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

ANTHONY SMITH, on behalf of himself and all others similarly situated, Plaintiff, v. RADISSON HOSPITALITY, INC.; RADISSON HOTELS INTERNATIONAL, INC.; and RADISSON HOTELS MANAGEMENT CORPORATION, Defendants.	Case No.: 2021 CH 00177 Judge Michael T. Mullen

REPRESENTATIVE PLAINTIFF'S UNOPPOSED MOTION FOR SERVICE AWARD AND FEE AWARD & INCORPORATED MEMORANDUM OF LAW

Dated: June 21, 2022

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Pursuant to 735 ILCS 5/2-801 and the Court's Order dated May 13, 2022, Representative Plaintiff Anthony Smith and Class Counsel at Hedin Hall LLP respectfully move for the Court's approval of a Service Award and a Fee Award in connection with the Parties' preliminarily approved Settlement.[1] Defendant does not object to the requested Service Award or Fee Award amounts.

INTRODUCTION

In this consumer class action, Representative Plaintiff Anthony Smith alleges that Defendants Radisson Hospitality, Inc., Radisson Hotels International Inc., and Radisson Hotels Management Corporation (collectively, "Defendants" or "Radisson") violated the Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1 *et seq.*, by collecting his and its other employees' fingerprints for timekeeping purposes without providing the requisite disclosures or obtaining informed written consent required by the statute.

The Parties have reached a comprehensive class-wide resolution to this Action, which the Court preliminarily approved in its order dated May 13, 2022. The preliminarily approved Settlement establishes a non-reversionary Settlement Fund of $465,000.00 (four hundred sixty five thousand dollars) for the benefit of the Settlement Class, which consists of 465 people, equaling a gross payment of $1000 per Settlement Class Member; the Settlement Fund will be used to automatically pay cash awards to all Settlement Class Members who have not excluded themselves (without requiring any of them to file a claim form), Settlement Administration Costs, and a Service Award to the Representative Plaintiff and Fee Award to Class Counsel as approved by the Court. The Settlement also provides meaningful prospective relief to the Settlement Class,

[1] Unless otherwise defined herein, all capitalized terms have the same force, meaning and effect as ascribed in Section 2 ("Definitions") of the Settlement Agreement.

securing representations from Defendants that Defendants are no longer using the Time-Keeping System in Illinois, and have not done so since January 10, 2019; that Defendants directed their timekeeping vendor to irretrievably destroy any and all data that might be considered "biometric information" or "biometric identifiers" for all current and former employees of the Radisson Blu Aqua Hotel in January 2019; that Defendants' vendor represented that it had done so on January 10, 2019; and to the best of Defendants' knowledge, they do not have possession, custody or control, directly or indirectly, of any biometric information and/or biometric identifiers for any Settlement Class Member, any current or former employees of the Radisson Blu Aqua Hotel or any other individuals who have not signed BIPA-compliant consent documents. Defendants further agreed that in the event Defendants elect in the future to utilize a timekeeping system that is subject to the provisions of BIPA, Defendants will implement procedures and systems to comply with BIPA.

Per the approved Notice Plan, Notice of the Settlement was disseminated by US Postal mail to each of the 465 members of the Settlement Class, and a Settlement Website has been established for Settlement Class Members to learn more about the Settlement, to review the relevant filings, orders, and other pertinent documents, to elect payment to an electronic wallet, to obtain instructions for objecting to or submitting requests for exclusion from the Settlement, and to submit requests for exclusion from the Settlement on a simple, web-based form. To date, none of the members of the Settlement Class have filed requests to be excluded from the Settlement or objected to the Settlement.

Class Counsel has invested significant time and resources, monetary and otherwise, investigating and litigating the claims and negotiating the Settlement on behalf of the Settlement Class – a high-risk undertaking that will result in each member of the Settlement Class receiving

approximately $570 after all fees and expenses associated with the Settlement are deducted from the Settlement Fund. The Representative Plaintiff likewise played an invaluable role in this action by assisting counsel at every stage of the proceedings, including by providing counsel with information regarding Defendant's biometrics collection policies and practices, reviewing pleadings and other filings in the case, staying in regular contact with counsel and abreast of the proceedings, and taking an active role in negotiating, drafting, and executing the Settlement. Class Counsel devoted substantial time and resources to this action and will continue to do so until the Settlement administration process concludes and funds have been disbursed to Settlement Class Members.

Representative Plaintiff and Class Counsel respectfully request the Court's approval of a Service Award of $5,000 and a Fee Award of 35% of the Settlement Fund (or $162,750.00). As detailed below, the requested awards are appropriate under governing Illinois law, consistent with the amounts awarded in prior similar settlements Illinois state and federal court, and constitute fair compensation for the significant amount of work performed by Class Counsel and the Representative Plaintiff in investigating, prosecuting, and resolving this litigation.

ILLINOIS' BIOMETRIC INFORMATION PRIVACY ACT

Recognizing the "very serious need" to protect Illinois citizens' biometric data—which includes retina scans, fingerprints, voiceprints, and scans of hand or face geometry—the Illinois legislature unanimously passed BIPA in 2008 to provide individuals recourse when companies fail to appropriately handle their biometric data in accordance with the statute. (*See* Comp., ¶ 11); 740 ILCS 14/5. Thus, 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 whicha 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 how companies must handle individuals' biometric data. For example, BIPA requires companies to develop a written policy establishing a retention schedule and guidelines for permanently destroying biometric data. 740 ILCS 14/15(a). To enforce the statute, BIPA provides a civil private right of action and allows for the recovery of statutory damages in the amount of $1,000 for negligent violations—or $5,000 for willful violations—plus costs and reasonable attorneys' fees. *See* 740 ILCS 14/20.

BACKGROUND

I. NATURE OF THE ACTION[2]

Defendants operate the Radisson Blu Aqua Hotel in Chicago, Illinois ("the Radisson Blue Aqua Hotel"). (Comp., ¶8, ¶17). Defendants employed Plaintiff at the Radisson Blue Aqua Hotel from approximately August 2018 through November 2018. (Comp., ¶17). Plaintiff alleges that during his employment at the Radisson Blue Aqua Hotel, Defendants required him to place his fingers on a fingerprint scanner, at which point digital copies of Plaintiff's fingerprints were scanned, collected, and stored in an electronic database. (Comp., ¶18). Plaintiff and other workers were required to use the fingerprint scanner every day, each time they wished to clock in and clock

[2] This section includes allegations from Plaintiffs' Complaint.

out of work. (Comp., ¶19). Plaintiff further alleges that Defendants' sophisticated fingerprint matching technology compared Plaintiff's scanned fingerprint against the fingerprints previously stored in Defendants' fingerprint database, at which point Plaintiff, and all others similarly situated, were able to clock in and clock out of work at Radisson Blue Aqua Hotel. (*Id.*). Plaintiff asserts that he never consented, agreed, or gave permission – written or otherwise – to Defendants for the collection or storage of his unique biometric identifiers or biometric information (Comp., ¶20), and further, that Defendants never provided Plaintiff with, nor did he ever sign, a written release allowing Defendants to collect or store his unique biometric identifiers or biometric information. (Comp., ¶21). Additionally, Plaintiff asserts that Defendants did not provide him with required statutory disclosures or an opportunity to prohibit or prevent the collection, storage or use of his unique biometric identifiers or biometric information. (Comp., ¶¶22-24).

Plaintiff alleges that by collecting his unique biometric identifiers or biometric information without his consent, written or otherwise, Defendants invaded his statutorily protected right to maintain control over his biometrics. (Comp., ¶23).

II. PRE-FILING INVESTIGATION

Class Counsel conducted a comprehensive pre-filing investigation concerning every aspect of the factual and legal issues underlying the claims alleged in this matter. (Ravindran Decl. ¶ 9.) These pre-filing efforts included:

- Researching the nature of Defendant's business, size, number of employees, and location;
- Interviewing Representative Plaintiff to understand Defendant's timekeeping practices and whether such practices were BIPA compliant;
- Determining the appropriate measure of statutory damages;
- Assessing the factual and legal basis for any potential defenses to the claims alleged in the Complaint; and

- Reviewing Defendant's litigation history to determine whether Defendant had any pending claims on either an individual or class-wide basis.

(*Id.*, ¶ 9(A)-(E).)

As a result of this thorough pre-filing investigation, Class Counsel was able to develop multiple potentially viable theories of BIPA liability against Defendant, analyze the legal issues relevant to the merits of claims under each such theory, assess the likelihood of success of potential defenses, and ultimately prepare a complaint against Defendant aimed at maximizing the likelihood of certifying a class and recovering meaningful class-wide relief. (Ravindran Decl. ¶ 10.) Following this pre-filing investigation and analysis, on January 15, 2021, Plaintiff filed his Class Action Complaint in the Circuit Court of Cook County, Chancery Division.

III. SETTLEMENT NEGOTIATIONS

The parties began their initial settlement negotiations in mid-May 2021. (Ravindran Decl. ¶ 12.) To meaningfully advance those discussions, Defendant provided Plaintiff with discovery regarding the potential class size, availability of insurance coverage, and information relevant to Defendants' operating procedures. *Id.* The Parties negotiated at arm's length for several months concerning various aspects of the relief and notice and distribution plan. (*Id.*, ¶ 13.) The Parties executed the Settlement Agreement on May 5, 2022. (*Id.*)

Additionally, the Parties agreed to engage JND Legal Administration ("JND"), a nationally recognized class-action settlement administration company with prior experience administering BIPA employee class settlements, to administer the Settlement. (Ravindran Decl. ¶ 14.). Plaintiff's counsel and Defendants' counsel reviewed the quote, and upon determining the quote was reasonable and in line with industry standards, agreed to engage JND as Settlement Administrator. (*Id.*) Plaintiff's counsel worked with Defendants' counsel to ensure that all notice-related materials comply with due process and applicable law and are easily understood by Settlement

Class Members. (*Id.*)

IV. TERMS OF THE SETTLEMENT

A copy of the Settlement Agreement is attached as Exhibit 1 to the Ravindran Decl. (filed concurrently herewith), the key terms of which are summarized as follows:

a. Settlement Class Definition

The Settlement Class defined in the Settlement Agreement, and conditionally certified by the Court in its Order dated January 14, 2022, is as follows:

> "All individuals who used the Time-Keeping System at the Radisson Blue Aqua Hotel between January 15, 2016 and the date of the Court's order preliminarily approving the settlement."

Settlement Agreement §2.31; §3.39.

b. Settlement Payments

The Settlement provides that a *pro rata* share of the Settlement Fund (after payment of administrative expenses, any approved fee award to class counsel and any approved service award to the class representative) will be sent directly to Settlement Class Members, without the need for them to submit claim forms. (Agreement §5.44.) Defendant has agreed to pay a gross amount of $1000 per member of the Settlement Class into the Settlement Fund; because there are 465 members of the Settlement Class, Defendant will pay $465,000.00 to the Settlement Fund within sixty days of the entry of the Court's entry of the Preliminary Approval Order. (*Id.* §5.43(a).) The settlement is non-reversionary. (*Id.* §5.41(f)). Each member of the Settlement Class who does not request exclusion will receive a *pro rata* share of the net Settlement Fund after Settlement Administration Expenses and any attorneys' fees and service award approved by the Court are first deducted. Each Settlement Class Member is estimated to receive a check for approximately $570. (Ravindran Decl.¶ 20). If any checks remain uncashed within ninety (90) days after the date of

issuance, the check will be void, and such uncashed funds will be distributed to a *cy pres* recipient, mutually selected by the Parties and subject to Court approval. (Agreement, §5.46(d))

c. Prospective Relief

As a material term of the Settlement Agreement, Defendants made the following representations: Defendants are no longer using the Time-Keeping System in Illinois, and have not done so since January 10, 2019; Defendants directed their timekeeping vendor to irretrievably destroy any and all data that might be considered "biometric information" or "biometric identifiers" for all current and former employees of the Radisson Blu Aqua Hotel in January 2019; Defendants' vendor represented that it had done so on January 10, 2019; and to the best of Defendants' knowledge, they do not have possession, custody or control, directly or indirectly, of any biometric information and/or biometric identifiers for any Settlement Class Member, any current or former employees of the Radisson Blu Aqua Hotel or any other individuals who have not signed BIPA-compliant consent documents. (Agreement, §6.47). Defendants further agreed that in the event Defendants elect in the future to utilize a timekeeping system that is subject to the provisions of BIPA, Defendants will implement procedures and systems to comply with BIPA. (*Id.* §6.45).

d. Notice Plan

The Settlement Administrator disseminated the Class Notice, the form of which the Court preliminarily approved in its Order dated May 13, 2022, to all potential Settlement Class Members by e-mail and U.S. Postal mail. (Agreement §9.57; Ravindran Decl. ¶ 27). The Class Notice approved by the Court is attached as Exhibit "B" to the Settlement Agreement.

Further, the Settlement Administrator has established and is currently maintaining the Settlement Website, located at the URL www.RadissonBluBiometricsSettlement.com.

(Agreement, §2.35; Ravindran Decl. ¶ 27.) The Settlement Website provides information about the Settlement and makes case-related documents available for download, such as the Settlement Agreement, Notice, Preliminary Approval Order, and when filed, this Fee and Expense Application, and contains a web-based form for Settlement Class Members to submit requests for exclusion, and allows Settlement Class Members to opt to receive payment by electronic wallet. *Id.*

e. SERVICE AWARDS AND FEE AWARD

Defendant does not oppose the Court's approval of a Service Award to the Representative Plaintiff of $5,000 and a Fee Award to Class Counsel of 35% of the Settlement Fund, which, if approved, will be paid from the Settlement Fund. *Id*. §§ 15.68-15.774. The Class Notice informed all Settlement Class Members of the amounts of the requested awards. *See* Settlement Agreement, Ex. B.

f. OBJECTION AND OPT-OUT RIGHTS

Any Settlement Class Member who wishes to exclude herself or himself from, or object to, the Settlement must do so on or before the Opt-Out or Objection Deadline of July 12, 2022, and in compliance with the requirements set forth in Sections 10 and 11 of the Settlement Agreement. Settlement Agreement § 10.58, et. seq; § 11.60, *et. seq*.

g. RELEASE

Upon the Court's entry of the Final Approval Order and Judgment, the Representative Plaintiff and Settlement Class Members who have not excluded themselves will have fully, finally, and forever released, relinquished, and discharged Defendants and Released Parties from the Released Claims, i.e., all claims arising out of the alleged capture, collection, storage, possession, transmission, conversion, and/or other use of biometric identifiers and/or biometric information in

connection with the Time-Keeping System used by Defendant, including but not limited to claims brought under 740 ILCS § 14/10, *et seq*. *See id.* § 1.26; 7.48-7.49.

THE REQUESTED SERVICE AWARDS SHOULD BE APPROVED

Because a named plaintiff is essential to any class action, service awards, also known as incentive awards, "are "justified when necessary to induce individuals to become named representatives." *Spano v. Boeing Co.*, No. 06-CV-743-NJR-DGW, 2016 WL 3791123, at *4 (S.D. Ill. Mar. 31, 2016) (internal citation omitted) (approving incentive awards of $25,000 and $10,000); *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"). Additionally, by lending his name to this litigation, the Representative Plaintiffs opened himself up to "scrutiny and attention," which in and of itself "is certainly worthy of some type of remuneration." *See Schulte*, 805 F. Supp. 2d at 600-01.

In this case, the Representative Plaintiff is well-deserving of a modest $5,000 Service Award given the vital role that he played. Even though no award of any sort has been promised to the Representative Plaintiff, he nonetheless contributed time and effort pursuing these claims on behalf of the Settlement Class — exhibiting a willingness to participate and undertake the responsibilities and risks attendant with bringing a representative action. (*See* Ravindran Decl. ¶ 33.) The Representative Plaintiff participated in Class Counsel's investigation and provided background information regarding Defendants' collection of biometric information in connection with timekeeping, reviewed pleadings and court filings, consulted with Class Counsel on numerous occasions, and provided feedback on a number of other filings, most importantly the Settlement Agreement. (Ravindran Decl. ¶ 33.) But for the Representative Plaintiff's assistance and active involvement in the litigation, the Settlement would not have been possible. (*Id*.)

The modest amount of the Service Award requested for the Representative Plaintiff –

$5,000 – equates to just 1% of the total settlement fund, and which is significantly less than the average incentive award granted in a class settlement. *See* 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"). Service awards much larger than the amounts sought here are routinely approved. *See, e.g., Dixon v. Washington & Jane Smith Cmty.-Beverly*, No. 17-cv-8033 (N.D. Ill.) (granting $10,000 incentive award in BIPA case); *Brown v. Moran Foods, Inc*., No. 2019-CH-02576 (Cir. Ct. Cook Cnty.) ($5,000 award in BIPA case); *Barnes v. Aryz*ta, No. 2019-CH-02576 (Cir. Ct. Cook Cnty.) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11-cv-4462, U.S. Dist. LEXIS 35421, at *20 (N.D. Ill. Mar. 23, 2015) (awarding $25,000 incentive award); *Satterfield v. Simon & Schuster*, No. 06-cv-2893, Dkt. 131, at 4 (awarding incentive awards totaling $30,000, including a $20,000 award to one class representatives). Accordingly, a Service Award of $5,000 to Representative Plaintiff is fair and reasonable and should be approved.

THE REQUESTED FEE AWARD SHOULD BE APPROVED

Class Counsel respectfully request the Court's approval of a Fee Award of 35% of the settlement fund (or $162,750.00).

I. CLASS COUNSEL SHOULD BE AWARDED THE *EX ANTE* MARKET RATE FOR THE LEGAL SERVICES PERFORMED FOR THE BENEFIT OF THE SETTLEMENT CLASS

Courts strongly encourage negotiated fee awards in class action settlements. *See Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) ("A request for attorneys' fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of the fee."). "The Illinois Supreme Court has adopted the approach taken by the majority of federal courts on the issue of attorney fees in equitable fund cases," *Baksinski v. Northwestern Univ.*, 231 Ill. App. 3d 7, 13 (1st

Dist. 1992) (citing *Fiorito v. Jones*, 72 Ill.2d 73 (1978)), which is to permit "attorneys for the successful plaintiff [to] 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)); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("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 deciding fee levels in common fund cases" such as the instant matter, courts must "'do their best to 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.'" *Sutton v. Bernard*, 504 F.3d 688, 692 (7th Cir. 2007) (quotation omitted). In performing this inquiry, the Illinois Supreme Court has determined that courts may "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)).

II. THE COURT SHOULD APPLY THE PERCENTAGE-OF-THE-FUND METHOD IN THIS CASE

In this case, the Court should use the percentage-of-the-fund method in determining an appropriate Fee Award to Class Counsel. In "choosing between the percentage and lodestar approaches," courts "look to the calculation method most commonly used in the marketplace at the time such a negotiation would have occurred." *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 500-01 (N.D. Ill. 2015) (citing *Cook v. Niedert*, 142 F.3d 1004, 1013 (7th Cir. 1998)). And in consumer cases such as the instant matter, where "the normal practice [is] to negotiate a fee arrangement based on a percentage of the plaintiffs' ultimate recovery," *Kolinek*, 311 F.R.D. at 500-01, state

and federal courts in Illinois and throughout the country are in near unanimous agreement that the percentage-of-the-fund approach best yields the fair market price for the services provided by counsel to the class. *See Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 2006) ("When the prevailing method of compensating lawyers for similar services is the contingent fee, then the contingent fee *is* the 'market rate.'"); *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 923 (1st Dist. 1995) (noting that "a percentage fee was the best determinant of the reasonable value of services rendered by counsel in common fund cases") (citation omitted); *Williams v. Gen. Elec. Capital Auto Lease*, 94 C 7410, 1995 WL 765266, *9 (N.D. Ill. Dec. 26, 1995) (noting that "[t]he approach favored in the Seventh Circuit is to compute attorney's fees as a percentage of the benefit conferred upon the class"); *see also, e.g., Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (explaining that where "a class suit produces a fund for the class," as is the case here, "it is commonplace to award the lawyers for the class a percentage of the fund," and affirming fee award of 38% of $20 million recovery to class); *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); *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 794 (N.D. Ill. 2015) ("[T]he court agrees with Class Counsel that the fee award . . . should be calculated as a percentage of the money recovered for the class.").

This Court should likewise calculate Class Counsel's Fee Award using percentage-of-the-fund method. The percent-of-the-fund method best replicates the *ex ante* market value of the services that Class Counsel provided to the Settlement Class. It is not just the typical method used in contingency-fee cases generally, *see Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998), but it is also the means by which an informed Settlement Class and Class Counsel would have established counsel's fee *ex ante*, at the outset of the litigation. *See e.g. Cornejo v. Amcor Rigid*

Plastics USA, LLC, No. 18-cv-7018, dkt. 57 (N.D. Ill. 2018) (using percentage-of-the-fund method to calculate attorneys' fees in BIPA case); *Alvarado v. Int'l Laser Prods., Inc.*, No. 18-cv-7756, dkt. 70 (N.D. Ill. Jan. 24, 2020) (same); *see also Kolinek*, 311 F.R.D. at 500-01 ("the normal practice [is] to negotiate a fee arrangement based on a percentage of the plaintiffs' ultimate recovery"). The percentage-of-the-fund method also better aligns Class Counsel's interests with those of the Settlement Class because it bases the fee on the results the lawyers achieve for their clients rather than on the number of motions they file, documents they review, or hours they work, and it avoids some of the problems the lodestar-times-multiplier method can foster (such as encouraging counsel to delay resolution of the case when an early resolution may be in their clients' best interests). *Brundidge*, 168 Ill.2d at 242; *Florin v. Nationsbank of Georgia, N.A.*, 34 F.3d 560, 566 (7th Cir. 1994); *In re Synthroid Mktg. Litig.*, 264 F.3d 712 at 720-721 (7th Cir. 2001). And it is also simpler to apply. *Id.*; *see also, e.g., Kolinek*, 311 F.R.D. at 501; *Ryan*, 274 Ill. App. 3d at 924.

Accordingly, Class Counsel respectfully requests that the Court apply the percentage-of-the-fund approach in determining an appropriate Fee Award in this case.

III. THE COURT SHOULD APPROVE A FEE AWARD OF 35% OF THE SETTLEMENT FUND

In terms of the percentage to award, Class Counsel respectfully requests that the Court award a Fee Award of 35% of the settlement fund (or $162,750.00).

An award to Class Counsel of 35% of the settlement fund to Class Counsel is well within the range of fees typically awarded to class counsel by Illinois courts in comparable all-cash class action settlements. *See, e.g., Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97-cv-7694, U.S. Dist. LEXIS 20397, at *10 (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, U.S. Dist. LEXIS 52962, at *5 (S.D. Ill. July 31, 2006); *see also Sabon, Inc.*, 2016 IL App (2d) 150236, at ¶ 59 (upholding an attorneys' fees award of one-third of a reversionary fund recovered in light of the "substantial risk in prosecuting this case under a contingency fee agreement given the vigorous defense of the case and defenses asserted by [the defendant]").

And in this case in particular, the requested Fee Award would fairly and reasonably compensate Class Counsel for (1) agreeing to take on this action in the face of substantial risk, (2) achieving an excellent result on behalf of the Settlement Class, and (3) investing substantial time and other resources investigating, prosecuting, and resolving this action. (*See* Ravindran Decl. ¶ ¶ 9-15, ¶¶ 28-29, ¶ 31).

A. This was High Risk and Undesirable Litigation at its Inception, and Class Counsel Should be Rewarded for Having Pursued it on Behalf of the Class

The requested Fee Award is particularly reasonable given the risks associated with this litigation at the time it was commenced. *See Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) ("Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel.").

Workplace BIPA claims implicate several potential defenses, the contours of which continue to work their way through the courts. For example, on September 17, 2021, the First District Court of Appeals in *Tims v. Black Horse Carriers, Inc.*, No. 1-20-0562 (Ill. App. 1st Dist.) found the statute of limitations applicable to BIPA claims is five years, not one year as asserted by defendant. This issue is presently pending before the Illinois Supreme Court. *Tims v. Black Horse Carriers, Inc.*, No. 12780 Additionally, during the pendency of this litigation it was uncertain whether workplace BIPA claims, such as those Representative Plaintiff asserted in this case, are

preempted by the IWCA. *McDonald v. Symphony Bronzeville Park LLC*, 2022 IL 126511 (February 3, 2022) (determining workplace BIPA claims are not preempted by Illinois's Workers Compensation Act ("IWCA")). Notably, the Parties' negotiations occurred while both *Tims* and *McDonald* were pending, the outcomes of which posed a significant risk of total non-recovery to the entire Settlement Class (in the case of *McDonald*) or at least a substantial portion of the Settlement Class (in the case of *Tims*). The Settlement Agreement that Class Counsel negotiated reflects those risks, among others, and yet nonetheless provides substantial, *meaningful* relief to the Settlement Class.

Further, Radisson indicated that, if this case had not settled, it would have argued that the information captured by its fingerprint scanners were not actually "biometric identifiers" or "biometric information" subject to BIPA (Ravindran Decl. ¶ 19); although Plaintiff again puts little stock in this argument, resolving the issue would present novel issues of law and require significant and lengthy expert discovery concerning the relevant technology. *Cf. In re Facebook Biometric Info. Privacy Litig.*, No. 3:15-cv-03747-JD, 2018 WL 2197546, at *2-3 (N.D. Cal. May 14, 2018) (denying motion for summary judgment on whether facial scans were biometric data regulated by BIPA).

In addition to these uncertainties, other risks threatened to eliminate, reduce, or delay recovery to the Settlement Class, even if the Representative Plaintiff prevailed at summary judgment and/or trial on the Settlement Class's behalf. Given the damages at issue, Radisson would have likely appealed any adverse decision and—even if not winning outright— likely would have sought a reduction in statutory damages on, *inter alia*, due process grounds. *See, e.g.*, *Golan v. FreeEats.com, Inc.*, 930 F.3d 950 (8th Cir. 2019) (statutory award in TCPA class action of $1.6 billion reduced to $32 million).

Class Counsel agreed to represent the Representative Plaintiff and the Settlement Class in the face of these risks, in addition to many others (including the possibility of legislative action to retroactively change the law in Defendant's favor, absolving it of liability). The high-risk nature of this litigation at the outset firmly supports the reasonableness of the requested Fee Award. *See Ryan*, 274 Ill. App. 3d at 924

B. The Outstanding Result that Class Counsel Achieved for the Settlement Class Further Supports the Requested Fee Award

Despite the many serious risks of non-recovery to the Settlement Class and thus non-payment to Class Counsel described above, both at the outset and for the duration of the proceedings, Class Counsel nevertheless achieved an excellent result for the Settlement Class.

Pursuant to the Settlement Agreement, Radisson has agreed to establish a Settlement Fund of $465,000 in cash – a gross recovery of $1000 per Settlement Class Member –from which each Settlement Class Member will automatically receive a check or electronic payment of approximately $570 (provided the Court approves the Service Award and fee). Given the enormous risks presented in this case, both at the commencement of the litigation and when the Settlement was negotiated, the relief provided by the Settlement in this case compares favorably with per-Class Member recoveries in prior BIPA settlements. *See, e.g., Jones v. CBC Rest. Corp.*, 19-cv-06736 (N.D. Ill. Oct. 22, 2020) (fund equating to gross amount of $800 per person); *Johnson v. Rest Haven Illiana Christian*, 2019-CH-01813 (Cir. Ct. Cook Cty.) (fund equating to gross amount of $900 per person); *Dixon v. Grunt Style LLC*, 2019-CH-01891 (Cir. Ct. Cook Cty.) (fund equating to gross amount of $1,000 per person).

In addition to the monetary compensation that Class Counsel negotiated for the Settlement Class, the Settlement also obtained meaningful prospective relief for the Class, including representations by Defendants that they are no longer using the Time-Keeping System in Illinois,

and have not done so since January 10, 2019; that Defendants directed their timekeeping vendor to irretrievably destroy any and all data that might be considered "biometric information" or "biometric identifiers" for all current and former employees of the Radisson Blu Aqua Hotel in January 2019; that Defendants' vendor represented that it had done so on January 10, 2019; and to the best of Defendants' knowledge, they do not have possession, custody or control, directly or indirectly, of any biometric information and/or biometric identifiers for any Settlement Class Member, any current or former employees of the Radisson Blu Aqua Hotel or any other individuals who have not signed BIPA-compliant consent documents. As further prospective relief, Defendants further agreed that in the event Defendants elect in the future to utilize a timekeeping system that is subject to the provisions of BIPA, Defendants will implement procedures and systems to comply with BIPA. The presence of such meaningful nonmonetary prospective relief such as this is also useful in determining whether the fee award being sought is reasonable. *See Spano*, 2016 WL 3791123, at *1 ("A court must also consider the overall benefit to the Class, including non-monetary benefits, when evaluating the fee request").

And to achieve this result, Class Counsel expended a substantial amount of attorney time and out-of-pocket costs and expenses investigating, prosecuting, and negotiating the terms of the Settlement, without any guarantee of recovery (Ravindran Decl. ¶¶ 28-31). Accordingly, the result achieved for the Settlement Class further confirms that an award of 35% of the Settlement Fund (or $162,750.00), inclusive of all out-of-pocket costs expended (which to date total $932.67) (Ravindran Decl. ¶ 30) is fair and reasonable and should be approved.

CONCLUSION

For the foregoing reasons, the Court should approve a Service Award of $5,000 to the Representative Plaintiff and a Fee Award (inclusive of all out-of-pocket costs expended) of 35% of the Settlement Fund, or $162,750.00, to Class Counsel. The requested Fee Award and Service

Award would both adequately reward and reasonably compensate Class Counsel and the Representative Plaintiff for assuming the significant risks that this case presented at the outset and nonetheless expending a substantial amount of time and other resources investigating, litigating, and negotiating a resolution to the case for the benefit of the Settlement Class.

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Respectfully submitted,

By: /s/ *Carl V. Malmstrom*

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