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

**Carolyn Baldwin, Xavier Sanders,** )  
**LaTonia Williams and Dequrvia** )  
**Williams,** individually and on behalf of )  
all others similarly situated, )  
)  
Plaintiffs, )  
)  
v. )  
)  
**Metrostaff Incorporated,** )  
)  
Defendant. )

No. 19 CH 04285  
Honorable Thaddeus L. Wilson

**PLAINTIFFS’ MOTION AND MEMORANDUM FOR APPROVAL OF  
ATTORNEYS’ FEES, COSTS AND INCENTIVE AWARDS**

**I. INTRODUCTION**

Having secured this \$1,250,000.00 settlement on behalf of individuals who provided their biometric information to Defendant, Class Counsel seek an attorneys’ fee award of \$475,000.00 and reimbursement of costs not to exceed \$1,500.00. On December 1, 2021, Judge David B, Atkins granted preliminary approval of this settlement. With approximately two weeks to go before the end of the time to submit claim forms, approximately 1,531 people have returned claim forms. Assuming 1,750 people submit claim forms by the end of the claim deadline, the average per person net payment will be approximately \$400 each. This is an excellent settlement that supports awarding Class Counsel 38% of the settlement fund as attorney fees. Based on case law, and as set forth in detail below and on this record, Class Counsel’s fee request is within the reasonable range of fee awards in Illinois.

Additionally, to recognize the time and effort that the named Plaintiffs expended for the benefit of the Class Members, the results they made possible for the Class Members, and the risks they accepted by initiating and leading the litigation, Plaintiffs request a service payment of

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\$8,500.00 for each of the Named Plaintiffs. As set forth below, the Named Plaintiffs assisted counsel's investigation of the claims, provided valuable information regarding the disputed facts and claims, conferred with Class Counsel during the pendency of the case and the mediation process, and pursued this action which provides for substantial monetary benefits to the approximately 1,531 individuals who have claimed into the settlement to date.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

On April 2, 2019, Plaintiffs filed a Class Action Complaint in the Circuit Court of Cook County, Chancery Division, alleging that Defendant violated the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1 *et seq.*, by requiring Plaintiffs and other workers to provide Defendant with their fingerprints as a means of identifying and tracking hours worked by workers. In particular, Plaintiffs alleged that Defendant violated BIPA by (1) collecting Plaintiffs' and the settlement class members' biometric identifiers and information without following BIPA's informed written consent procedures; and (2) possessing Plaintiffs' and the settlement class members' biometric identifiers and information without a publicly available data retention schedule and destruction policy.

On July 3, 2019, Defendant filed a Section 5/2-619.1 and 2-615 Motion to Dismiss Plaintiffs' Class Action Complaint ("Motion to Dismiss"). In its Motion to Dismiss, Defendant argued that Plaintiffs' claims must be dismissed in their entirety for several reasons. First, Defendant argued that the Illinois Workers' Compensation Act ("WCA") is the sole remedy for any "injury" occurring in the workplace, which includes Plaintiffs' BIPA statutory rights. Second, Defendant argued that Plaintiffs failed to plead a violation of the BIPA statute because they did not sufficiently allege negligence or reckless or intentional conduct. Third, Defendant argued that a one- or two-year statute of limitations applies to BIPA because BIPA does not contain an express

provision regarding the statute of limitations (Plaintiffs argue that a five year “catch all” statute of limitations applies).

Plaintiffs filed a Second Amended Complaint on October 1, 2019, which contained the same allegations as the original Complaint but named the proper entity as the Defendant. On November 8, 2019, Defendant filed a Motion to Dismiss the Second Amended Complaint. In its Motion, Defendant advanced the same or similar arguments as set forth above. On January 2, 2020, Plaintiffs filed their Response to the Motion to Dismiss the Second Amended Complaint.

On January 8, 2021, Plaintiffs filed a Third Amended Complaint which contained the same allegations as the original and Second Amended Complaint but added LaTonia Williams and Dequrvia Williams as named Plaintiffs and added averments that specifically stated the putative class includes individuals whose fingerprints were captured, collected, obtained, stored or used by Defendant at its own offices and at third party work locations.

On January 14, 2020, Defendant filed a Motion to Stay pending the appeal in the matter of *McDonald v. Symphony Bronzeville Park, LLC*, Circuit Court Case No. 17 CH 11311 and Appellate Court Case No. 1-19-2398. On January 24, 2020, the Court entered an Order that entered and continued the Motion to Stay and the time for Defendant to respond to Plaintiffs’ Third Amended Complaint. The case was stayed when the Parties entered into arms-length negotiations which ultimately led to the Settlement.

### **III. THE SETTLEMENT IS HIGHLY BENEFICIAL TO CLASS MEMBERS**

Under the Settlement, Class Members will enjoy substantial relief without having to provide or respond to written discovery, without having to sit for depositions, or go through a trial in which they would have to prevail on liability and damages in the face of Defendants’ numerous defenses. The guaranteed payment of approximately \$400.00 to each person who claimed into the

settlement is an excellent result. It guarantees payments to the Class Members now, rather than risk a payment several years down the road should the litigation continue, and it is a relatively significant payment under a BIPA settlement. *See e.g., Hernandez v. Hooters, Inc.*, No. 17 CH 13593 (Cir. Ct. Cook Cnty., Oct. 31, 2019)(resulting in each participating class member being eligible to receive a *pro rata* share of a settlement fund that was worth approximately \$265.00); *Gaca v. Transportation Repairs and Services, Inc.*, No. 17 CH 13914 (Cir. Ct. Cook. Cnty., Nov. 18, 2019)(resulting in each class member being eligible to receive a *pro rata* share of a settlement fund of approximately \$250.00 per person); *Marshall v. Life Time Fitness*, No. 17 CH 14262 (Cir. Ct. Cook Cty.)(each class member being eligible to receive approximately \$270 net each person); *Rosenbach v. Six Flags Ent. Corp.*, 2016 CH 00013 (Cir. Ct. Lake Cnty. May 14, 2021)(preliminarily approving \$36 million fund for approximately 1,110,000 class members, and capping class member payments at \$200 or \$60 depending on date of finger scan).

Accordingly, the settlement provides for substantial and highly beneficial payments to the Class Members.

#### **IV. ARGUMENT**

##### **A. An Award of Fees and Costs is Allowed Under BIPA**

BIPA provides that reasonable attorneys' fees and costs shall be awarded to prevailing plaintiffs. 740 ILCS § 14/20(3) ("Any person aggrieved by a violation of this Act shall have a right of action in a State circuit court...A prevailing party may recover for each violation...reasonable attorney' fees and costs, including expert witness fees and other litigation expenses").

If this Court grants FINAL approval of the settlement, the named Plaintiffs and the Class Members here will be prevailing parties, because they will have an award entered in their favor in

the total amount of \$1,250,000.00. When fee-shifting statutes such as BIPA are involved, parties may negotiate settlements that encompass a defendant's total liability for damages, attorney fees, and costs. *See Evans v. Jeff D.*, 475 U.S. 717, 733-34, 738 n. 30 (1986); *see also Williams v. MGM-Pathé Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997) ("parties to a class action properly may negotiate not only the settlement of the action itself, but also the payment of attorney's fees."). Pursuant to the Settlement, Class Counsel request fees in an amount of \$475,000.00, which represents 38% of the settlement fund, and litigation costs not to exceed \$1,500.00. As set forth below, Plaintiff's fee requests is within the range of fee awards in BIPA cases in Illinois and the Seventh Circuit.

**B. The Court Should Award Attorneys' Fees from a Percentage of the Fund**

Illinois courts endorse the "common fund doctrine" for the payment of attorney fees in class actions. *Wendling v. S. Ill. Hosp. Servs.*, 242 Ill. 2d 261, 265 (2011). "The doctrine provides that 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." *Id.* (internal quotations omitted). The doctrine is based on the principle that "successful litigants would be unjustly enriched if their attorneys were not compensated from the common fund created for the litigants' benefit." *Brundidge v. Glendale Fed. Bank F.S.B.*, 168 Ill. 2d 235, 238 (1995). "By awarding fees payable from the common fund created for the benefit of the entire class, the court spreads the costs of litigation proportionately among those who will benefit from the fund." *Id.* (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)).

The Court has authority to award attorney fees here based on the percentage-of-the-recovery method. *Brundidge*, 168 Ill. 2d at 243-44. Under the percentage-of-the-recovery method,

attorney fees are “based upon a percentage of the amount recovered on behalf of the plaintiff class.” *Id.* at 238. The advantage of the percentage-of-the-recovery method is that it is easy to apply and aligns class counsel’s incentives with those of the class. *See Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 923 (1st Dist. 1995) (summarizing findings of a Third Circuit task force appointed to compare the respective merits of the percentage-of-the-recovery and lodestar methods). By contrast, the lodestar method – awarding fees based on hours expended in the litigation – encourages churning the file and discourages early settlement. *See In re Synthroid Mktg. Litig.*, 264 F.3d 712, 789-90 (7th Cir. 2001).

Illinois state and federal courts routinely apply the percentage-of-the-fund method when awarding attorney fees in BIPA class settlements. *See* BIPA Settlement Chart below (all applying a percentage-of-the-fund method in awarding attorney fees). Indeed, Settlement Class Counsel are unaware of any BIPA common fund settlements where a court awarded attorney fees based on the lodestar method instead of the percentage-of-the-fund method.

**C. Attorneys’ Fees and Costs Should Be Approved as Fair and Reasonable**

**1. Courts Regularly Award One-Third to 40 Percent in BIPA Settlements**

Settlement Class Counsel’s request here for 38% of the gross fund is consistent with – or below – fees awarded by Illinois courts in similar BIPA class action settlements:

**BIPA SETTLEMENT CHART**

<b>Case</b>	<b>Judge</b>	<b>Approximate Class Size</b>	<b>Attorney Fees</b>	<b>Incentive Award</b>
<i>Kusinski v. ADP, LLC</i> , 17-CH-12364 (Cook Cnty. Feb. 10, 2021)	J. Atkins	320,000	\$8,750,000 (35% of settlement fund)	\$22,500 (for three class representatives)

<i>Prelipceanu v. Jumio Corp.</i> , 18-CH-15883 (Cook Cnty. July 21, 2020)	J. Mullen	Thousands <sup>1</sup>	\$2,800,000 (40% of total settlement)	\$10,000
<i>Jones v. CBC Rest. Corp.</i> , 1:19-cv-06736 (N.D. Ill. Oct. 22, 2020)	J. Alonso	4,053	\$1,054,966 (32.5% of total settlement)	\$7,500
<i>Kiefer v. Bob Evans Farms, LLC</i> , 17-L-12 (Tazewell Cnty. Feb. 18, 2020)	J. Kouri	1,501	\$482,369.33 (1/3rd of total settlement)	\$7,500
<i>White v., Bridgeway</i> , 2019-CH-03387 (Cook Cnty. Sept. 11, 2020)	J. Tailor	205	\$112,442.00 (40% of total settlement)	\$5,000
<i>Diaz v. Greencore USA – CPG Partners, LLC</i> , 2017-CH-13198 (Cook Cnty. Aug. 30, 2019)	J. Valderrama	8,194	\$1,901,750 (1/3rd of total settlement)	\$15,000
<i>Dixon v. The Wash. &amp; Jane Smith Home</i> , 1:17-cv-8033 (N.D. Ill. Aug. 20, 2019)	J. Kennelly	1,378	\$451,548 (1/3rd of total settlement)	\$10,000
<i>Marshall v. Life Time Fitness, Inc.</i> , 17-CH-14262 (Cook Cnty. July 30, 2019)	J. Tailor	6,000	\$800,000 (1/3rd of total settlement)	\$5,000
<i>Zhirovetskiy v. Zayo Group, LLC</i> , 17-CH-09323 (Cook Cnty. Apr. 8, 2019)	J. Flynn	2,200	\$407,256.17 (40% of total settlement)	\$10,000

see also Herbert Newberg & Alba Conte, *Newberg on Class Actions* § 15.83 (William B. Rubenstein ed., 5th ed.) (noting that, generally, “50% of the fund is the upper limit on a reasonable fee award from any common fund”).

<sup>1</sup> The settlement documents do not reveal the precise number of class members, but the settlement approval documents state that “thousands” of claims were filed.

The guaranteed and timely payment of approximately \$400.00 for each individual who submitted a claim form is excellent. There is no guarantee that Plaintiffs would have prevailed at each and every juncture of continued litigation, from summary judgment, to certification and potentially decertification, to trial and through appeal. The settlement provides for substantial payments to the Class Members and the Parties' settlement provides immediate benefit to the Class Members.

**2. Settlement Class Counsel Prosecuted the Case with No Guarantee of Fees**

Settlement Class Counsel pursued this litigation on a contingent fee basis, risking investing time and money with no guaranteed recovery. The contingent-fee risk was significant in this case because when Plaintiff filed it, no courts had ruled on the Constitutional standing or statute of limitations defenses that Defendant pursued in its Motion to Dismiss. Given the substantial risk that Settlement Class Counsel would recover nothing after years of litigation against Defendant, Settlement Class Counsel's request for thirty-eight percent of the gross fund is reasonable. *See Ryan*, 274 Ill. App. 3d at 924.

**3. Continued Litigation Presented a Significant Risk to the Class**

If litigation were to continue, extensive class discovery would be required to establish liability and damages. Here, further litigation would likely result in depositions, a fully briefed motion for class certification, potential decertification proceedings, and summary judgment practice, and would prolong the risk, time, and expense associated with a trial. Any judgment would likely be appealed, further extending the litigation. These costs of further litigation are considerable in terms of both time and money but would not reduce the risks that litigation holds for the class. *See Isby*, 75 F.3d at 1199. Under these circumstances, the benefits of a guaranteed

recovery today as opposed to an uncertain result in the future, are readily apparent. This factor therefore weighs in favor of final approval.

**5. There Were No Objections to Class Counsel's Request for Fees**

The response of the class has been uniformly favorable as well. As of February 11, 2022, approximately 1,531 individuals submitted valid and timely claim forms and elected to participate in this settlement. No individuals objected to any aspect of the settlement, including Class Counsel's request for fees. The facts demonstrate that the class overwhelmingly supported the settlement. The lack of objectors and a single exclusion indicates support for the settlement and strongly favors a finding that it is "fair and reasonable." *Am. Civil Liberties Union v. United States Gen. Servs. Admin.*, 235 F. Supp. 2d 816, 819 (N.D. Ill. 2002). The fact that "99.9% of class members have neither opted-out nor filed objections to the proposed settlements... [is] strong circumstantial evidence favoring settlement." *In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d 1002, 1020-21 (N.D. Ill. 2000).

**D. The Service Award to the Named Plaintiffs Should Be Approved as Fair and Reasonable**

Settlement Class Representatives Carolyn Baldwin, Xavier Sanders, LaTonia Williams and Dequrvia Williams merit an \$8,5000 Incentive Award each for their work in filing and prosecuting this lawsuit in their own name, which remains a matter of public record and poses a risk of future employers retaliating against them; for conferring with Settlement Class Counsel throughout this case; and for recovering money for the class.

Incentive awards are appropriate in class actions because a class representative's efforts benefit absent class members and serve to encourage the future filing of beneficial litigation. *GMAC Mort. Corp. of PA v. Stapleton*, 236 Ill. App. 3d 486, 497 (1st Dist. 1992). Indeed, without

the Settlement Class Representatives, there may have been no lawsuit or settlement because no other similar lawsuits were filed against Defendant other than the claims brought by the Settlement Class Representatives.

Here, the requested Incentive Award is well within the range of those regularly awarded by other Illinois and federal courts in BIPA class settlements. *See* BIPA Settlement Chart pp. 6-7, *supra* (citing cases granting equivalent or higher incentive awards). Further, the Class Notice also advised Settlement Class Members of the amount of the Incentive Award to be requested and, to date, no Settlement Class Members objected to that amount. Given the reasonableness of the request, the Court should grant Settlement Class Representative's Incentive Award.

## V. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that the Honorable Court grant his Motion for Approval of Attorneys' Fees, Costs and Service Payment to the Named Plaintiff and enter an Order as follows:

- (1) awarding Class Counsel attorneys' fees in the amount of \$475,00.00 and costs not to exceed \$1,500.00;
- (2) awarding an incentive award in the amount of \$8,500.00 for each of the four Named Plaintiffs; and
- (3) for such other relief as the Honorable Court deems appropriate.

Dated: February 16, 2022

Respectfully submitted,

Carolyn Baldwin, Xavier Sanders, LaTonia Williams and Dequrvia Williams, individually and on behalf of all others similarly situated.

By: /s/ Thomas M. Ryan  
One of Plaintiffs' attorneys

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**CERTIFICATE OF SERVICE**

The undersigned counsel certifies that his office served the above document through the Court's electronic filing system on Defendant's attorneys of record on February 16, 2022.

/s/ Thomas M. Ryan  
One of Plaintiffs' Attorneys