

**IN THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT
SALINE COUNTY, ILLINOIS**

D'LISA WILLIAMS, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

JRN, INC.,

Defendant.

Case No. 2024LA34

**PLAINTIFF'S UNOPPOSED MOTION
FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARD**

Plaintiff D'Lisa Williams ("Williams" or "Plaintiff"), individually and on behalf of a class of similarly-situated individuals, moves the Court, pursuant to the Settlement Agreement and this Court's January 3, 2025 Order granting Plaintiff's Motion for Preliminary Approval, for an Order approving this unopposed motion for Class Counsel's attorneys' fees and costs, as well as a service award for Plaintiff based on her efforts in representing the absent Class Members in this lawsuit.

I. Introduction

As the Court is aware, this case concerns JRN's alleged violations of BIPA—in particular, the requirement that employers, prior to capturing or collecting biometric information from employees, obtain express consent from the employees and inform them of the purpose and term of biometric collection. This case was previously pending in federal court in the Southern District of Illinois, where the Parties briefed and argued a motion to stay and motion to dismiss, conducted preliminary discovery, and agreed to participate in a mediation session.

The mediation session was successful in bringing the Parties together to discuss their

respective claims and defenses, and the Parties reached a settlement to resolve the claims at issue and provide relief to Williams and the Class. Thereafter, the case was re-filed in this Court for settlement purposes. The result is a strong Settlement that fairly, reasonably, and adequately compensates the Class.

Counsel have zealously prosecuted the claims, achieving the Settlement Agreement only after extensive investigation, negotiations, an all-day mediation with a respected mediator, Hon. James Epstein (Ret.), and continued work with Judge Epstein in the days and weeks following the mediation. Judge Epstein—who was a judge in the Chancery Division of the Circuit Court of Cook County from 1999-2010 and was a justice of the Illinois Appellate Court from 2010-2015—helped both parties understand the strengths and weaknesses of their case and the future of the BIPA landscape, and ensured that the negotiations stayed at arms-length and that the ultimate settlement was fair, reasonable, and adequate (and indeed the best possible outcome for the settlement class).

This settlement is an outstanding result for the settlement class. It establishes a Settlement Fund of \$960,000 that will be used to pay each of the 1,279 Settlement Class Members who file timely claims, notice and administration costs, a service award to Ms. Williams, and attorneys' fees, costs, and expenses to Class Counsel. The Settlement also provides meaningful prospective relief, ensuring that JRN will move into compliance with BIPA if it conducts business in Illinois in the future. All told, this settlement brings certainty, closure, and significant and valuable relief to Settlement Class Members in lieu of contentious and costly litigation. It is no wonder that, as of the date of the filing of this Motion, no Settlement Class Member has objected or opted-out of the settlement. This overwhelmingly-positive reaction from the Class speaks to the strength of the settlement.

As compensation for the substantial benefit conferred upon the Settlement Class, and as agreed to by JRN in the settlement agreement, Counsel respectfully moves the Court for an award of attorneys' fees totaling \$336,000, which is 35% of the Settlement Fund. Counsel also respectfully moves the court for reimbursement of reasonable expenses in the amount of \$10,308.84. The total amount sought pursuant to the settlement agreement for fees and expenses, therefore, is \$346,208.84.

Higher fee requests have been found reasonable and granted by Courts in BIPA cases providing less compensation to individual class members than in this settlement. *See, e.g., Sekura v. L.A. Tan Enters., Inc.*, No. 2015-CH-16694 (Ill. Cir. Ct. Cook Cnty. 2016) (granting a 40% fee where class members stood to recover approximately \$40 per person); *Zepeda v. Intercontinental Hotels Grp., Inc.*, No. 2018-CH-02140 (Ill. Cir. Ct. Cook Cnty. 2018) (awarding a 40% fee where class members were expected to receive less than \$500 per person).

Additionally, Williams also respectfully moves the Court for an incentive award of \$5,000 to for her work on behalf of the Class. This settlement would not be possible without Williams' service as a named plaintiff and settlement class representative, \$5,000 is an ordinary and customary amount in consumer class action settlements, and JRN does not oppose.

For the reasons stated below, the Court should grant this Motion and award Plaintiff's Counsel the total amount of \$346,107.84 for fees and expenses, and also award Williams a \$5,000 incentive award.

II. Legal Background

Illinois enacted BIPA in 2008 to regulate "the collection, use, safeguarding, handling, storage, retention, and destruction" of biometric identifiers and biometric information. 740 ILCS

14/5(g). These protections are necessary because biometric identifiers are biologically unique and cannot be changed—individuals have no recourse if their identifiers are compromised. 740 ILCS 14/5(c). BIPA creates a privacy interest in biometric data and gives individuals the right to control when private entities collect their data. *Rosenbach v. Six Flags Entm't Corp.*, 2019 IL 123186, ¶¶ 34-35 (Ill. 2019). Among other things, BIPA prohibits private entities from collecting, possessing, or storing biometric data unless they first inform the subject person in writing of: (1) the collection itself; (2) the purpose of collection; and (3) the length of time the information will be kept. 740 ILCS 14/5(b). The entity must also obtain a written release from the subject authorizing collection of the biometric information. *Id.* If an entity commits negligent, reckless, or intentional violations of BIPA, it faces liquidated or actual damages, whichever are higher—\$1,000 per aggrieved person, and \$5,000 per aggrieved person. 740 ILCS 14/20.

III. Procedural History

JRN is an operator of fast-food franchises, specifically Kentucky Fried Chicken (“KFC”) franchise locations. This case challenges JRN’s implementation of a finger scan timekeeping system at its Illinois locations, which Williams alleges was done without being in compliance with BIPA’s requirements. One of JRN’s employees was Plaintiff Williams, who was employed by JRN from approximately 2008 until April 2021. During her employment, beginning around 2014 or 2015, she was instructed to use the subject timeclock to clock in and out of work. She alleges that she was not provided with any disclosures related to the timeclock or the collection of biometric information, and she likewise did not consent to the collection of biometric information.

After filing her complaint in federal court on June 13, 2022, Defendant sought a stay, which was granted over Plaintiff’s objection, pending the resolution of certain Illinois appellate cases

related to BIPA. Following a lift of the stay, JRN filed a motion to dismiss the complaint, which was granted in part and denied in part on June 5, 2024. The Court dismissed Williams' claim for declaratory or injunctive relief, but rejected JRN's other arguments and permitted Plaintiff's claim for damages to proceed. JRN filed its Answer on July 16, 2024.

The Parties then agreed to participate in a mediation session on August 12, 2024 overseen by the respected mediator Hon. James Epstein (Ret.) of JAMS in Chicago. The mediation was productive, but the case did not settle that day. However, the Parties remained in contact via the mediator in the days and weeks following the mediation and, with Judge Epstein's diligent assistance, reached an agreement in principle approximately two (2) weeks later on the present settlement.

As set forth below, the Parties' efforts and negotiations have produced settlement terms that clearly fall within the range of what this Court, or any court, would ultimately adjudicate as fair, reasonable, and adequate on final approval.

IV. Key Terms of the Settlement

The complete terms of the Settlement are set forth in the Settlement Agreement. A brief summary follows:

A. Class Definition

The "Settlement Class" or "Class" is defined as "All persons who appear on the list of individuals which JRN's records reflect are current or former employees who used the finger scan time clock at issue to clock in and out for work at JRN from June 13, 2017 to present." (Settlement Agrmt. at § 1.6.) There are 1,279 persons who meet the definition of the Settlement Class.

B. Monetary Relief

The Settlement provides Class Members with substantial monetary relief. Specifically, JRN must establish a Settlement Fund of \$960,000 (*Id.* at § 1.36), which will be used to pay all valid Class Member claims, settlement administration costs, and payment of any award of attorneys’ fees, costs to Plaintiff’s Counsel and a service award to Williams. Each timely and valid claim submitted results in a payment of \$750.

Under BIPA, liquidated damages are up to \$1,000 per person for a negligent violation of the statute, and \$5,000 for a reckless or intentional violation—no such liquidated damages amount is attributable to violations that do not qualify as at least negligent. 740 ILCS 14/20. Moreover, the Illinois Supreme Court has noted that Courts have discretion to fashion damage awards so as not to “destroy[] defendant’s business.” *See Cothron v. White Castle Sys., Inc.*, 2023 IL 128004, ¶ 42, 216 N.E.3d 918, 929.

The recovery of \$750 per class member who submits a valid and timely claim exceeds amounts that have been approved by courts in similar cases throughout the state of Illinois. Accordingly, the monetary relief provided to the Class is undoubtedly favorable.

C. Release of Liability

In exchange for the benefits to the Class, JRN will receive a full release of any claims relating to JRN’s purported collection of biometric information through its finger-scan timekeeping system, under BIPA or any similar law. (Settlement Agrmt. § 3.) The Release includes unknown claims, which are limited to claims that could have been brought in this litigation.

D. Notice

The Settlement also calls for the dissemination of notice to Class Members. This plan—

which features direct mail notice as well as the establishment of a settlement website which will house important case documents for Class Members to review—has been implemented successfully. The Administrator reports that, as of April 2, 2025, 1,279 notices have been mailed, with only 145 of those marked as “dead addresses”. Thus, the notice’s reach far exceeds the 70% “rule of thumb” for adequate notice. *See* FEDERAL JUDICIAL CENTER, Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide 3 (2010).

V. The Requested Fees, Costs, and Service Award are Reasonable

A. The Requested Fees are Reasonable

“Illinois follows the ‘American Rule,’ which provides that absent statutory authority or a contractual agreement, each party must bear its own attorney fees and costs.” *McNiff v. Maza Motor Co. of Am., Inc.*, 384 Ill. App. 3d 401, 405 (4th Dist. 2008) (citations omitted). “If a statute or contractual agreement expressly authorizes an award of attorney fees, the court may award fees ‘so long as they are reasonable’.” *Id.*

Here, the Parties have entered into a contractual agreement (the Settlement Agreement) which expressly authorizes Plaintiff to seek an award of attorneys’ fees of \$336,000 plus costs. For the reasons set forth below, Counsel’s request for \$336,000, or 35% of the Fund, in attorneys’ fees (which Defendant does not oppose) is fair and reasonable and should be approved.

Under Illinois law, an attorney in a class action “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.” *Wendling v. S. Ill. Hosp. Servs.*, 242 Ill. 2d 261, 265 (2011) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (internal citations omitted)). The basis of the common fund doctrine is “the equitable concept that the beneficiaries of a fund will be unjustly enriched by

the attorney's services unless they contribute to the costs of the litigation." *Wendling*, 242 Ill. 2d at 265.

In determining the amount of a reasonable fee award in a common fund case such as this, the Court has discretionary authority to choose the percentage-of-the-recovery or lodestar method. *See, e.g., Brundidge v. Glendale Fed. Bank*, 168 Ill. 2d 235, 243–44 (1995) Under the percentage-of-the-recovery method, the Court awards "attorney fees to plaintiffs' counsel based on a percentage of the fund." *Id.* at 244. This method "is, overall, a fair and expeditious method that reflects the economics of legal practice and equitably compensates counsel for the time, effort, and risks associated with representing the plaintiff class." *Id.* (also holding that "[w]hen awarding attorney's fees in a class action, a court must make sure that counsel is fairly compensated for the amount of work done as well as for the results achieved".)

On the other hand, the lodestar method has been criticized for encouraging inefficiency and creating additional litigation. *See, e.g., Ryan v. City of Chi.*, 274 Ill. App. 3d 913, 924 (1995) (noting that "[p]ercentage analysis approach eliminates the need for additional major litigation" while detailing the inefficiencies of the lodestar method). *See also Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986) ("When the prevailing method of compensating lawyers for similar services is the contingent fee, then the contingent fee is the 'market rate.'")

Using the percentage approach here, which Defendant does not oppose, makes the most sense in this case. This approach has been used to determine a reasonable fee award in many BIPA class action settlements in Illinois in recent years. *See, e.g., Zepeda v. Intercontinental Hotels Grp., Inc.*, No. 18-CH-02140 (Ill. Cir. Ct. Cook Cnty. 2018); *Svagdis v. Alro SteelCorp.*, No. 17-CH-12566 (Ill.Cir.Ct.CookCnty. 2018); *Stecker v. MAAC Mach. Co.*, No. 2020-L-000321 (Ill. Cir. Ct.

DuPage Cnty. 2021). Moreover, given the relatively small size of the class in this case, this is not a case where plaintiff's counsel is seeking an exorbitant sum of money in fees. Indeed, even if the Court were to conduct a lodestar analysis, Counsel's lodestar would easily justify the requested fee using a modest multiplier.

The fee requested here is eminently reasonable when compared to the value of other similar settlements approved in Illinois courts. This Settlement provides significant, concrete value to Settlement Class Members. The Fund provided for in the Settlement is sufficient for every Settlement Class Member who files a timely claim to receive \$750. Additionally, the non-monetary value of the Settlement—ensuring that JRN will comply with BIPA in the future—provides additional value to the Settlement Class. Under Illinois law, “an attorney is entitled to an award from the fund for the reasonable value of his or her services.” *Ryan*, 274 Ill. App. 3d at 922. Here, the fees and costs requested are 35% of the Settlement Fund and will fairly and equitably compensate Counsel. Not only is the request in line with the market value of attorneys' fees in contingency cases, but the request is also in the lower range of fee awards in BIPA and other class actions.

Indeed, courts in Illinois have awarded higher percentages than the 35% of the Settlement Cap requested here. *See Rapai v. Hyatt Corp.*, Case No. 2017-CH-14483 (Cir. Ct. Cook Cnty., Jan. 26, 2022) (awarding 40% of Settlement Fund in BIPA settlement); *Lark v. McDonald's USA, LLC*, Case No. 17-L-559 (Cir. Ct. St. Clair Cnty., Feb. 28, 2022) (awarding 37% in BIPA settlement). *See also Retsky Fam. Ltd. P'ship v. Price Waterhouse LLP*, No. 97 C 7694, 2001 WL 1568856, at *4 (N.D. Ill. Dec. 10, 2001) (“Courts try to approximate the market in determining reasonable attorney's fees . . . A customary contingency fee would range from 33 1/3% to 40% of

the amount recovered.”); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 599 (N.D. Ill. 2011) (“The Court is independently aware that 33 1/3% to 40% (plus the cost of litigation) is the standard contingent fee percentages [sic] in this legal marketplace[.]”); *Wells v. Allstate Ins. Co.*, 557 F. Supp. 3d 1, 7-8 (D.D.C. 2008) (approving 45% of the settlement fund).

Here, Plaintiff’s requested fee of 35% falls well within—and even below—the range of acceptable class action fees. The fees and costs requested here also compare favorably with other BIPA cases. For example, in *Sekura v. L.A. Tan Enters., Inc.*, No. 2015-CH-16694 (Ill. Cir. Ct. Cook Cnty. 2016), the court awarded a 40% fee where the BIPA class settlement resulted in each class member being eligible to receive a pro rata share of a settlement fund that would have amounted to approximately \$40 per person if each class member had submitted a valid claim. Similarly, in *Zepeda v. Intercontinental Hotels Grp., Inc.*, No. 2018-CH-02140 (Ill. Cir. Ct. Cook Cnty. 2018), the court awarded a 40% fee where the settlement provided each class member being eligible to receive a pro rata share of a settlement fund that would amount to approximately \$500 per person before deductions for administrative expenses, attorneys’ fees and costs, and an incentive award. Here, again each class member who files a timely claim will receive \$750. Accordingly, an award of 35% of the Settlement for both fees and reimbursable costs, is well within the existing market for fee awards in BIPA class actions, reasonable, and should be approved by this Court.

Additionally, the requested 35% fee award is also reasonable based on the work Class Counsel put into this case. This case was heavily litigated early on, including a motion to stay and a motion to dismiss, and Counsel also expended considerable time and resources discussing and negotiating a potential a resolution of the case. Class Counsel dedicated significant time to

preparing for and attending mediation, negotiating the finer terms of the Settlement Agreement, drafting and revising related exhibits, and drafting and appearing for the hearing on the Motion for Preliminary Approval. Going forward, Counsel will incur additional hours in order to bring this case to final resolution. Specifically, Class Counsel still must continue to monitor the notice and claims administration, prepare the Motion for Final Approval, participate in the Final Approval Hearing, respond to any Class Members' inquiries and even after Final Approval otherwise ensure that the Settlement is properly administered.

Finally, the 35% fee award is also reasonable based on the contingent risk assumed by Counsel, who accepted this litigation on a contingent fee basis, fronting costs and expenses, and accepting the risk that should they ultimately be unsuccessful they would receive no compensation for their work. Although these risks are inherent in any class action, there are additional unique risks in BIPA class actions given the relative volatility of judicial interpretation of the statute. Indeed, the statute was amended during the pendency of this case to foreclose the possibility of per-scan damages and cap the per-person recovery at \$1,000 for any negligent violation and \$5,000 for any intentional or reckless violation. PA 103-0769. \$750 per person under this settlement is an excellent result given that the reality of winning at trial would be \$1,000, since the facts here don't lend themselves to an intentional violation.

Simply put, Plaintiff's requested attorney fee award is fair and reasonable and should be granted.

B. The Expenses are Also Reasonable

The Settlement Agreement also provides that Counsel would seek reimbursement of their litigation costs and expenses. As with attorneys' fees, Plaintiffs' counsel who obtain a common

fund for a class are entitled to reimbursement of expenses because class members receiving a common fund should contribute to the cost of litigation. *See, e.g., Wendling*, 242 Ill. 2d at 265.

Here, Class Counsel's expenses were all reasonably incurred in pursuing this litigation. Counsel have expended \$10,308.84 in reimbursable litigation expenses related to filing fees, service of process, and mediation expenses. Specifically, Counsel seeks recovery for \$402 for the initial federal court filing fee, \$79 for service of process, \$328 for the state court filing fee, \$201 for Counsel's appearance fee, and Judge Epstein's fee of \$9,298.84. These expenses were necessary to prosecute litigation of this size and complexity on behalf of the Settlement Class, to drive resolution, and they are typical (if not lower than) expenses regularly awarded in consumer class action settlements. This is not a case where Counsel seeks reimbursements for unnecessary travel or steak dinners; rather, Counsel's expenses were necessary to file the case, serve the defendant, and retain an experienced mediator. Accordingly, Plaintiff request that the Court approve the reimbursement of Class Counsel's reasonable litigation expenses.

C. The Court Should Also Grant the Incentive Award Request

The Settlement Agreement also provides for an incentive award of \$5,000 to Williams. Incentive awards "are not atypical in class action cases" as compensation for the class representative's service to the class and to incentivize others to step forward as future named plaintiffs. *GMAC Mortg. Corp. of Pa.v. Stapleton*, 236 Ill. App. 3d 486, 497 (1992). Here, Plaintiff's participation was critical to the case's ultimate resolution. Plaintiff's willingness to commit time to this litigation and undertake the responsibilities involved in representative litigation resulted in a substantial benefit to the Class and fully justifies the requested incentive award. Moreover, the requested incentive award is consistent with other BIPA class action

incentive awards. *See, e.g., Sekura v. L.A. Tan Enters.*, No. 2015-CH- 16694 (Ill. Cir. Ct. Cook Cnty. Dec. 1, 2016) (granting \$5,000 incentive award in BIPA case); *Svagdis*, No. 2017-CH-12566 (Ill. Cir. Ct. Cook Cnty. Jan. 14, 2019) (granting \$5,000 incentive award in BIPA case). Accordingly, Plaintiff's request should be granted.

VI. Conclusion

For the foregoing reasons, Plaintiff respectfully asks that the Court grant Plaintiff's Motion and award \$336,000 in attorneys fees and \$10,308.84 in reasonable expenses. Plaintiff also requests that the Court award her a \$5,000 incentive award.

Respectfully submitted,

D'LISA WILLIAMS, individually and on behalf
of all others similarly situated,

Dated: April 4, 2025

/s/ Patrick H. Peluso

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the above titled document was served upon counsel of record by filing such papers via the Court's electronic filing system on April 7, 2025.

/s/ *Patrick H. Peluso*