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

AUSTE SALKAUSKAITE, individually and on behalf of all others similarly situated, *Plaintiff,* v. SEPHORA USA, INC., a Delaware corporation, *Defendant.*	No. 18-CH-14379 Hon. Anna M. Loftus

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

Plaintiff, Auste Salkauskaite, 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 Sephora USA, Inc. ("Defendant"). In support of this Motion, Plaintiff submits the following memorandum of law.

Dated: April 30, 2021

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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 $1,250,000.00 to provide each Settlement Class Member who files a valid, timely claim with an estimated cash payment of over $1,000.00 for allegedly having their biometrics collected by Defendant in 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. Notice of the Settlement by direct notice and publication notice commenced on April 9, 2021, and as of the filing of this Motion, hundreds of claims have already been submitted, with over a month remaining before the Claims Deadline. Notably, no Settlement Class Member has objected to the proposed Settlement and no Class Member has requested exclusion from the Settlement Class.

Both Class Counsel and the Class Representative have devoted significant time and effort on behalf of the Settlement Class Members' claims; this case has been litigated for over two years years and their efforts have yielded an extraordinary 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 $437,500.00, 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. As explained in detail below, Class

[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.

Counsel's requested fee award is consistent with Illinois law and fee awards granted in other cases in Illinois courts, including other BIPA class actions, and warrants Court approval.

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 operates one of the leading chains of cosmetics stores in the country with hundreds of locations across America. To help sell its cosmetics products, Defendant installed "Sephora Virtual Artist" ("SVA") kiosks at a number of its stores, including in stores located in

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

Illinois. Defendant's SVA kiosks used the camera function of an iPad to create the appearance of a digital "mirror" of the customer's face and allowed them to interact with it and virtually "try on" different cosmetics products without having to purchase them. In essence, Defendant's SVA kiosks were a form of augmented reality, similar to photo filters, that virtually applied different makeup products. Plaintiff has alleged that Defendant's SVA kiosks gathered and used individuals' facial biometrics when they interacted with Defendant's SVA kiosks in order to virtually apply the makeup products, including when Plaintiff interacted with one of Defendant's SVA kiosks at one of its stores located in Chicago, Illinois in late 2018. 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 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; (4) failed to publish a publicly available retention schedule and guidelines for permanently destroying biometrics; and (5) failed to obtain informed consent to disclose or disseminate the biometrics. Defendant denies any violation of or liability under BIPA.

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

This action was initiated on November 18, 2018 in the Circuit Court of Cook County, Illinois, alleging violations of BIPA against Defendant and Modiface, Inc. ("Modiface"), the entity that helped develop the SVA kiosks and their technology. Defendant subsequently removed the case to the Northern District of Illinois. Thereafter, Modiface filed its motion to dismiss, asserting that the court lacked personal jurisdiction over Modiface, which is a Canadian company. While Modiface's motion to dismiss was ultimately granted after Plaintiff took jurisdictional discovery,

Defendant Sephora answered Plaintiff's First Amended Complaint on May 24, 2019. Thereafter, the Parties engaged in significant informal discovery regarding both the merits of Plaintiff's claims and class certification issues. In an effort to reach an early resolution to what would otherwise be highly-contested litigation involving dueling motions for summary judgment and class certification, on December 1, 2020, the Parties participated in a formal, full-day mediation session with the Honorable Morton Denlow (Ret.) of JAMS in Chicago, Illinois.

Counsel for Plaintiff and for Defendant expended significant efforts to reach a settlement, including but not limited to exchanging information regarding the technology used by Defendant's SVA kiosks and identification of potential class members, and participating in extensive arms-length negotiations. Evidencing the contentious nature of the Parties' negotiation efforts, despite attending a full day mediation session with Judge Denlow, the Parties were not able to reach a settlement in principle until more than two weeks later, on December 16, 2020, and only after Judge Denlow submitted a mediator's proposal for the Parties to accept or reject. Following additional months of negotiation over the final form of the Parties' settlement papers, including the contours of the settlement agreement, the scope of the release, and the form and content of the notice documents, the Parties agreed upon and executed the initial settlement agreement that the Court preliminarily approved on March 12, 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 $1,250,000.00 non-reversionary Settlement Fund (Ex. 1, ¶ 55), 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. (Ex. 1, ¶ 55.)

Importantly, the Settlement also provides for significant prospective relief to the Settlement Class. Defendant has agreed that it shall take significant steps to inform consumers how their information is being collected and stored. (*Id.*, ¶ 72.) The Settlement provides that, so long as Defendant elects to operate SVA kiosks in the state of Illinois, it shall make an "SVA Privacy Policy" publicly available that explains what information Defendant gathers from its SVA kiosks and how that information is handled and when it is destroyed. (*Id.*, ¶ 72(a)). Defendant would also prevent any camera functionality on its SVA kiosks from operating until a customer affirmatively consents to interacting with it. (*Id.*, ¶ 72(b)–(c)). This prospective relief benefits the Settlement Class Members and the public at large.

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

Under the Settlement Agreement's notice plan, which has already gone into effect, direct notice of the Settlement has been provided to the Settlement Class Members, with over 8,700 notices sent by mail, and over 1,800 notices sent to email addresses associated with Settlement Class Members. (Declaration of Eugene Y. Turin, attached hereto as Exhibit 2, at ¶ 17.) In addition, the Settlement Website is operational and makes available the Claim Form, detailed Long Form Notice, and all relevant case information. (*Id.*) Furthermore, the publication notice campaign has launched, with over 2,700,000 online impressions being made to date. (*Id.*) As a result of the Parties' notice campaign, hundreds of claim forms have already been submitted in advance of the Claims Deadline, and, critically, no Class Member has objected, and no Class Member has requested exclusion. (*Id.*)

IV. ARGUMENT

A. The Court Should Award Class Counsel's Requested Attorneys' Fees Using The Percentage-Of-The-Recovery Method.

Pursuant to the Settlement, Class Counsel seek attorneys' fees in the amount of $437,500.00, which amounts to 35% of the Settlement Fund, plus $17,645.31 in reimbursable expenses. (Ex. 1, ¶ 97.) 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

[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.

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-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. (Turin Decl., ¶ 20); *see also In re Capital One Tel. Consumer Prot.*

Act Litig., 80 F. Supp. 3d at 795 (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); *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.); *Fluker v. Glanbia, Inc.*, No. 2017-CH-12993 (Cir. Ct. Cook Cnty., Ill.); *Collier, et. al. v. Pete's Fresh Market 2526 Corporation, et. al.*, No. 2019-CH-05125 (Cir. Ct. Cook Cnty., 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*, No. 2019-CH-12769 (Cir. Ct. Cook Cnty., Ill. Apr. 8, 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.[4]

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 exceptionally 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 $437,500.00 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. 2018-CH-02140 (Cir. Ct. Cook Cnty. 2018) (attorneys' fee award of 40% of settlement fund in BIPA class settlement); *Svagdis v. Alro Steel Corp.*, No. 2017-CH-12566 (Cir. Ct. Cook Cnty., Ill., 2018) (same); *Zhirovetskiy v. Zayo Group, LLC*, No. 2017-CH-09323 (Cir. Ct. Cook Cnty., Ill., 2019) (same); *McGee v. LSC Commc's*, 2017-CH-12818 (Cir. Ct. Cook Cnty., Ill. 2019) (same); *Smith v.*

[4] To be sure, if the Court prefers, Class Counsel can submit detailed time entries and proposed billing rates for *in camera* review and submit legal justification for an appropriate risk multiplier given the risk factors that were present from the outset of this litigation.

Pineapple Hospitality Grp., No. 2018-CH-06589 (Cir. Ct. Cook Cnty., Ill. 2020) (same); *Prelipceanu v. Jumio Corp.*, No. 2018-CH-15883 (Cir. Ct. Cook Cnty. 2020) (same); *Williams v. Swissport USA, Inc.*, No. 2019-CH-00973 (Cir. Ct. Cook County, Ill. 2020) (attorneys' fee award of 40% of settlement fund in BIPA class settlement); *Glynn v. eDriving, LLC*, No. 2019-CH-08517 (Cir. Ct. Cook County, Ill. 2020) (same); *Draland v. Timeclock Plus, LLC*, No. 2019-CH-12769 (Cir. Ct. Cook County, Ill. 2021) (same); *see also, e.g.,Willis v. iHeartMedia Inc.*, No. 2016-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 (noting that fifty percent of the fund appears to be an approximate upper limit on fees and expenses).

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 demonstrated the intent to raise several defenses, including that its SVA kiosks do not fall under the scope of BIPA because they allegedly are unable to identify unique individuals and only gather basic facial landmark features and that they allegedly do not store any information collected from each customer's

interaction. These defenses have not yet been litigated, and Defendant expressed a strong belief that it would ultimately prevail at summary judgment and had even already retained an expert in the field of facial biometrics who was prepared to testify that Defendant's SVA kiosks do not gather biometrics that are subject to BIPA. If Defendant was ultimately successful in litigating this issue, Plaintiff and the proposed Settlement Class Members would have received no payment whatsoever.

Even absent the risk posed to Plaintiff's and the Settlement Class Members' claims by Defendant's defenses regarding the technology behind its SVA kiosks, 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 the Settlement Class which creates a $1,250,000.00 Settlement Fund and provides valid claimants with the ability to claim at least a substantial amount of, if not an amount greater than, their expected statutory damages under BIPA. Thus, the Settlement's estimated provision of at least $1,000.00 dollars 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 justifies the requested percentage of attorneys' fees*.

Despite the significant risks inherent in any further litigation, Class Counsel were able to obtain a Settlement Fund that will provide an estimated payment of over $1,000.00 for each claimant, which represents a full statutory award for a negligent BIPA violation. Although the claims deadline has not yet passed, hundreds of claims and no objections or requests for exclusions

have been received thus far. This reflects the Settlement Class Members' predictably overwhelmingly positive reaction to the Settlement.

In addition to the monetary compensation that Class Counsel have obtained for the Settlement Class Members, the Settlement also provides for valuable prospective relief. The Settlement provides that, so long as Defendant elects to operate SVA kiosks in the State of Illinois, it shall make an "SVA Privacy Policy" publicly available that explains what information Defendant gathers from its SVA kiosks and how that information is handled and when it is destroyed. (Ex. 1, ¶ 72(a)). Defendant would also prevent any camera functionality on its SVA kiosks from operating until a customer affirmatively consents to interacting with it. (Ex. 1, ¶ 72(b)–(c)). These measures will result in consumers having the opportunity to provide informed consent prior to using Defendant's SVA kiosks, only doing so after first obtaining the information required under BIPA—a significant benefit vis-à-vis their privacy rights.

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

Given the significant monetary compensation and non-monetary relief 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 $17,645.31 in reimbursable expenses related to filing fees, mediation fees, copying, and case administration, with the likelihood of more expenses yet to come. (Turin 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 $455,145.31.

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 Salkauskaite for serving as Class Representative and agreeing to prosecute this action in her own name despite the risk and stigma associated with commencing a lawsuit. Ex. 1, ¶ 100; *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d at 600–01 (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*, 2016 WL 3791123, at *4 (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'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, 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. (Turin 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.*, ¶¶ 21–24.) 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 higher incentive awards than the $10,000 award sought here. *See, e.g.*, *Seal v. RCN Telecom Services, LLC*, No. 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-cv-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); *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).

Accordingly, an Incentive Award of $10,000.00 is eminently justified by Ms. Salkauskaite'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: (i) approving an award of attorneys' fees and expenses of $455,145.31, 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: April 30, 2021

Respectfully submitted,

AUSTE SALKAUSKAITE, individually and on behalf of the Settlement Class

By: /s/ Eugene Y. Turin
One of Plaintiff's Attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on April 30, 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/ Eugene Y. Turin