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

FRANCISCO LOPEZ, individually and on )  
behalf of all others similarly situated, )  
 )  
 *Plaintiff,* )  
 )  
 v. )  
 )  
 MULTIMEDIA SALES & MARKETING, )  
 INC., an Illinois corporation, )  
 )  
 *Defendant.* )  
 )  
 \_\_\_\_\_ )

9159711

No. 17-CH-15750

Hon. Anna M. Loftus

**PLAINTIFFS' UNOPPOSED MOTION & MEMORANDUM OF LAW IN SUPPORT OF  
APPROVAL OF ATTORNEYS' FEES, EXPENSES, & INCENTIVE AWARDS**

Plaintiffs, Francisco Lopez and Jeffrey Buehler (“Plaintiffs”), by and through their attorneys, and pursuant to 735 ILCS 5/2-801 and this Court’s March 3, 2020 Preliminary Approval Order, hereby move for an award of attorneys’ fees and expenses for Class Counsel, as well as an incentive award for Plaintiffs as the Class Representatives in connection with the class action Settlement with Defendant Multimedia Sales & Marketing, Inc. (“Defendant”). Defendant does not object to the relief sought herein. In support of this Motion, Plaintiffs submit the following memorandum of law.

Dated: April 28, 2020

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## I. INTRODUCTION

The Class Action Settlement<sup>1</sup> that Class Counsel have achieved in this case is an exceptional result for Settlement Class Members. It establishes a Settlement Fund of \$467,500.00 to provide each Settlement Class Member who files a valid, timely claim with a \$565.00 cash payment for having their biometrics collected by 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 includes terms that provide significant non-monetary relief designed to minimize or eliminate the allegedly unlawful biometric collection and use practices at issue in this case.

The Court preliminarily approved the Settlement on March 3, 2020. Direct Notice of the Settlement commenced on March 20, 2020. As of the filing of this Motion, many claims have already been submitted, with seven weeks remaining before the Claims Deadline. No Settlement Class Member has objected to the proposed Settlement and no Class Member has requested exclusion.

With this Motion, Class Counsel request a fee of one-third, or 33% of the total Settlement Fund obtained for the Settlement Class, amounting to \$155,833.00, plus their litigation expenses. As explained in detail below, Class Counsel’s requested fee award is justified given the exceptional monetary and non-monetary relief provided under the Settlement and is consistent with Illinois law and fee awards granted in other class action cases, including BIPA cases, in Illinois courts.

Both Class Counsel and the Class Representatives have devoted significant time and effort to the prosecution of the Settlement Class Members’ claims, and their efforts have yielded an

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<sup>1</sup> 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 Plaintiffs’ previously-filed Motion for Preliminary Approval.

extraordinary benefit to the Settlement Class. The requested attorneys' fees and costs and Incentive Award are thus justified in light of the investment, significant risks, and excellent results obtained for the Settlement Class Members, particularly given the uncertainty over the state of BIPA litigation when this Settlement was reached. Plaintiffs and Class Counsel respectfully request that the Court approve attorneys' fees of \$155,833.00, plus expenses, and the agreed-upon Incentive Awards of \$5,000 each for Francisco Lopez and Jeffrey Buehler for their active participation as Class Representatives.

## **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)<sup>2</sup> 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.

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<sup>2</sup> "Biometric identifiers" and "biometric information" are collectively referred to herein as "biometrics."

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. Factual Background And Procedural History**

**1. *Defendant's business operations***

Defendant is a private company that helps businesses leverage various media platforms in order to communicate with target audiences. As an ordinary part of its business practices, Defendant has utilized biometric timekeeping for the purpose of tracking the work time of its employees who work at its Illinois facilities. This practice has allowed Defendant to track and identify all hours worked by its employees by requiring such persons to use finger and/or palm scanning devices at its Illinois locations.

However, in carrying out its biometric timekeeping practices, Plaintiffs allege that Defendant failed to comply with BIPA by: (1) failing to inform individuals prior to capturing their biometrics that it will be capturing such information; (2) failing to receive a written release for the capture of biometrics prior to such capture; (3) failing 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) failing to publish a publicly available retention schedule and guidelines for permanently destroying biometrics.

**2. *The Litigation and the Parties' settlement efforts***

On November 29, 2017, Plaintiff Lopez filed a class action lawsuit in the Circuit Court of Cook County, Illinois, against Defendant alleging violations of BIPA. The case was initially assigned to Judge Kathleen Pantle. Defendant subsequently filed a motion to dismiss, which the Parties fully briefed, but prior to ruling the Parties agreed to stay the case pending the Illinois



Supreme Court's decision in *Rosenbach v. Six Flags Entertainment Corp.* The stay was lifted on April 8, 2019, following the *Rosenbach* decision, which was issued on January 25, 2019, and which mooted the issues raised in Defendant's pending motion. Plaintiff Lopez filed his Second Amended Class Action Complaint on May 6, 2019. Thereafter, the Parties agreed to attempt to resolve the Litigation.

After Plaintiff Lopez filed his Second Amended Class Action Complaint, and given the Parties' anticipation of expending significant costs and effort in discovery, the Parties agreed to settle this case based on the results of a formal, full-day mediation session in a similar BIPA matter, attended by counsel for Plaintiffs and Counsel for Defendant, with the Honorable Wayne R. Andersen (Ret.) of JAMS in Chicago, Illinois.

To that end, counsel for Plaintiffs and for Defendant expended significant efforts to reach a settlement, including but not limited to exchanging information regarding Defendant's Biometric Timekeeping System and potential class members, and participating in arms-length negotiations. Following a day-long meeting overseen by Judge Andersen in a similar BIPA matter involving counsel for all Parties, and following several months of additional negotiations, the Parties were able to agree upon a final Settlement Agreement which the Court preliminarily approved on March 3, 2020.

### **III. THE SETTLEMENT**

#### **A. Monetary And Non-Monetary Relief To The Settlement Class Members**

Class Counsel's prosecution of this litigation has culminated in this class-wide Settlement that provides substantial monetary relief to the Settlement Class Members. The Settlement establishes a \$467,500.00 Settlement Fund, with each valid claimant entitled to receive a payment

of up to \$565.00. (Settlement Agreement, ¶¶ 48–49).

The Settlement also provides significant non-monetary relief of an injunctive nature to the Settlement Class and Defendant’s future employees. (*Id.* ¶ 63). Defendant has agreed to implement material changes to its business practices to ensure compliance with BIPA. (*Id.*). These changes will result in individuals such as Plaintiffs having the opportunity to provide informed consent to the use of their biometrics only after first obtaining the information required under BIPA. (*Id.*).

**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 putative Class Members. (*See* Declaration of Evan M. Meyers, attached as Exhibit A, ¶ 16). In addition, the Settlement Website is operational and makes available the Claim Form, Long Form Notice, and all relevant case information to Settlement Class Members. To date, numerous claims have been submitted, no Class Members have objected, and no 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 \$155,833.00, which amounts to one-third, or 33%, of the Settlement Fund plus \$919.34 in reimbursable litigation expenses. (Settlement Agreement, ¶ 88). 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 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-fund 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, Plaintiffs submit that the Court should apply the percentage-of-

the-fund approach—the approach used in the vast majority of common fund class actions. Under either calculation however, Class Counsel’s fee request is supported and reasonable.

**B. Class Counsel’s Requested Fees Are Reasonable Under The Percentage-Of-The-Fund Method Of Calculating Attorneys’ Fees**

The vast majority of courts presiding over class action settlements in suits seeking statutory damages, including BIPA, have adopted the percentage-of-the-fund method in determining the appropriate amount of attorneys’ fees to award class counsel. *See, e.g., Willis v. iHeartMedia Inc.*, No. 2016-CH-02455, August 11, 2016 Final Judgment and Order of Dismissal (Cir. Ct. Cook County, Ill., 2016.) (Atkins, J.) (granting final approval and awarding class counsel 40% of settlement fund in a TCPA class action); *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 794 (N.D. Ill. 2015) (finding that even though “in common fund cases like this one, district courts have discretion to choose either the lodestar or a percentage approach to calculating fees . . . [T]he court agrees with Class Counsel that the fee award . . . should be calculated as a percentage of the money recovered for the class”); *Sabon*, 2016 IL App (2d) 150236, at ¶ 59 (affirming trial court’s award of attorneys’ fees in TCPA suit based on a percentage-of-the-fund approach); *Sterk v. Path, Inc.*, No. 2015-CH-08609 (Cir. Ct. Cook Cnty., Ill.) (Mikva, J.) (granting final approval and awarding class counsel 35% of settlement fund in a TCPA class action); *Sawyer v. Stericycle, Inc.*, No. 2015-CH-07190 (Cir. Ct. Cook Cnty, Ill. ) (Martin, Jr., J.) (granting final approval awarding class counsel attorneys’ fees based on percentage-of-the-fund); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 500 (N.D. Ill. 2015) (“[t]he Court agrees with [plaintiff’s] counsel that the fee award in this case should be calculated based on a percentage-of-the-fund method”).

Notably, numerous judges in the Circuit Court of Cook County have very recently entered final approval in BIPA class action settlements and awarded attorneys’ fees based on a percentage-of-the-fund analysis – including four judges who have recently entered final approval of a 40%

attorneys' fee award. *See, e.g., Zepeda et al v. Intercontinental Hotels Group, Inc.*, 18-CH-02140 (Cir. Ct. Cook County, Ill., 2018) (Atkins, J.) (40% fee award based on percentage-of-the-fund); *Svagdis v. Alro Steel Corp.*, 17-CH-12566 (Cir. Ct. Cook County, Ill., 2018) (Larsen, J.) (same); *Zhirovetskiy v. Zayo Group, LLC*, 17-CH-09323 (Cir. Ct. Cook County, Ill., 2019) (Flynn, J.) (same); *McGee v. LSC Communications, Inc., et al.*, 17-CH-12818 (Cir. Ct. Cook Cnty., Ill. 2019) (Atkins, J.) (same); *Smith v. Pineapple Hospitality Grp.*, 18-CH-06589 (Moreland, J.) (same); *Marshall v. Lifetime Fitness, Inc., et al.*, 17-CH-14262 (Tailor, J.) (fee award of 33% based on percentage-of-the-fund). Here, Plaintiffs' Counsel seek 33% of the Settlement Fund, which is well within – and in many situations, well below – the range of attorneys' fees recently approved by courts in this Circuit as reasonable in BIPA class action settlements.

The use of the percentage-of-the-fund approach in common fund class settlements likely 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 for the class.

By contrast, a lodestar approach encourages inefficiencies and further litigation as the parties and the court have to review the extensive billing records produced and determine the reasonableness of the time spent on any particular task and whether it actually furthered the litigation. *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 924 (1st Dist. 1995) (“Percentage analysis approach eliminates the need for additional major litigation . . . as a result of plaintiffs' request for attorneys' fees . . . nearly half of the 11,000 page record in this case is devoted to fee litigation.”).

Applying a percentage-of-the-fund 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).

Here, the percentage-of-the-fund method would most fairly compensate Class Counsel for the significant time and resources expended in obtaining relief for the Settlement Class Members, while taking into account the magnitude of the recovery achieved for the Settlement Class Members and the substantial risk of non-payment in bringing this litigation, particularly in light of the uncertainty in the law surrounding BIPA.

The percentage-of-the-fund 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., ¶ 18); *see also In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d at 795 (applying the percentage-of-the-fund approach and noting that class members would typically negotiate a fee arrangement based on the percentage method rather than lodestar).

Accordingly, the Court should adopt and apply the percentage-of-the-fund approach here. Under this approach, Class Counsel’s requested attorney fees are reasonable in light of the work performed and the substantial recovery secured for the Settlement Class Members.

**1. *The requested attorneys' fees amount to 33% of the Settlement Fund—a percentage well within the range found reasonable in other cases.***

The requested fee award of \$155,833.00 represents 33%, 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. As set forth above, a 40% fee award was recently awarded in five separate BIPA class action settlements in the Circuit Court of Cook County. *See Zepeda*, 18-CH-02140 (Cir. Ct. Cook Cnty. 2018); *Svagdis*, 17-CH-12566 (Cir. Ct. Cook Cnty., Ill., 2018); *Zhirovetskiy*, 17-CH-09323 (Cir. Ct. Cook Cnty., Ill., 2019); *McGee*, 17-CH-12818 (Cir. Ct. Cook Cnty., Ill. 2019); *Smith*, 18-CH-06589 (Cir. Ct. Cook Cnty., Ill. 2020); *see also, e.g., Willis v. iHeartMedia Inc.*, No. 16-CH-02455, August 11, 2016 Final Judgment and Order of Dismissal, at 5 (awarding attorneys' fees and costs of 40% of an \$8,500,000 common fund in a TCPA class settlement); *Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97-cv-7694, 2001 WL 1568856, at \*4 (N.D. Ill. Dec. 10, 2001) (noting that a "customary contingency fee" ranges "from 33 1/3% to 40% of the amount recovered") (citing *Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986)); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 599 (N.D. Ill. 2011) (same); *Sabon*, 2016 IL App (2d) 150263, at ¶¶ 59, 65 (affirming over objections an attorney fee award of 33% of the fund); *Sterk*, No. 2015-CH-08609 (approving attorneys' fee award in TCPA case of 35% of the fund); *Marshall*, 17-CH-14262 (fee award of 33% of the fund in BIPA class settlement); *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 percentage 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). The requested 33% award should be approved because it sits towards

the bottom of the range courts accept as reasonable in BIPA class settlements, and is significantly less than several fee awards already approved in this Circuit in the past year.

**2. *The requested percentage of attorneys' fees is appropriate given the significant risks involved in continued litigation.***

The attorneys' fees sought in this case are particularly reasonable in light of the risks of prosecuting this case and the relief that Class Counsel have obtained for the Settlement Class. *See Sabon, Inc.*, 2016 IL App (2d) 150236, at ¶ 59 (upholding fee award based on percentage-of-the-fund in light of the “substantial risk in prosecuting this case under a contingency fee agreement given the vigorous defense of the case and defenses asserted by [the defendant]”); *Ryan*, 274 Ill. App. 3d at 924 (noting the trial court’s fee award was reasonable given the funds recovered for the class and the contingency risk).

The current status of BIPA jurisprudence is rapidly evolving, presenting highly novel and complex issues which put both Plaintiffs and Defendant at risk on the merits. For example, the First District Appellate Court is currently addressing in other BIPA cases whether the Illinois Workers Compensation Act bars employee-plaintiffs from litigating BIPA actions against their employers in court. Any ruling by the First District in favor of the employer-appellant could significantly impact employee BIPA litigation and whether such cases must be arbitrated. There is also continuing uncertainty with respect to BIPA’s limitations period. In fact, the First District recently also granted an employer-defendant leave to appeal that issue. Should the employer-appellant prevail on appeal, the scope of employee BIPA class sizes could be significantly limited. This Settlement was thus entered into in the context of, and as a result of, significant uncertainty and risk in the BIPA landscape.

The Settlement in this case represents an extraordinary result for the Settlement Class, especially considering the uncertainties of continuing litigation, the ever-evolving state of BIPA



law, and all factors bearing on the merits of the Settlement. As a result, this litigation presented multiple risks to Plaintiffs' ultimate success and Defendant would have strenuously defended the claims asserted had this Settlement not been reached. Thus, a settlement providing for such a significant cash benefit is an exceptional result.

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

Despite the significant risks inherent in any further litigation, Class Counsel were able to obtain an excellent result for the Settlement Class Members. As stated above, the Settlement Agreement provides for the creation of a \$467,500.00 Settlement Fund, from which Settlement Class Members can each submit claims for a \$565.00 cash payment. Although the Claims Deadline is not for approximately another seven weeks, the size of the Settlement Fund makes it very likely that Class Members who file valid claims will receive the maximum payment.

In addition to the monetary compensation that Class Counsel have obtained for the Settlement Class Members, the Settlement also provides for substantial prospective relief. Under the terms of the Settlement Agreement negotiated by Class Counsel, Defendant has agreed to implement material changes to its prior business practices in order to ensure compliance with BIPA. (Agreement, ¶ 63). As a result of this negotiated prospective relief, individuals such as Plaintiffs will no longer have to provide their sensitive biometrics when they work at Defendant's facilities, or else they will have the opportunity to provide informed consent only after first obtaining the information required under BIPA—a significant benefit vis-à-vis their privacy rights.

The non-monetary relief obtained by Class Counsel in this case further justifies the reasonableness of the attorneys' fee 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 changes in Defendant’s biometric collection and use practices implemented as a result of the Settlement, an attorneys’ fee award of 33% of the Settlement Fund is reasonable and fair compensation—particularly 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 \$919.34 in reimbursable expenses related to filing 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., Zepeda*, 18-CH-02140 (Cir. Ct. Cook County, Ill. 2018) (awarding reimbursement of expenses in addition to attorneys’ fee award in BIPA class action); *Svagdis*, 17-CH-12566 (Cir. Ct. Cook County, Ill., 2018) (same); *Zhirovetskiy*, 17-CH-09323 (Cir. Ct. Cook County, Ill., 2019) (same); *Kaplan v. Houlihan Smith & Co.*, No. 12 C 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 \$156,752.34.

**D. The Agreed-Upon Incentive Awards For Plaintiffs Are Reasonable And Should Be Approved**

The requested \$5,000 Incentive Awards are reasonable and modest compared to other incentive awards granted to class representatives in similar class actions. Because named plaintiffs are 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, Plaintiffs’ efforts and participation in prosecuting this case justify the \$5,000 Incentive Awards sought. Even though no award of any sort was promised to Plaintiffs prior to the commencement of the litigation or any time thereafter, Plaintiffs nonetheless contributed their time and effort in pursuing their BIPA claims, as well as in serving as representatives 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., ¶¶ 20–23).

Plaintiffs participated in investigation of their 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 a number of other filings including, most importantly, the Settlement Agreement. (*Id.*).

Further, agreeing to serve as the Class Representatives meant that Plaintiffs publicly placed their names on this suit and in court filings and opened themselves to “scrutiny and attention” which, in and of itself, “is certainly worthy of some type of remuneration.” *See Schulte*, 805 F. Supp. 2d at 600–01. This is particularly the case here where Plaintiffs, Defendant and the Settlement Class Members are all part of the same employment community. Were it not for Plaintiffs’ willingness to bring and prosecute this action on a class-wide basis, their efforts and contributions to the litigation by assisting Class Counsel with their investigation and filing of this suit, and their continued participation and monitoring of the case up to and through settlement, the substantial benefit to the Settlement Class Members afforded under the Settlement Agreement would not exist. (Meyers Decl., ¶ 22).

The \$5,000 Incentive Awards requested for Plaintiffs are well in line with typical incentive awards granted in class actions. Indeed, numerous courts that have granted final approval in similar class action settlements have awarded significantly higher incentive awards than the one 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.) (Atkins, J.) (awarding \$10,000 incentive award 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 of the class representatives); *Spano*, 2016 WL 3791123, at \*4 (approving \$10,000 incentive awards); *Zhirovetskiy*, No. 17-CH-09323 (April 18, 2019 Final Order and Judgment, ¶ 20) (Flynn, J.) (awarding \$10,000 incentive award in BIPA class action).

Compensating Plaintiffs for the risks and efforts they 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 incentive awards in similar class action litigation consistent with and greater than the agreed-upon \$5,000 Incentive Awards here. Moreover, no objection to the Incentive Awards has been raised to date. Accordingly, Incentive Awards of \$5,000 to each Plaintiff are reasonable, justified by Plaintiffs' time and effort in this case, and should be approved.

**V. CONCLUSION**

For the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court enter an Order: (i) approving an award of attorneys' fees and expenses of \$156,752.34; and (ii) approving Incentive Awards in the amount of \$5,000.00 to each Plaintiff in recognition of their significant efforts on behalf of the Settlement Class Members.

Dated: April 28, 2020

Respectfully submitted,

FRANCISCO LOPEZ & JEFFREY  
BUEHLER, individually and on behalf of all  
others similarly situated

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

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that on April 28, 2020, a copy of *Plaintiffs' Unopposed Motion & Memorandum of Law in Support of Approval of Attorneys' Fees, Expenses, & Incentive Awards* 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