procedural history and the Parties' settlement negotiations*

Plaintiff initiated this action on November 22, 2017, alleging violations of BIPA against Dart Container Corporation of Illinois ("Dart"), one of Defendant's clients. On December 27, 2017, Dart removed the action to the U.S. District Court for the Northern District of Illinois, where it was assigned to Judge Ronald A. Guzman. On March 12, 2018, on Plaintiff's motion, Judge Guzman remanded the case back to the Circuit Court of Cook County.

Thereafter, on March 22, 2018, Plaintiff filed her First Amended Complaint. Dart filed a motion to dismiss on June 22, 2018, which was fully briefed by September 5, 2018. On October 31, 2018, Judge Valderrama stayed the litigation in light of the then-pending Illinois Supreme Court's decision in *Rosenbach v. Six Flags Entertainment Corporation*. After the *Rosenbach* decision was issued on January 25, 2019, Judge Valderrama lifted the stay.

On July 19, 2019, Plaintiff filed a Second Amended Complaint, adding Bullhorn, Inc. as a defendant. On August 28, 2019, Bullhorn, Inc. removed the action to the Northern District of Illinois, where it was assigned to the Honorable Sara L. Ellis.

In an effort to reach an early resolution to what was and would be highly-contested litigation, on November 26, 2019, the Parties participated in a formal, full-day mediation session with the Honorable James F. Holderman (Ret.) of JAMS in Chicago, Illinois. No settlement was reached, and on January 15, 2020, the Parties participated in a second half-day mediation before

Judge Holderman. Again, no settlement was reached. Counsel for Plaintiff and for Defendant subsequently expended significant efforts to reach a settlement, including but not limited to exchanging information regarding Defendant's use of a Biometric Timekeeping System, identifying potential class members, and participating in continued arm's-length negotiations. On June 11, 2020, following months of additional negotiations involving Judge Holderman, the Parties reached a settlement in principle and then spent many months further negotiating and drafting the Settlement Agreement and related exhibits.

On February 12, 2021, Plaintiff voluntarily dismissed her claims against Bullhorn, Inc. In order to avoid any jurisdictional challenges to the Settlement, the Parties stipulated to remand the action to this Court. On February 26, 2021, Judge Ellis ordered the case remanded to the Circuit Court of Cook County, Illinois. Following remand, Plaintiff filed her operative Third Amended Class Action Complaint against Defendant. On May 20, 2021, this Court preliminarily approved the Parties' Settlement Agreement, and as directed by the Court's Preliminary Approval Order, notice was disseminated to the Settlement Class Members on June 10, 2021.

## III. THE SETTLEMENT

### A. Relief to the Settlement Class Members

Class Counsel's prosecution of this litigation has culminated in this class-wide Settlement that provides outstanding monetary relief to the Settlement Class Members. The Settlement establishes a $1,500,000.00 non-reversionary Settlement Fund (Ex. 1, ¶ 54(a)), and each valid claimant will be entitled to an equal share of the fund after deductions for administration costs and the Court-approved attorneys' fees and incentive award (*Id.*, ¶ 55).

The Settlement also provides valuable prospective relief to the Settlement Class. Defendant has agreed that it shall remain compliant with all BIPA requirements going forward, including

BIPA's consent and retention policy requirements. (*Id*., ¶ 72). This prospective 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 of the Settlement has been provided by U.S. Mail to the Settlement Class Members. (Declaration of Evan M. Meyers ("Meyers Decl."), attached hereto as Exhibit 2, at ¶ 17). In addition, the Settlement Website is operational and makes available the Claim Form, Long Form Notice, and all relevant case information. (*Id.*) To date, with a full six weeks left in the claims period, hundreds of claims have been submitted, no Class Member has objected, and only seven Class Members have requested exclusion. (*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 $525,000.00, which amounts to 35% of the Settlement Fund, plus $21,836.17 in reimbursable expenses. (Ex. 1, ¶ 98); (Meyers Decl., ¶ 19). Such a request is well within the range of fees approved in other class actions and is fair and reasonable in light of the work performed by Class Counsel and the outstanding recovery secured on behalf of the Settlement Class Members.

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

In cases where, as here, a class action settlement results in the creation of a settlement fund, "[t]he Illinois Supreme Court has adopted the approach taken by the majority of Federal courts on the issue of attorney fees[.]" *Baksinski v. Northwestern Univ.*, 231 Ill. App. 3d 7, 13 (1st Dist. 1992) (citing *Fiorito v. Jones*, 72 Ill.2d 73 (1978)). That is, where "an equitable fund has been created, attorneys for the successful plaintiff may directly petition the court for the reasonable value of those of their services which benefited the class." *Id.* at 14 (citing *Fiorito*, 72 Ill.2d 73). This rule "is based on the equitable notion that those who have benefited from litigation should share in its costs." *Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007) (citing *Skelton v. Gen. Motors Corp.*, 860 F.2d 250, 252 (7th Cir. 1988)).

In deciding an appropriate fee in such cases, "a trial judge has discretionary authority to choose a percentage[-of-the-recovery] or a lodestar method[.]" *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. Under 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 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-fund 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-fund 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

[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.

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 Plaintiffs, who agreed *ex ante* that up to 40% of any settlement fund plus reimbursement of costs and expenses would represent a fair award of attorneys' fees from a fund recovered for the Class. (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 majority of BIPA class actions are pending) 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); *Williams v. Swissport USA, Inc.*, No.

2019-CH-00973 (Cir. Ct. Cook Cnty., Ill. Nov. 12, 2020); *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*, 2019-CH-08517 (Cir. Ct. Cook Cnty., Ill. Dec. 14, 2020); *Kusinski v. ADP, LLC*, 2017-CH-12364 (Cir. Ct. Cook Cnty., Ill. Feb. 10, 2021); *Draland v. Timeclock Plus, LLC*, (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,* 2017-CH-13636 (Cir. Ct. Cook County, Ill. June 15, 2021); *Salkauskaite v. Sephora USA, Inc.*, 2018-CH-14379 (Cir. Ct. Cook County, Ill. June 23, 2021); *Gonzalez v. Silva Int'l, Inc.*, 2020-CH-03514 (Cir. Ct. Cook County, Ill. June 24, 2021).

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 attorney 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 of 35% of the settlement fund is a percentage well within the range found reasonable in similar cases.*

The requested fee award of $525,000.00 represents 35% of the Settlement Fund. This

percentage is well 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 higher – including multiple 40% fee awards – have been recently awarded in numerous BIPA class action settlements in the Circuit Court of Cook County. *See, e.g., Zepeda v. Kimpton Hotel & Restaurant Group, LLC et al.*, No. 18-CH-02140 (Cir. Ct. Cook Cnty. 2018) (attorneys' fee award of 40% of settlement fund in BIPA class settlement); *Svagdis*, No. 17-CH-12566 (Cir. Ct. Cook Cnty., Ill., 2018) (same); *Zhirovetskiy v. Zayo Group, LLC*, No. 17-CH-09323 (Cir. Ct. Cook Cnty., Ill., 2019) (same); *McGee v. LSC Commc's*, 17-CH-12818 (Cir. Ct. Cook Cnty., Ill. 2019) (same); *Smith v. Pineapple Hospitality Grp.*, No. 18-CH-06589 (Cir. Ct. Cook Cnty., Ill. 2020) (same); *Prelipceanu v. Jumio Corp.*, No. 18-CH-15883 (Cir. Ct. Cook Cnty. Ill. 2020) (same); *Freeman-McKee v. Alliance Ground Int'l, LLC*, No. 17-CH-13636 (Cir. Ct. Cook Cnty., Ill. 2021) (same); *see also, e.g., Rogers v. CSX Intermodal Terminals, Inc.*, 19-CH-04168 (Cir. Ct. Cook Cnty. 2021) (attorneys' fee award of 38% of settlement fund in BIPA class settlement) (Walker, J.); *Gonzalez v. Silva Int'l, Inc.*, 20-CH-03514 (Cir. Ct. Cook Cnyt., 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); *Williams v. Swissport USA, Inc.*, No. 19-CH-00973 (Cir. Ct. Cook County, Ill. 2020) (same); *Glynn v. eDriving, LLC*, No. 2019-CH-08517 (Cir. Ct. Cook County, Ill. 2020) (same) (Walker, J.); *Willis v. iHeartMedia Inc.*, No. 16-CH-02455 (Cir. Ct. Cook County, Ill. 2016) (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)); *Sterk v. Path, Inc.*, No. 2015-CH-

08609 (Cir. Ct. Cook Cnty., Ill.) (approving attorneys' fee award in TCPA case of 35% of the fund); *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 35% of the Settlement Fund is within the range of attorneys' fees recently approved by courts in this Circuit as reasonable 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 also represents an excellent result for the Settlement Class given that Defendant has expressed a firm denial of her material allegations and the intent to raise several defenses, including that Plaintiff and the Settlement Class Members consented to the collection of their biometrics, that their claims may be preempted by the Illinois Workers' Compensation Act, that any award of statutory damages under BIPA would violate Defendant's due process rights, and that Plaintiff's and a significant number of the Settlement Class Members' claims are barred by the applicable statute of limitations. Any of these defenses, if successful, would likely result in Plaintiff and a substantial majority of the proposed Settlement Class Members receiving no payment whatsoever.

For example, while many courts in this Circuit have found that a five-year statute of limitations applies to BIPA claims, Illinois courts are not unanimous. Indeed, a court sitting in the Circuit Court of DuPage County recently held, in *Cannon v. FIC America Corp.*, No. 20-L-121 (Cir. Ct. DuPage Cnty., August 7, 2020), that a two-year statute of limitations applies to BIPA claims. Illustrating the potential for disagreement as to the appropriate statute of limitations, the

First District Appellate Court recently accepted a BIPA defendant's interlocutory appeal in a case pending in this Circuit and is currently reviewing whether a five-year or one-year limitations period applies to BIPA claims. *See Tims v. Black Horse Carriers, Inc.*, No. 1-19-0563. If the First District were to rule that a one-year limitations period applies, Plaintiff and many of the Settlement Class Members could recover nothing. In addition, the Illinois Supreme Court recently agreed to review the First District Appellate Court's decision in *McDonald v. Symphony Bronzeville Park LLC*, 2020 IL App (1st) 192398, which rejected the defendant-appellant's argument that workers' BIPA claims against their employers are preempted by the Illinois Workers' Compensation Act. If the Supreme Court were to reverse the First District, Plaintiff and the Class Members would likely be unable to recover any statutory damages under BIPA here.

Even absent the risk posed to Plaintiff's and the Settlement Class Members' claims by the pending *Tims* and *McDonald* appeals, 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 on behalf of Settlement Class defined according to a five-year statute of limitations, which creates a $1,500,000.00 Settlement Fund and provides valid claimants with the ability to claim what will likely amount to hundreds of dollars in cash benefits.

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

Despite the significant risks inherent in any further litigation, Class Counsel were able to obtain an excellent result for the Settlement Class. Although the claims deadline is not for another

six weeks, over five hundred claims and no objections have been received thus far. This reflects the Settlement Class Members' predictably overwhelmingly positive reaction to the Settlement.

Given the significant monetary compensation obtained for the Settlement Class Members, an attorneys' fee award of 35% of the Settlement Fund plus expenses is reasonable and fair compensation—particularly, as discussed above, in light of the significant uncertainty in 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 $21,836.17 in reimbursable expenses related to filing fees, mediation fees, copying, and case administration, with the likelihood of more expenses yet to come. (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 $546,836.17.

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

The Settlement Agreement also provides for an Incentive Award of $10,000.00 to Plaintiff Roberts for serving as the class representative and agreeing to prosecute this action in her own name despite the risk and stigma associated with commencing a lawsuit in the employment

context, which includes inherent reputational risks vis-à-vis current and future employers and co-workers. (Ex. 1, ¶ 101); *Schulte v. Fifth Third Bank,* 805 F. Supp. 2d 560, 600–01 (N.D. Ill. 2011) (noting that class representatives open themselves to "scrutiny and attention" by adding their name to public lawsuits, which, in and of itself, "is certainly worthy of some type of remuneration"). 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 v. Boeing Co.,* No. 06-cv-743, 2016 WL 3791123, at *4 (S.D. Ill. Mar. 31, 2016) (approving incentive awards of $25,000 and $10,000 for class representatives) (internal citation omitted); *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 497 (1st Dist. 1992) (noting that incentive awards "are not atypical in class action cases . . . and serve to encourage the filing of class actions suits.").

Here, Plaintiff Robert's efforts and participation in prosecuting this case justify the $10,000.00 Incentive 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 and served 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 her claims and provided documents and information to Class Counsel to aid in preparing the initial pleadings, reviewed the pleadings prior to filing, consulted with Class Counsel on numerous occasions, and provided feedback on various filings including, most importantly, the Settlement Agreement. (*Id*.) Were it not for Plaintiff's willingness to bring this action on a class-wide basis and her efforts and contributions to the litigation up through settlement, the substantial benefit to the Settlement Class Members afforded under the Settlement Agreement would not exist. (*Id.*, ¶ 23).

Numerous courts that have granted final approval in similar class action settlements have awarded the same or significantly higher incentive awards than the $10,000 award sought here. *See, e.g., Seal v. RCN Telecom Services, LLC,* 2016-CH-07033, February 24, 2017 Final Order and Judgment, ¶ 20 (Cir. Ct. Cook Cnty., Ill.) (awarding $10,000 incentive awards to each of two named plaintiffs); *Craftwood Lumber Co. v. Interline Brands, Inc.,* No. 11-CV-4462, 2015 WL 1399367, at *6 (N.D. Ill. Mar. 23, 2015) (awarding $25,000 incentive award); *Aranda v. Caribbean Cruise Line, Inc.*, No. 12 C 4069, 2017 WL 1369741, at *10 (N.D. Ill. Apr. 10, 2017) (awarding $10,000 to each class representative); *Spano*, 2016 WL 3791123, at *4 (approving $10,000 incentive awards); *Rogers v. CSX Intermodal Terminals, Inc.*, No. 2019-CH-04168, Final Order and Judgment, ¶ 21 (awarding $15,000 incentive award in BIPA class action) (Walker, J.); *Zhirovetskiy*, No. 2017-CH-09323 (April 18, 2019 Final Order and Judgment, ¶ 20) (awarding $10,000 incentive award in BIPA class action); *Glynn v. eDriving, LLC*, No. 2019-CH-08517, Final Order and Judgment, ¶ 20) (same) (Walker, J.).

Accordingly, an Incentive Award of $10,000.00 is eminently justified by Ms. Roberts' 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: (i) approving an award of attorneys' fees and expenses of $546,836.17, and (ii) approving an Incentive Award in the amount of $10,000.00 to the Class Representative in recognition of her significant efforts on behalf of the Settlement Class Members.

Dated: July 1, 2021

Respectfully submitted,

LAQUANDERIA ROBERTS, individually and on behalf of all similarly situated individuals

By: /s/ Timothy P. Kingsbury
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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that on July 1, 2021, a copy of *Plaintiff's Motion & Memorandum Of Law In Support Of Approval Of Attorneys' Fees, Expenses, And Incentive Award* was filed electronically with the Clerk of Court, with a copy sent to by electronic mail to all counsel of record.

/s/ Timothy P. Kingsbury