IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
MCLEAN COUNTY, ILLINOIS

TRACY JACKSON, individually and on behalf of similarly situated individuals, *Plaintiff*, v. UKG INC., f/k/a THE ULTIMATE SOFTWARE GROUP, INC., a Delaware corporation, *Defendant.*	)	No. 2020L0000031

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

Plaintiff, Tracy Jackson, by and through his attorneys, and pursuant to 735 ILCS 5/2-801, hereby moves for an award of attorneys' fees and expenses for Class Counsel, as well as an incentive award for Plaintiff as the Class Representative in connection with the class action settlement with Defendant UKG, Inc., f/k/a The Ultimate Software Group, Inc. ("Defendant"). Defendant does not object to the relief sought herein. In support of this Motion, Plaintiff submits the following memorandum of law.

Dated: March 25, 2022

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I. INTRODUCTION

The Class Action Settlement[1] that Class Counsel have achieved in this case is an exceptional result for Settlement Class Members. It establishes a Settlement Fund of $3,362,026.50 to provide each Settlement Class Member who files a valid, timely claim with an estimated cash payment of several hundred dollars for having their biometrics collected by Defendant in alleged violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA"). Direct notice of the Settlement was sent to Settlement Class Members on March 4, 2022 and as of the filing of this Motion, no Settlement Class Member has objected to the proposed Settlement and only one Class Member has even requested exclusion from the Settlement Class.

Both Class Counsel and the Class Representative have devoted significant time and effort – more than 2 years – on behalf of the Settlement Class Members' claims, and their efforts have yielded an outstanding benefit to the Class. With this Motion, Class Counsel request a fee of 35% of the total Settlement Fund obtained for the Settlement Class, amounting to $1,176,709.00, plus their litigation expenses, and an Incentive Award of $10,000.00 for the Class Representative, as provided for in the Settlement Agreement. The requested attorneys' fees, costs and Incentive Award are amply justified in light of the investment, significant risks, and excellent results obtained for the Settlement Class Members, particularly given the continued uncertainty over the state of BIPA litigation; are consistent with Illinois law and fee awards and incentive awards granted in other cases in Illinois courts, including other BIPA class actions; and warrant Court approval.

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

II. BACKGROUND

A. BIPA

BIPA is an Illinois statute that provides individuals with certain protections for their biometric information. To effectuate its purpose, BIPA requires private entities that seek to use biometric identifiers (e.g., fingerprints and handprints) and biometric information (any information gathered from a biometric identifier which is used to identify an individual)[2] to:

(1) inform the person whose biometrics are to be collected in writing that his biometrics will be collected or stored;

(2) inform the person whose biometrics are to be collected in writing of the specific purpose and the length of term for which such biometrics are being collected, stored and used;

(3) receive a written release from the person whose biometrics are to be collected allowing the capture and collection of their biometrics; and

(4) publish a publicly available retention schedule and guidelines for permanently destroying the collected biometrics. 740 ICLS 14/15.

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

B. The Case and Procedural History

1. *Plaintiff's allegations*

Defendant is a technology company that provides workforce management and human resource management solutions, including some timekeeping/payroll solutions, for clients in Illinois. Plaintiff has alleged that Defendant collected, stored, and used his biometric data through a biometric-enabled timeclock Defendant sold to his employer so that his employer could track his work hours. Plaintiff has further alleged that in so doing Defendant has failed to comply with BIPA

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

because Defendant: (1) failed to inform individuals prior to capturing alleged biometric data that it would be capturing such information; (2) failed to receive a written release for the capture of alleged biometric data prior to such capture; (3) failed to inform the person whose alleged biometric data was being captured of the specific purpose and length of term for which such alleged biometric data was captured; and (4) failed to make publicly available a retention schedule and guidelines for permanently destroying alleged biometric data. Defendant denies any violation of or liability under BIPA, and further denies that it is subject to BIPA as a technology provider that plays no role in its customers' use of workforce solutions in their respective workplaces.

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

This action was initiated by plaintiff Colin Cottingham in the Circuit Court of McLean County, Illinois on March 4, 2020. On April 4, 2020, Defendant removed the lawsuit to the U.S. District Court for the Central District of Illinois.

On December 15, 2020, in light of jurisdictional issues raised by *Bryant v. Compass Group USA, Inc.*, 958 F.3d 617 (7th Cir. 2020), Mr. Cottingham filed a motion to remand his claim under 740 ILCS 14/15(a). On May 25, 2021, following briefing on Mr. Cottingham's motion to remand, the District Court entered an order granting Mr. Cottingham's motion, remanding his claim under 740 ILCS 14/15(a) to this Court. On July 2, 2021, after Defendant shared information casting doubt on Mr. Cottingham's membership in the putative class and his ability to represent the class, Mr. Cottingham filed a motion for leave to file an amended complaint replacing him with Jackson as named plaintiff and representative of the putative class.

Thereafter, in an effort to reach an early resolution to what was already – and what was going to be – highly-contested litigation, on August 10 2021, the Parties participated in a formal, full-day mediation session with the Honorable James Holderman (Ret.) of JAMS Chicago, the

former Chief Judge of the U.S. District Court for the Northern District of Illinois. Due to the Parties' strong disagreement over many settlement terms, the Parties failed to reach a settlement. The Parties subsequently conducted a second mediation with Judge Holderman on September 1, 2021. Counsel for Plaintiff and for Defendant expended significant efforts to reach a settlement, including but not limited to exchanging formal mediation submissions, exchanging information regarding Defendant's alleged biometric timekeeping technology, identifying potential class members, and participating in arm's-length negotiations. While the second mediation session failed to produce a Settlement, the Parties continued settlement negotiations over the following months and were ultimately able to agree upon the terms of a settlement which the Court preliminarily approved on December 29, 2021. As directed by the Court's Preliminary Approval Order, notice was disseminated to the Settlement Class Members on March 4, 2022.

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 $3,362,026.50 non-reversionary Settlement Fund (Ex. 1, ¶ 49), and each valid claimant will be entitled to an equal share of the fund after deductions for administration costs and the Court-approved attorneys' fees and incentive award (*Id.*, ¶ 61). While the per-claimant payment will depend on the number of valid claims submitted, Plaintiff anticipates that each valid claimant will receive hundreds of dollars in cash .

The Settlement also provides valuable prospective relief to the Settlement Class. Defendant has agreed that it has taken specific steps to become BIPA-compliant, including making publicly available its policies regarding how and whether data collected by the UltiPro and NOVAtime

timeclocks is retained and destroyed, taking steps to encourage BIPA-compliant use of the UltiPro and NOVAtime Timeclocks by its customers, including by providing its customers with BIPA-compliant notice and consent forms, and verifying that any alleged biometric information in its possession is deleted according to BIPA's requirements. (*Id*., ¶ 76). This prospective relief benefits both the Settlement Class Members and future Illinois workers who use Defendant's timeclocks.

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 was provided by U.S. Mail to the Settlement Class Members. (Declaration of Evan M. Meyers, attached hereto as Exhibit 2, at ¶ 17). In addition, the Settlement Administrator has placed targeted banner advertisements online using the Google Display Network. (*Id.*) The Settlement Website is also operational and makes available the detailed Long Form Notice (in English and Spanish) and all relevant case information, and permits Class Members to submit claims online. (*Id.*) To date, with a full six weeks left in the claims period, nearly three thousand claims have already been submitted, no Class Member has objected, and only one Class Member has 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 $1,176,709.00, which amounts to 35% of the Settlement Fund, plus $15,963.60 in reimbursable expenses. (Ex. 1, ¶ 101). Such a request is well within the range of fees approved in other class actions and is fair and reasonable in light of the work performed by Class Counsel and the outstanding recovery secured on behalf of the Settlement Class Members.

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

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

In deciding an appropriate fee in such cases, "a trial judge has discretionary authority to choose a percentage[-of-the-recovery] or a lodestar method[.]" *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 58 (citing *Brundidge v. Glendale Federal Bank, F.S.B.*, 168 Ill. 2d 235, 243–44 (1995)). Under the percentage-of-the-recovery approach, the attorneys' fees awarded are "based upon a percentage of the amount recovered on behalf of the plaintiff class." *Brundidge*, 168 Ill. 2d at 238. Under the lodestar approach, the attorneys' fees to be awarded are calculated by determining the total amount of hours spent by counsel in order to secure the relief obtained for the class at a reasonable hourly rate, multiplied by a "weighted" "risk multiplier" that takes into account various factors such as "the contingency nature of the

proceeding, the complexity of the litigation, and the benefits that were conferred upon the class members." *Id.* at 240.

Here, Plaintiff submits that the Court should apply the percentage-of-the-recovery approach—the approach used in the vast majority of common fund class actions, including BIPA class actions. It is settled law in Illinois that the Court need not employ the lodestar method in assessing a fee petition. *Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 59. This is because the lodestar method is disfavored, as it not only adds needless work for the Court and its staff,[3] it misaligns the interests of Class Counsel and the Settlement Class Members. 5 Newberg on Class Actions § 15:65 (5th ed.) ("Under the percentage method, counsel have an interest in generating as large a recovery for the class as possible, as their fee increases with the class's take. By contrast, when class counsel's fee is set by an hourly rate, the lawyers have an incentive to run up as many hours as possible in the litigation so as to ensure a hefty fee, even if the additional hours are not serving the clients' interests in any way").

The lodestar method has been long criticized by Illinois courts as "increas[ing] the workload of an already overtaxed judicial system . . . creat[ing] a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law . . . le[ading] to abuses such as lawyers billing excessive hours … not provid[ing] the trial court with enough flexibility to reward or deter lawyers so that desirable objectives will be fostered . . . [and being] confusing and unpredictable in its administration." *Ryan v. City of Chicago,* 274 Ill. App. 3d 913, 923 (1st Dist. 1995).

Conversely, the use of the percentage-of-the-recovery approach in common fund class settlements flows from, and is supported by, the fact that the percentage-of-the-fund approach

[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.

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. Applying a percentage-of-the-recovery approach is also generally more appropriate in cases like this one because it best reflects the fair market price for the legal services provided by the class counsel. *See Ryan*, 274 Ill. App. 3d at 923 (noting that "a percentage fee was the best determinant of the reasonable value of services rendered by counsel in common fund cases") (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force*, 108 F.R.D. 237, 255–56 (3d. Cir. 1985); *Sutton*, 504 F.3d at 693 (directing district court on remand to consult the market for legal services so as to arrive at a reasonable percentage of the common fund recovered). This approach also accurately reflects the contingent nature of the fees negotiated between Class Counsel and Plaintiff, who agreed *ex ante* that up to 40% of any settlement fund plus reimbursement of costs and expenses would represent a fair award of attorneys' fees from a fund recovered for the Class. (Meyers Decl., ¶ 20); *see also In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 795 (N.D. Ill. 2015) (applying the percentage-of-the-recovery approach and noting that class members would typically negotiate fee arrangement based on percentage method rather than lodestar).

Class Counsel are not aware of any BIPA class action settlements involving a monetary common settlement fund where a court relied on the lodestar method to determine attorneys' fees. In fact, to Class Counsel's knowledge, the percentage-of-the-recovery method has been used to determine a reasonable fee award in every BIPA class action settlement in Illinois courts (where

the majority of BIPA class actions are pending) where the defendant – as here – created a monetary common fund. *See, e.g., Lark v. McDonald's USA, LLC*, 2017-L-559 (Cir. Ct. St. Clair Cnty., Ill. Feb. 28, 2022); *Sahlin v. Hospital Housekeeping Systems, LLC*, 2021-L-28 (Cir. Ct. Williamson Cnty., Ill. Aug. 23, 2021); *Roberts v. Paychex, Inc.*, 2019-CH-00205 (Cir. Ct. Cook Cnty., Ill. Sept. 10, 2021); *Rogers v. CSX Intermodal Terminal, Inc.*, No. 19-CH-04168 (Cir. Ct. Cook Cnty., Ill. May 13, 2021); *Harrison v. Fingercheck, LLC* (Cir. Ct. Lake Cnty., Ill. Apr. 9, 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 attorneys' fees are eminently reasonable.

B. Class Counsel's Requested Fees Are Reasonable Under The Percentage-Of-The-Recovery Method Of Calculating Attorneys' Fees.

When assessing a fee request under the percentage-of-the-recovery method, courts often consider the magnitude of the recovery achieved for the Settlement Class Members and the risk of non-payment in bringing the litigation. *See Ryan*, 274 Ill. App. 3d at 924 (affirming district court's attorney fee award due to the contingency risk of pursuing the litigation, and the "hard cash benefit" obtained). As set forth below, this Settlement provides excellent relief for the Settlement Class Members and in the context of such an excellent result, and weighed against the risk of continuing, protracted litigation, Class Counsel's fee request is fair.

1. *The requested attorneys' fees of 35% of the settlement fund is a percentage well within the range found reasonable in similar cases.*

The requested fee award of $1,176,709.00 represents 35% of the Settlement Fund. This percentage is well within the range of attorneys' fee awards that courts have found reasonable in BIPA class settlements and other class action settlements generally. In fact, fee awards of 35% or higher – including multiple 40% fee awards – have been routinely awarded in numerous BIPA

class action settlements in Illinois courts. *See, e.g., Lark v. McDonald's USA, LLC*, 2017-L-559 (Cir. Ct. St. Clair Cnty., Ill. Feb. 28, 2022) (awarding attorneys' fee award of 37% of settlement fund in BIPA class settlement); *Sahlin v. Hospital Housekeeping Systems, LLC*, 2021-L-28 (Cir. Ct. Williamson Cnty., Ill. Aug. 23, 2021) (awarding attorneys' fee award of 37.5% of settlement fund in BIPA class settlement); *Rogers v. CSX Intermodal Terminals, Inc.*, 19-CH-04168 (Cir. Ct. Cook Cnty. May 13, 2021) (attorneys' fee award of 38% of settlement fund in BIPA class settlement); *Kusinski v. ADP, LLC*, No. 2017-CH-12364 (Cir. Ct. Cook Cnty. Feb. 10, 2021) (attorneys' fee award of 35% of settlement fund in BIPA class settlement involving biometric timekeeping vendor); *Harrison v. Fingercheck, LLC* (Cir. Ct. Lake Cnty., Ill. Apr. 9, 2021) (same); *Freeman-McKee v. Alliance Ground Int'l, LLC*, No. 17-CH-13636 (Cir. Ct. Cook Cnty., Ill. June 15, 2021) (awarding 40% of settlement fund in BIPA class settlement); *Prelipceanu v. Jumio Corp.*, No. 18-CH-15883 (Cir. Ct. Cook Cnty. Ill. July 21, 2020) (same); *Zepeda v. Kimpton Hotel & Restaurant Group, LLC et al.*, No. 18-CH-02140 (Cir. Ct. Cook Cnty. 2018) (same);*see also Dobbs v. DePuy Orthopaedics, Inc.*, 885 F.3d 455, 459 (7th Cir. 2018) ("The typical contingent fee is between 33 and 40 percent") (quoting *Gaskill v. Gordon*, 160 F.3d 361, 362 (7th Cir. 1998)); *Meyenburg v. Exxon Mobil Corp.*, No. 05-cv-15, 2006 WL 2191422, at *2 (S.D. Ill. July 31, 2006) ("33 1/3% to 40% (plus the cost of litigation) is the standard contingent fee percentages in this legal marketplace for comparable commercial litigation"); Herbert Newberg & Alba Conte, *Newberg* on Class Actions § 15.83 (William B. Rubenstein ed.; 5th ed.) (noting that fifty percent of the fund appears to be an approximate upper limit on fees and expenses). Thus, Plaintiff's request of 35% of the Settlement Fund is well within the range of attorneys' fees recently approved by courts as reasonable in BIPA class action settlements.

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

The Settlement in this case also represents an excellent result for the Settlement Class given that Defendant has expressed a firm denial of Plaintiff's material allegations and has raised several defenses, including that Plaintiff and the Settlement Class Members consented to the collection of their alleged biometric data and that the information and data collected by Defendant does not constitute biometric identifiers or biometric information under BIPA, and that any alleged collection of Plaintiff's and other Settlement Class Members purported biometric data by Defendant occurred outside Illinois. Absent settlement Defendant intends to challenge Plaintiff's assertion that Defendant's timekeeping technology collects data subject to BIPA, which would likely necessitate highly technical and expensive expert discovery. Any of these defenses, if successful, would likely result in Plaintiff and many of the proposed Settlement Class Members receiving no payment whatsoever.

In addition, there substantial uncertainty remains in the BIPA landscape regarding the applicable statute of limitations. For example, while in *Tims v. Black Horse Carriers, Inc.*, 2021 IL App (1st) 200563, the First District Appellate Court recently determined that *some* BIPA claims are subject to a five-year limitations period, the Illinois Supreme Court has accepted the defendant-appellant petition for review. If the Supreme Court were to rule that a one-year limitations period applies to all BIPA claims, Plaintiff and many of the Settlement Class Members could recover nothing.

Further still, in addition to any defenses on the merits Defendant can and will raise, absent this Settlement Plaintiff would also otherwise be required to prevail on a class certification motion, which would be highly contested and for which success would certainly not be guaranteed. *See Schulte v. Fifth Third Bank,* 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) ("Settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation")

(internal citations omitted). "If the Court approves the [Settlement], the present lawsuit will come to an end and [Settlement Class Members] will realize both immediate and future benefits as a result." *Schulte*, 805 F. Supp. 2d at 586. In sum, approval would allow Plaintiff and the Settlement Class Members to receive meaningful and significant compensation now, instead of years from now—or perhaps never. *See id.* at 582

Even absent the risk posed to Plaintiff's and the Settlement Class Members' claims by the pending *Tims* appeal and Defendant's other defenses on the merits, 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 dispositive motion briefing, targeted class discovery, and adversarial class certification briefing.

In the face of these obstacles and unknowns, Class Counsel succeeded in negotiating and securing a settlement on behalf of Settlement Class defined according to a five-year statute of limitations, which creates a $3,362,026.50 Settlement Fund and provides valid claimants with the ability to claim what will likely amount to hundreds of dollars in cash benefits.

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

Despite the significant risks inherent in any further litigation, Class Counsel were able to obtain a Settlement Fund of $3,362,026.50 for the Settlement Class. Although the claims deadline is not for another six weeks, nearly three thousand claims have already been submitted and no objections have been received thus far. This reflects the Settlement Class Members' predictably overwhelmingly positive reaction to the Settlement.

Given the significant monetary compensation obtained for the Settlement Class Members, an attorneys' fee award of 35% of the Settlement Fund plus expenses is reasonable and fair

compensation—particularly, as discussed above, in light of the significant uncertainty in the relevant law, the "substantial risk in prosecuting this case under a contingency fee agreement" and the "defenses asserted by [Defendant]." *Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 59.

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

Class Counsel have expended $15,963.60 in reimbursable expenses related to filing fees, mediation fees, copying, and case administration, with the likelihood of more expenses yet to come. (Meyers Decl., ¶ 19). Courts regularly award reimbursement of the expenses counsel incurred in prosecuting the litigation. *See, e.g., Kaplan v. Houlihan Smith & Co.*, No. 12-cv-5134, 2014 WL 2808801, at *4 (N.D. Ill. June 20, 2014) (awarding expenses "for which a paying client would reimburse its lawyer"); *Spicer v. Chicago Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1256 (N.D. Ill. 1993) (detailing and awarding expenses incurred during litigation). Therefore, Class Counsel request the Court approve as reasonable the incurred expenses, a request which Defendant does not oppose. Accordingly, this Court should award a total fee and expense award to Class Counsel of $1,192,672.60.

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 Jackson for serving as the class representative and agreeing to prosecute this action in his own name despite the risk and stigma associated with commencing a lawsuit in the employment context, which includes inherent reputational risks vis-à-vis current and future employers and co-workers. (Ex. 1, ¶ 104); *Schulte v. Fifth Third Bank,* 805 F. Supp. 2d 560, 600–01 (N.D. Ill. 2011) (noting that class representatives open themselves to "scrutiny and attention" by adding their name to public lawsuits, which, in and of itself, "is certainly worthy of some type of remuneration").

Because a named plaintiff is essential to any class action, "[i]ncentive awards are justified when necessary to induce individuals to become named representatives." *Spano v. Boeing Co.,* No. 06-cv-743, 2016 WL 3791123, at *4 (S.D. Ill. Mar. 31, 2016) (approving incentive awards of $25,000 and $10,000 for class representatives) (internal citation omitted); *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 497 (1st Dist. 1992) (noting that incentive awards "are not atypical in class action cases . . . and serve to encourage the filing of class actions suits.").

Here, Plaintiff Jackson's efforts and participation in stepping forward and prosecuting this case as the named plaintiff 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 has contributed his time and effort in pursuing his own BIPA claims and serving as a representative on behalf of the Settlement Class Members, exhibiting a willingness to participate and undertake the responsibilities and risks attendant with bringing a representative action. (Meyers Decl., ¶¶ 21–24). Plaintiff participated in the initial investigation of his 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*., ¶ 22). Were it not for Plaintiff's willingness to bring this action on a class-wide basis and his 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.*, ¶ 24).

Numerous courts that have granted final approval in similar class action settlements have awarded the same or significantly higher incentive awards than the $10,000 award sought here. *See, e.g., Rogers v. CSX Intermodal Terminals, Inc.*, No. 2019-CH-04168, May 13, 2021 Final

Order and Judgment, ¶ 21 (awarding $15,000 incentive award in BIPA class action); *See, e.g., Gonzalez v. Silva Int'l, Inc.*, No. 2020-CH-03514 (June 24, 2021 Final Order and Judgment, ¶ 19 (awarding $10,000 incentive award in BIPA class action); *Seal v. RCN Telecom Services, LLC,* 2016-CH-07033, February 24, 2017 Final Order and Judgment, ¶ 20 (Cir. Ct. Cook Cnty., Ill.) (awarding $10,000 incentive awards to each of two named plaintiffs); *Aranda v. Caribbean Cruise Line, Inc.*, No. 12 C 4069, 2017 WL 1369741, at *10 (N.D. Ill. Apr. 10, 2017) (awarding $10,000 to each class representative); *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).

Accordingly, an Incentive Award of $10,000.00 is eminently justified by Mr. Jackson'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 $1,192,672.60 and (ii) approving an Incentive Award in the amount of $10,000.00 to the Class Representative in recognition of his significant efforts on behalf of the Settlement Class Members.

Dated: March 25, 2022

Respectfully submitted,

TRACY JACKSON, individually and on behalf of all similarly situated individuals

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

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on March 25, 2022, a copy of *Plaintiff's Motion & Memorandum Of Law In Support Of Approval Of Attorneys' Fees, Expenses, And Incentive Award* was filed electronically with the Clerk of Court, with a copy sent to by electronic mail to all counsel of record.

/s/ Timothy P. Kingsbury