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

ESLANDA BERTASIUTE, individually and on behalf of all others similarly situated, *Plaintiff*, v. THE HARI GROUP, INC., and ORLAND PARK DELI, INC. d/b/a MCALISTER'S DELI OF ORLAND PARK, *Defendants*.	Case No. 2020-CH-07055 Calendar 11 Courtroom 2305 Hon. Pamela McLean Meyerson

PLAINTIFF'S UNOPPOSED MOTION FOR AND MEMORANDUM IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

1. INTRODUCTION

The Settlement[1] here offers a meaningful result for Settlement Class Members, offering substantial relief relative to the likelihood non-recovery had litigation continued. The Parties' Agreement provides each Settlement Class Member a *pro rata* distribution of the $90,000 settlement fund for allegedly having their biometrics collected by Orland Park Deli, Inc. d/b/a McAlister's Deli of Orland Park ("Orland") in violation of the Biometric Information Privacy Act, 740 ILCS 14/1–99 ("BIPA"). The Court preliminarily approved the Settlement on June 27, 2022. Direct Notice of the Settlement commenced on July 25, 2022. To date, no Class Member has objected to the Settlement and no Class Member has requested exclusion.

Class Counsel now requests a fee award of one-third of the total Settlement Fund, amounting to $30,000, with no separate recovery of litigation expenses (which were over $3,000). Plaintiff also seeks an incentive award of $2,500 for her contributions to the case and recovery. As explained in detail below, Class Counsel's requested fee award and Plaintiff's requested Incentive Award are justified given the relief provided under the Settlement, follow Illinois law and fee awards granted in other cases in Illinois courts, and are also reasonable given the time Class Counsel and Plaintiff have committed to resolving this litigation to benefit the Class Members.

Both Class Counsel and the Class Representative devoted significant time and effort to the prosecution of the Class Members' claims, and their efforts have yielded a substantial benefit to the Class. The requested Fee Award and Incentive Award are amply justified by the investment, significant risks, and excellent results obtained for the Class Members, particularly given the

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

substantial uncertainty over the state of BIPA when this Settlement was reached. Plaintiff and Class Counsel respectfully request that the Court approve attorneys' fees of $30,000 and the agreed-upon Incentive Award of $2,500 for Plaintiff as Class Representative.

2. BACKGROUND

2.1. The Biometric Information Privacy Act

Recognizing the "very serious need" to protect Illinoisans' biometrics—including fingerprints, voiceprints, retina scans, and scans of hand or face geometry—the Illinois legislature passed BIPA unanimously in 2008. 740 ILCS 14/5. BIPA makes it unlawful for any private entity to "collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifier or biometric information, unless it first:

> (1) informs the subject … in writing that a biometric identifier or biometric information is being collected or stored;
>
> (2) informs the subject … in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; and
>
> (3) receives a written release executed by the subject of the biometric identifier or biometric information ….

740 ILCS 14/15(b). BIPA also establishes standards for handling biometric data. For example, BIPA requires companies to develop and comply with a written policy establishing a retention schedule and guidelines for permanently destroying biometric data. 740 ILCS 14/15(a).

2.2. Litigation, Negotiation, and Settlement

On December 3, 2020, Plaintiff Eslanda Bertasiute sued Hari Group, Inc. Kayes Decl. ¶ 7. Plaintiff alleged that Hari Group violated: (1) BIPA § 15(a)'s requirement that entities in possession of biometrics publish and comply with a biometric retention and destruction policy; (2) BIPA § 15(b)'s requirement that private companies obtain informed, written consent before collecting biometrics; and (3) BIPA § 15(d)'s prohibition on disclosing biometrics without

informed, written consent. Compl. ¶¶ 34–45. Plaintiff sought to certify a class of everyone who used Orland's biometric timeclocks in Illinois on or after within the applicable limitations period, *id.* ¶ 26, and requested statutory damages of $5,000 per class member, per violation on their behalf. *Id.*, Prayer for Relief.

Plaintiff sued Hari under the mistaken belief that its relationship to the deli restaurant where Plaintiff worked meant that BIPA liability would lie with Hari. Kayes Decl. ¶ 8. Counsel for Hari Group appeared, began discussing settlement, and providing information. *Id.* ¶ 9. As part of that process, Plaintiff learned that Hari Group was not the appropriate defendant and that the named insured on the relevant insurance policies was Orland. *Id.* ¶ 10. For that reason, Plaintiff filed an amended complaint, naming Orland, on March 1, 2021. *Id.* ¶ 11. Based on Orland's cooperation to that point, Plaintiff agreed to stay the case for 90 days to pursue settlement. *Id.* ¶ 12.

From the start, several risks encouraged the parties to seek compromise. While BIPA claims against employers have generally led to favorable settlements, this case was filed at a time when the overwhelming majority of Chancery Courts were staying BIPA cases pending resolution of three appellate cases: (1) *McDonald v. Symphony Bronzeville Park LLC*, No. 126511 (Ill.), which determined whether the Illinois Workers' Compensation Act preempts employees' BIPA claims against their employers; (2) *Tims v. Black Horse Carriers, Inc.*, No. 1-20-0562 (Ill. App. 1st Dist.), which addressed the statutes of limitations applicable to claims under BIPA's various subsections;[2]

[2] The landscape has changed significantly since the parties started their negotiations. On September 17, 2021, *Tims* held claims under BIPA §§ 15(c) and 15(d) subject to a one-year limitations period, and §§ 15(a), (b), and (e) a five-year period. *Tims v. Black Horse Carriers, Inc.*, 2021 IL App (1st) 200563. On December 20, 2021, the Seventh Circuit certified the accrual question to the Illinois Supreme Court, which the Court accepted three days later. *Cothron*, No. 128004 (Ill.). On January 26, 2022, the Supreme Court granted the PLA in *Tims*, and eight days

and (3) *Marion v. Ring Container Techs., LLC*, No. 3-20-0184 (Ill. App. 3d Dist.), which will also address the applicable statute of limitations for BIPA claims. *Cothron v. White Castle System, Inc.*, No. 128004 (Ill.), which will determine the date of accrual of BIPA claims (*i.e.*, whether they accrue only once, upon the first unlawful scan, or whether a new claim accrues with each unlawful scan), was also pending. A defense-friendly ruling in any of those cases would reduce—or in the case of *McDonald* and *Tims*, would have eliminated—the likelihood and size of a class-wide recovery. Plaintiff-friendly rulings in each of the cases above, on the other hand, would boost the value of BIPA employment cases like this one.

On top of the pending appeals, Orland shared during negotiations detailed and credible information about its inability to pay a substantial settlement or judgment. *Id.* ¶¶ 15–16. Orland also eventually agreed to share its insurance policies and coverage correspondence. Plaintiff hired coverage counsel to analyze those documents. *Id.* ¶¶ 17–18. Based on that analysis, Plaintiff decided to make a time-limited settlement demand for the remaining policy limits on one of Orland's policies. Plaintiff believed that doing so would either (a) obtain an immediate, fair settlement for the putative class or (b) offer the class a chance at a settlement under which Orland would assign to the class a potentially more lucrative bad-faith claim against the insurer for unreasonable refusal to settle. *Id.* ¶ 20. Orland accepted the demand in writing on March 25, 2022. *Id.* ¶ 21. And the parties signed a term sheet on April 29, 2022. *Id.* ¶ 22. The material terms included a non-reversionary settlement fund of $90,000 paid with no claim forms. *Id.* ¶ 23.

The parties reduced the term sheet to a written settlement agreement and moved for

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later it held that the IWCA doesn't preempt BIPA. *McDonald v. Symphony Bronzeville Park LLC*, 2022 IL 126511.

preliminary approval. The Court preliminarily approved the Settlement on June 27, 2022. Since then, direct notice has been provided to the Class Members by U.S. Mail. *See* Kayes Decl. ¶ 27. To date, no Class Member has objected, and no Class Member has opted out of the Class. *Id*. ¶ 28.

3. ARGUMENT

3.1. The Court should award Class Counsel's requested attorneys' fees.

As authorized by the Settlement, Class Counsel seek an award of attorneys' fees of $30,000, one-third of the Settlement Fund. Agreement ¶ 8.1. Class Counsel does not seek reimbursement of litigation costs. The fee request is well in line with the fees typically awarded in class actions generally and BIPA class actions specifically. The requested fee award is fair and reasonable considering the work performed by Class Counsel and the recovery secured on behalf of the Class Members. Attorneys who, by their efforts, create a common fund to benefit a class are entitled to reasonable compensation. *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 common 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 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 fees to be awarded are calculated by determining the number of hours spent by counsel to secure the relief obtained for the class at a reasonable hourly rate, multiplied by a "weighted" "risk multiplier" that reflects 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] and it misaligns the interests of Class Counsel and the Class Members. William B. Rubenstein, 5 Newberg and Rubenstein on Class Actions § 15:65 (6th 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

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[3] *See Langendorf v. Irving Tr. Co.*, 244 Ill. App. 3d 70, 80 (1st Dist. 1992), abrogated on other grounds by 168 Ill. 2d 235; *Ryan v. City of Chicago,* 274 Ill. App. 3d 913, 923 (1st Dist. 1995).

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 percentage-of-the-fund approach in common fund class settlements flows from, and is supported by, the fact that it promotes early resolution of the matter, as it discourages 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. 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 to arrive at a reasonable percentage of the common fund recovered).

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 settlement—as here—created a common fund. *See, e.g.*, *Sekura v. L.A. Tan Enterps., 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., Jan. 14, 2019); *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 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); *Rogers v. CSX Intermodal Terminal, Inc.*, No. 2019-CH-04168 (Cir. Ct. Cook Cnty., Ill., May 13, 2021); *Freeman-McKee v. Alliance Ground Int'l, LLC*, No. 2017-CH-13636 (Cir. Ct. Cook Cnty., Ill., June 15, 2021); *Salkauskaite v. Sephora USA, Inc.*, No. 2018-CH-14379 (Cir. Ct. Cook Cnty., Ill., June 23, 2021); *Gonzalez v. Silva Int'l, Inc.*, No. 2020-CH-03514 (Cir. Ct. Cook Cnty., Ill., June 24, 2021); *Williams v. Inpax Shipping Solutions, Inc.*, No. 2018-CH-02307 (Cir. Ct. Cook Cnty., Ill., Sept. 1, 2021); *Roberts v. Paramount Staffing, Inc.*, No. 2017-CH-15522 (Cir. Ct. Cook Cnty., Ill., Sept. 3, 2021); *Roberts v. Paychex, Inc.*, No. 2019-CH-00205 (Cir. Ct. Cook Cnty., Ill., Sept 10, 2021).

For these reasons, the Court should adopt and apply the percentage-of-the-recovery approach here. Under this approach, as explained below, Class Counsel's requested attorneys' fees are eminently reasonable.

3.2. Class Counsel's requested fees are reasonable under the percentage-of-the-fund method.

When assessing a fee request under the percentage-of-the-recovery method, courts often consider the size of the recovery achieved for the Class Members and the risk of nonpayment in bringing the litigation. *See Ryan*, 274 Ill. App. 3d at 924 (affirming district court's attorney fee award because of the contingency risk of pursuing the litigation, and the "hard cash benefit" obtained). As shown below, this Settlement provides substantial relief for the Class Members and

in the context of such a result, and weighed against the risk of continuing, protracted litigation, Class Counsel's fee request is fair.

3.2.1. The requested one-third of the Settlement Fund is reasonable considering the awards in similar cases.

The requested Fee Award of $30,000 represents one-third of the Settlement Fund. This percentage is in on par with what other judges, including many judges within the Circuit Court of Cook County, have found reasonable in other class-action settlements. In fact, many BIPA settlements have recently awarded fees of up to 40 percent of the fund, *plus* expenses, which Class Counsel does not seek reimbursement of here. *See, e.g.*, *Zepeda*, No. 2018-CH-02140 (Cir. Ct. Cook Cnty., Ill., Dec. 5 2018) (attorneys' fee award of 40 percent of settlement fund in BIPA class settlement); *Svagdis*, No. 2017-CH-12566 (Cir. Ct. Cook Cnty., Ill., Jan. 14, 2019) (same); *Zhirovetskiy v. Zayo Group, LLC,* No. 2017-CH-09323 (Cir. Ct. Cook Cnty., Ill., Apr. 8 2019) (same); *McGee v. LSC Commc'ns*, No. 2017-CH-12818 (Cir. Ct. Cook Cnty., Ill., Aug. 7 2019) (same); *Smith v. Pineapple Hospitality Grp.*, No. 2018-CH-06589 (Cir. Ct. Cook Cnty., Ill., Jan. 22 2020) (same); *Prelipceanu v. Jumio Corp.*, No. 2018-CH-15883 (Cir. Ct. Cook Cnty. Ill., Jul. 21 2020) (same); *Freeman-McKee*, No. 2017-CH-13636 (Cir. Ct. Cook Cnty., Ill., June 25, 2021) (same); *Knobloch v. ABC Fin. Servs., LLC et al.*, No. 2017-CH-12266 (Cir. Ct. Cook Cnty., Ill. June 25, 2021); *see also, e.g.*, *Willis v. iHeartMedia Inc.*, No. 2016-CH-02455 (Cir. Ct. Cook Cnty., Ill., Aug. 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 Fam. Ltd. P'ship v. Price Waterhouse LLP,* No. 97-cv-7694, 2001 WL 1568856, at *4 (N.D. Ill. Dec. 10, 2001) (noting that a "customary contingency fee" ranges "from 33 1/3% to 40% of the amount recovered") (citing *Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986)); *Meyenburg v. Exxon*

Mobil Corp., No. 05-cv-15, 2006 WL 2191422, at *2 (S.D. Ill. July 31, 2006) ("33 1/3% to 40% (plus the cost of litigation) is the standard contingent fee percentages in this legal marketplace for comparable commercial litigation"); William B. Rubenstein, Newberg and Rubenstein on Class Actions § 15.83 (6th ed.) (noting that fifty percent of the fund appears to be an approximate upper limit on fees and expenses). Thus, Plaintiff's request of one-third of the Settlement Fund is reasonable considering the fees recently approved by courts in this Circuit, including courts considering BIPA settlements.

3.2.2. The fee request is appropriate given the risks and the recovery achieved despite them.

The requested Fee Award is also justified by the risk of nonpayment faced by class counsel in accepting and prosecuting this litigation. *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) ("The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel."). While BIPA claims against employers have led to many favorable settlements, this case was filed at a time when Chancery Courts were staying BIPA cases pending resolution of *McDonald*, *Tims*, *Marion*, and *Cothron*. Defense rulings in those appeals would have ended or slashed the value of this case.

Even if all of those cases came down in Plaintiff's favor, the Class faced a serious risk of recovering nothing. Orland had just one policy with coverage, limited to $100,000, and it was diminishing as defense costs increased. Furthering the litigation may have left the Class with no insurance money to tap and a defendant with no real cash or assets. Moreover, Plaintiff would need to prevail on a class certification motion, which would be contested.

Further, even if all the pending BIPA appeals resolved in Plaintiff's favor *and* Plaintiff certified a class *and* Orland found money, Class Counsel still sued facing the risk of nonrecovery

posed by potential amendments to BIPA itself. Multiple bills have been introduced in recent years that, if passed, could have endangered BIPA plaintiffs.[4] The BIPA defense bar and the business community will continue their efforts to amend or repeal BIPA, and if they succeed, Plaintiff and the Settlement Class Members could see their claims evaporate. Finally, even without those risks, 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 managed to negotiate and secure a settlement on behalf of Settlement Class defined according to a five-year statute of limitations, which creates a $90,000 Settlement Fund. Thus, the Settlement's estimated value, after all deductions, of approximately $300 each to Class Members now, as opposed to years from now or perhaps never, represents an excellent result.

For the reasons set forth above, Class Counsel's request would "award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time." *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001).

3.3. The requested incentive award warrants approval.

The requested $2,500 Incentive Award is reasonable compared to other incentive awards granted to class representatives in similar class actions. Because a named plaintiff is essential to any class action, "[i]ncentive awards are justified when necessary to induce individuals to become named representatives." *Spano v. The Boeing Co.*, No. 06-cv-743, 2016 WL 3791123, *4 (S.D. Ill. Mar. 31, 2016) (approving incentive awards of $25,000 and $10,000 for class representatives)

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4 *See* Illinois S.B. 2134 (2019), H.B. 3024 (2019), and H.B. 559 (2021).

(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 $2,500 Incentive Award sought. Even though no award of any sort was promised to Plaintiff before the start of the litigation or any time after, Plaintiff still contributed her time and effort in pursuing her own BIPA claim, as well as in serving as a representative on behalf of the Class Members—exhibiting a willingness to participate and undertake the responsibilities and risks attendant with bringing a representative action. Kayes Decl., ¶¶ 29-31.

Plaintiff participated in the initial investigation of her claim and provided information to Class Counsel to help prepare the initial pleadings, reviewed the pleadings before filing, consulted Class Counsel many times, and provided feedback on other filings including, most importantly, the Settlement Agreement. *Id.*

Further, agreeing to serve as the Class Representative meant that Plaintiff publicly placed her name on this suit and opened herself to "scrutiny and attention" which, in and of itself, "is certainly worthy of some type of remuneration," particularly in the context of a lawsuit against an employer. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 600–01 (N.D. Ill. 2011). Were it not for Plaintiff's willingness to pursue this action on a class-wide basis, her efforts and contributions to the litigation by assisting Class Counsel with their investigation and prosecution of this suit, and her continued participation and monitoring of the case up through settlement, the substantial benefit to the Class Members afforded under the Settlement Agreement would simply not exist. Kayes Decl., ¶¶ 29–31.

The $2,500 Incentive Award requested for Plaintiff is well in line with the average

incentive award granted in class actions. Indeed, many courts that have granted final approval in BIPA class-action settlements have awarded even larger incentive awards. *See, e.g.*, *Rogers*, 2019-CH-04168, Final Order and Judgment, ¶ 21 (Cir. Ct. Cook Cnty., Ill., May 13, 2021) (awarding $15,000 incentive award in BIPA class-action settlement); *Seal v. RCN Telecom Services, LLC*, No. 2016-CH-07073, Final Order and Judgment, ¶ 20 (Cir. Ct. Cook Cnty., Ill., Feb. 24, 2017) (awarding $20,000 in incentive award payments); *Gonzalez v. Silva Int'l, Inc.*, No. 2020-CH-03514, Final Order and Judgment, ¶ 19 (Cir. Ct. Cook Cnty., Ill., June 24, 2021) (awarding $10,000 incentive award in BIPA class action); *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11-cv-4462, 2015 WL 1399367, *6 (N.D. Ill. Mar. 23, 2015) (awarding $25,000 incentive award); *see also* Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303, 1348 (2006) (finding that "[t]he average award per class representative was $15,992").

Compensating Plaintiff for the risks and efforts she undertook to benefit the Class Members is reasonable under the circumstances of this case, especially considering the exceptional results obtained. As shown above, courts have regularly approved incentive awards in similar class action litigation similar to or in excess of the agreed-upon $2,500 Incentive Award here. Moreover, no objection to the Incentive Award has been raised to date. Accordingly, an Incentive Award of $2,500 to Plaintiff is reasonable, justified by Plaintiff's time and effort in this case, and should be approved.

4. CONCLUSION

Accordingly, Plaintiff respectfully requests that this Court enter an Order: (1) approving an award of attorneys' fees and expenses of $30,000; and (2) approving an Incentive Award of $2,500 to Plaintiff in recognition of her significant efforts on behalf of the Class Members.

Dated: September 12, 2022

Respectfully submitted,

ESLANDA BERTASIUTE, individually and on behalf of all others similarly situated,

s/ Thomas R. Kayes
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CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that on September 13, 2022, I e-filed the foregoing through an approved e-filing vendor, with courtesy copies sent by email to the following counsel for Defendant:

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Dated: September 13, 2022

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