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

MATTHEW LaPRADE, individually and on behalf of all others similarly situated,

Plaintiff,

v.

INDECK POWER EQUIPMENT COMPANY,

Defendant.

Case No. 2021-CH-00805

The Honorable Eve M. Reilly

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

Dated: June 15, 2023

WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLC
Carl V. Malmstrom
Attorney No. 38819
111 W. Jackson Street, Suite 1700
Chicago, IL 60604
Tel: (312) 984-0000
Fax: (212) 686-0114
Email: malmstrom@whafh.com

BURSOR & FISHER, P.A.
Joseph I. Marchese (*Pro Hac Vice* Forthcoming)
Philip L. Fraietta (#6337165)
1330 Avenue of the Americas, 32nd Floor
New York, NY 10019
Tel: (646) 837-7150
Fax: (212) 989-9163
Email: jmarchese@bursor.com
pfraietta@bursor.com

BURSOR & FISHER, P.A.
Julia K. Venditti (*Pro Hac Vice*)
1990 N. California Boulevard, Suite 940
Walnut Creek, CA 94596
Tel: (925) 300-4455
Fax: (925) 407-2700
Email: jvenditti@bursor.com

Class Counsel

TABLE OF CONTENTS

PAGE(S)

TABLE OF AUTHORITIES

PAGE(S)

CASES

STATUTES

RULES

OTHER AUTHORITIES

Pursuant to the Court's March 10, 2023 Order, Plaintiff Mathew LaPrade ("Plaintiff") respectfully moves for final approval of the class-wide Amended Settlement Agreement entered into between the Parties to this Action, a true and correct copy of which is attached as **Exhibit 1** to the Declaration of Philip L. Fraietta ("Fraietta Decl.") filed herewith.[1] Defendant does not oppose this Motion.

INTRODUCTION

On March 10, 2023, this Court preliminarily approved the class action settlement between Plaintiff and Defendant Indeck Power Equipment Company ("Indeck" or "Defendant") (together with Plaintiff, the "Parties") and directed that notice be sent to the Settlement Class. *See* Fraietta Decl. ¶ 19, Ex. 2. The settlement administrator has implemented the Court-approved notice plan and direct notice has reached 98.48% of the Settlement Class. *See* Declaration of Caroline P. Barazesh ("Barazesh Decl.") ¶ 13. The reaction from the Settlement Class has been overwhelmingly positive. Specifically, of the 66 Settlement Class Members, **zero** have objected, and **zero** have requested to be excluded. *See id*. ¶¶ 14-15. The Settlement is an excellent result for the Class and the Court should grant final approval.

The Settlement's strength speaks for itself: it creates a non-reversionary Settlement Fund of $66,825 from which every class member will automatically receive a *pro rata* cash payment of the Settlement Fund, estimated to be approximately $471. The Settlement also provides meaningful prospective relief, as Defendant has represented that it has provided, and will continue to provide, all notices and consents as required by BIPA.

Critically, the Settlement was reached despite substantial risk of non-recovery. Indeed, the Settlement was reached before the Illinois Supreme Court issued decisions in two appeals

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

pertaining to the length of the statute of limitations for BIPA claims, and when such claims accrue. *See Tims v. Black Horse Carriers, Inc.*, -- N.E.3d --, 2023 IL 127801 (Feb. 2, 2023) (concluding BIPA claims are subject to a five-year statute of limitations); *Cothron v. White Castle System, Inc.*, -- N.E.3d --, 2023 WL 128004 (Feb. 17, 2023) (concluding that BIPA claims accrue with each scan).[2] An adverse decision in either appeal would have deprived the Settlement Class, or at least a substantial portion thereof, of any recovery whatsoever.

For these reasons, and as explained further below, the Settlement is fair, reasonable, and adequate, and warrants this Court's final approval.

FACTUAL AND PROCEDURAL BACKGROUND

On February 19, 2021, Plaintiff filed a putative class action in the Circuit Court of Cook County, Illinois County Department, Chancery Division. *See* Fraietta Decl. ¶ 4. The material allegations of the Complaint were that Defendant collected, stored and used – without first providing notice, obtaining informed written consent or publishing data retention policies – the finger and/or handprints and associated personally identifying information of its current and former Illinois employees and temporary workers without first providing notice, obtaining informed written consent or making a biometric data retention and destruction policy publicly available, in violation of the BIPA, 740 ILCS 14/1 *et seq*. *See* Fraietta Decl. ¶ 4. The Complaint

[2] Indeed, numerous trial courts throughout Illinois had concluded that a BIPA claim accrues for purposes of calculating the statute of limitations upon the initial capture and use of a plaintiff's fingerprint or hand scan, thus potentially depriving some Settlement Class Members of any recovery whatsoever. *See Smith v. Top Die Casting Co.*, Case No. 2019-L-248 (Cir. Ct. Winnebago Cnty. Mar. 12, 2020); *Robertson v. Hostmark Hospitality Group, Inc.*, Case No. 18-CH-5194 (Cir. Ct. Cook Cnty. Jan. 27, 2020); *Robertson v. Hostmark Hospitality Group, Inc.*, Case No. 18-CH-5194 (Cir. Ct. Cook Cnty. May 29, 2020); *Watson v. Legacy Healthcare Financial Services, LLC*, Case No. 19-CH-3425 (Cir. Ct. Cook Cnty. June 10, 2020); *Mora v. J&M Plating Inc.*, Case No. 21-CH-0022 (Cir. Ct. Winnebago Cnty. July 13, 2021). *But see Watson v. Legacy Healthcare Financial Servs., LLC*, -- N.E.3d --, 2021 WL 5917935 (IL App. Ct. 1st Dist., Dec. 15, 2021) (holding otherwise).

alleges these individuals were required to "clock in" with their alleged fingerprints and/or hand scans in violation of the BIPA. *See id.*

In response to the complaint, on May 3, 2021, Indeck filed a motion to dismiss Plaintiff's claims under 735 ILCS 5/2-615 and 735 ILCS 5/2-619, arguing, *inter alia*, that Plaintiff failed to sufficiently plead a class action complaint under applicable Illinois law, and that his BIPA claims are barred by applicable affirmative defenses. *See* Fraietta Decl. ¶ 5. The Parties had oral argument before the Court on Indeck's motion to dismiss on November 9, 2021, and the Court subsequently ruled in Plaintiff's favor on all issues. *Id.* ¶ 7. The same day, the Court entered an order denying Indeck's motion to dismiss in full. *See id.* Discovery opened on January 10, 2022, and over the following months, the Parties exchanged formal written discovery, including requests for production and interrogatories and responses to same. *See id.* ¶ 9.

From the outset of the case, the Parties engaged in direct communications and discussed the prospect of an early resolution, which included the informal exchange of relevant information surrounding the alleged claims. *See id.* ¶¶ 9-10. Over the next several months following the Court's denial of Indeck's motion to dismiss, the Parties engaged in active, good faith settlement negotiations over the course of several months, which at all times were at arm's-length. *See id.* ¶¶ 10-12. Toward the end of July 2022, the Parties reached an agreement on all material terms of a class action settlement in this case. *See id.* ¶ 11.

Thereafter, the Parties drafted the original Class Action Settlement Agreement and related documents pertaining to this matter (the "Initial Settlement Agreement"), which was reached between the Parties after extensive negotiations spanning over many months. *See id.* ¶¶ 12-13. On January 5, 2023, Plaintiff submitted an Unopposed Motion for Preliminary Approval of Class Action Settlement, along with an accompanying Memorandum and Declaration in support thereof (the "January 5, 2023 Motion" or "Initial Motion"). *See id.* ¶ 14. On January 25,

2023, the Court held a duly noticed preliminary approval hearing to consider Plaintiff's unopposed motion. *See id.* ¶ 15. Following the hearing, the Court issues a courtesy order denying preliminary approval based on section 1.33 of the Initial Settlement Agreement, which, at that time, stated that "'[a]ny unclaimed funds remaining in the Settlement Fund due to, among other things, potential Class Members opting out of the Settlement, un-cashed settlement checks sent to Class Members and any potential Class Members the Settlement Administrator is unable to contact or find, shall revert back to Indeck.'" January 25, 2023 Courtesy Order Regarding Preliminary Approval ("03/10/2023 Preliminary Approval Order" or "Order") (quoting Initial Settlement ¶ 1.33); *see also* Fraietta Decl. ¶ 15. Following entry of the Court's Courtesy Order, the Parties negotiated an amendment to paragraph 1.33 of the Settlement Agreement, and the revised agreement was full executed as of February 24, 2023 (the "Amended Settlement Agreement" or "Settlement"). *See* Fraietta Decl. ¶¶ 3, 16, Ex. 1. The Amended Settlement Agreement revises paragraph 1.33 of the Initial Settlement, and is otherwise identical to the Initial Settlement in all other respects. *See* Fraietta Decl. ¶ 16.

On February 24, 2023, Plaintiff filed his Renewed Unopposed Motion for Preliminary Approval of the Settlement, and on March 10, 2023, the Court granted that Motion and preliminarily approved the Settlement. *See* Fraietta Decl. ¶ 17, Ex. 2.

TERMS OF THE SETTLEMENT

The key terms of the Settlement, attached to the Fraietta Declaration as Exhibit 1, are briefly summarized as follows:

A. Class Definition

The "Settlement Class" is defined as:

> All individuals who worked or are currently working for Defendant in the State of Illinois, including current or former temporary workers or contractors engaged by Defendant, who had

> their Biometric Identifiers and/or Biometric Information allegedly collected, captured, received, or otherwise obtained or disclosed by Defendant or its agents, without first signing a written consent form, for the period extending from February 19, 2016, to and through [March 10, 2023].[3]

Fraietta Decl. Ex 2., 03/10/2023 Preliminary Approval Order ¶ 10; Settlement ¶ 1.31. The Settlement Class is comprised of 66 class members. *See* Fraietta Decl. ¶ 18; Settlement ¶ 1.33.

B. Monetary And Prospective Relief

Defendant will establish a non-revisionary Settlement Fund of $66,825.00, from which each Settlement Class Member will automatically receive a *pro rata* portion of the Net Settlement Fund, estimated to be approximately $471 per Settlement Class Member. *See* Settlement ¶¶ 1.5, 1.33, 2.1(b) & Exs. A-C; Fraietta Decl. ¶¶ 18-19. The Settlement Fund will also be used to pay notice and administrative expenses, attorneys' fees, costs, and expenses, and an incentive award to the Class Representative. *See* Settlement ¶¶ 1.18, 2.1(a)-(b), 8.1, 8.3.

Additionally, Defendant has represented that it is has provided and will continue to provide all notices and consents as required by BIPA. *See* Settlement ¶ 2.2; Fraietta Decl. ¶ 20.

C. Release

In exchange for the relief described above, Defendant and each of its related and affiliated entities as well as all "Release Parties," as defined in ¶ 1.27 of the Settlement, will receive a full release of all claims arising out of or related to biometrics or BIPA in connection with Plaintiff's and the Settlement Class's employment with Defendant. *See also id*. ¶¶ 3.1-3.2.

[3] Excluded from the Settlement Class are: (1) any Judge or Magistrate presiding over this Action and members of their families; (2) Indeck, Indeck's subsidiaries, parent companies, owners, successors, predecessors, and any entity in which Indeck or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (3) Persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors or assigns of any excluded Persons. *See* Settlement ¶ 1.31.

D. Notice And Administrative Expenses

The Settlement Fund will be used to pay the cost of sending the Notice set forth in the Amended Settlement Agreement and any other notice as required by the Court, as well as all costs of administration of the Settlement. *See id*. ¶¶ 1.18-1.19, 2.1(a)-(b), 4.1-4.2.

E. Service Award, Attorneys' Fees, Costs, And Expenses

In recognition of his efforts on behalf of the Settlement Class, Defendant has agreed that Plaintiff may receive, subject to Court approval, an incentive award of up to $2,500 from the Settlement Fund, as appropriate compensation for his time and effort serving as Class Representatives and as party to the Action. *See id.* ¶ 8.3. Defendant will not oppose any request limited to this amount. *See id*. Defendant has also agreed that the Settlement Fund will also be used to pay Class Counsel reasonable attorneys' fees and to reimburse costs and expenses in this Action, in an amount to be approved by the Court. *See id.* ¶ 8.1. Class Counsel has agreed to petition the Court for attorneys' fees, costs, and expenses of no more than 40% of the Settlement Fund. *See id.* These awards are subject to this Court's approval, which Plaintiff moved for separately on May 1, 2023 (the "Fee Petition"). That motion is unopposed.

CLASS ACTION SETTLEMENT APPROVAL PROCESS

Strong judicial and public policies favor the settlement of complex class action litigation, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Quick v. Shell Oil Co.*, 404 Ill. App. 3d 277, 282 (3rd Dist. 2010); *see also* 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.41 (4th ed. 2002) (hereinafter "*Newberg*").

Courts review proposed class action settlements using a well-established two-step process. *Newberg* § 11.25, at 38-39; *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 492 (1st Dist. 1992). The first step is a preliminary, pre-notification hearing to determine

whether the proposed settlement is "within the range of possible approval." *Newberg*, § 11.25, at 38–39; *Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds*. If the Court finds the settlement proposal is "within the range of possible approval," the case proceeds to the second step in the review process: the final approval hearing. *Newberg*, § 11.25, at 38–39.

Plaintiff is presently at the second step of this two-step process.

ARGUMENT

Upon final approval, the Settlement reached in this matter will provide Settlement Class Members with substantial financial compensation and prospective relief that they otherwise likely would have been unable to obtain. Because the Settlement reached by the Parties is fair, reasonable, and provides adequate compensation to the Settlement Class, and because the Notice Plan effectively notified class members of their rights under the Settlement Agreement, the Settlement warrants final approval by the Court.

I. THE SETTLEMENT SHOULD BE FINALLY APPROVED

Section 2-801 provides that a court may approve a proposed class settlement "on a finding that it is fair, reasonable, and adequate." 735 ILCS 5/2-801; *see* Fed. R. Civ. P. 23(e)(2).

In assessing the fairness, reasonableness, and adequacy of a proposed class settlement, Illinois courts consider the following factors: "(1) the strength of the case for the plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant's ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed." *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990); *see also Armstrong*, 616 F.2d at 314.

In this case, as the Court has already found in granting preliminary approval of the Settlement, all eight factors weigh in favor of finding the Settlement fair, reasonable, and adequate, warranting its final approval.

A. The Settlement Provides Substantial Relief

As to the first factor, the Settlement in this case provides substantial material benefits to the Settlement Class: each Settlement Class Member will automatically receive a *pro rata* payment after final approval, estimated to be approximately $471. *See* Settlement ¶¶ 1.5, 1.33, 2.1(b); Fraietta Decl. ¶ 19. In addition, the Settlement provides meaningful prospective relief, as Defendant has represented that it has provided and will continue to provide all notices and consents as required by BIPA. *See* Settlement ¶ 2.2(a).

While Plaintiff believes he would likely prevail on his claims, he is also aware that Defendant denies the material allegations of the Complaint and intends to pursue several legal and factual defenses, including but not limited to whether Defendant actually possessed biometric information or biometric identifiers. Moreover, this case was likely to rise or fall based on the outcome of appeals in cases pending before the Illinois Supreme Court. Indeed, at the time of settlement, Defendant argued that the claims were barred by the applicable statute of limitations and that the claims only accrued on the first alleged collection. The viability of both defenses was the subject of pending appeals before the Illinois Supreme Court at the time of settlement. *See Tims v. Black Horse Carriers, Inc.*, -- N.E.3d --, 2023 IL 127801 (Feb. 2, 2023) (concluding BIPA claims are subject to a five-year statute of limitations); *Cothron v. White Castle System, Inc.*, -- N.E.3d --, 2023 WL 128004 (Feb. 17, 2023) (concluding that BIPA claims accrue with each scan). An adverse decision in either appeal would have deprived the Settlement Class, or at least a substantial portion thereof, of any recovery whatsoever. *See* Fraietta Decl. ¶ 27. Thus, the unsettled nature of several potentially dispositive threshold issues in this case

poses a significant risk to Plaintiff's claims and will add to the length and costs of continued litigation. Taking these realities into account and recognizing the risks involved in any litigation, the relief available to each Settlement Class Member in the Settlement represents a truly excellent result for the Settlement Class.

In addition to any defenses on the merits Defendant would raise, should litigation continue Plaintiff would also be required to prevail on a class certification motion, which would be highly contested and for which success is certainly not 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." *Id*. Approval would allow Plaintiff and the Settlement Class Members to receive meaningful and significant payments now, instead of years from now or never. *See id*. at 582.

Additionally, the fairness, reasonableness, and adequacy of the instant Settlement are supported by previously approved settlements, which provide comparable or, in many cases, significantly less value than that achieved for the class here. For example, in *Sekura v. L.A. Tan Enterprises, Inc.*, No. 2015-CH-16694 (Cir. Ct. Cook Cty. 2016), the consumer 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. And in *Carroll v. Crème de la Crème, Inc.*, No. 2017-CH-01624 (Cir. Ct. Cook Cty. 2018), the settlement resulted in each consumer class member being eligible to enroll in credit and identity monitoring services free of charge without further monetary relief. *See also, e.g.*, *Marshall v. Lifetime Fitness, Inc.*, No. 2017-CH-14262 (Cir. Ct. Cook Cty.) (paying claimants $270 each in addition to credit monitoring); *Prelipceanu v. Jumio Corp.*, No.

2018-CH-15883 (Cir. Ct. Cook Cty.) (paying claimants approximately $260 each). Here, each Settlement Class Member will automatically receive a pro rata payment from the Settlement Fund in the amount of approximately $471. *See* Fraietta Decl. ¶ 19.

This result is exceptional in comparison to other BIPA cases—and is certainly fair, reasonable, and adequate and warrants Court approval.

B. Defendant's Ability To Pay

The second factor that can be considered by the Court is the Defendant's ability to pay the settlement sum. Defendant's financial standing has not been placed at issue here.

C. Continued Litigation Is Likely To Be Complex, Lengthy, And Expensive

The third factor asks whether the settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation. *See City of Chicago*, 206 Ill. App. 3d at 972. In absence of settlement, it is certain that the expense, duration, and complexity of the protracted litigation that would result would be substantial. Not only would the Parties have to undergo significant motion practice before any trial on the merits is even contemplated, but evidence and witnesses from throughout the State of Illinois and beyond would have to be assembled for any trial. Further, given the complexity of the issues and the amount in controversy, the defeated party would likely appeal both any decision on the merits as well as on class certification. As such, the immediate and considerable relief provided to the Settlement Class under the Settlement Agreement weighs heavily in favor of its approval compared to the inherent risk and delay of a long and drawn-out litigation, trial, and appeal. Protracted and expensive litigation is not in the interest of any of the Parties or Settlement Class Members.

D. There Has Been No Opposition To The Settlement

The fourth and sixth factors consider the amount of opposition to the Settlement and the reaction of the Settlement Class to the Settlement. *See City of Chicago*, 206 Ill. App. 3d at 972.

Following the implementation of the Notice plan set forth in the Settlement Agreement, the Settlement Class's reaction to the Settlement has been overwhelmingly favorable. In accordance with the Notice plan, the Settlement Administrator successfully provided direct notice to 98.48% of the Settlement Class by mail or email. *See* Barazesh Decl. ¶ 13. Moreover, **zero** Settlement Class Members objected to the Settlement and **zero** Settlement Class Members have requested to be excluded from the Settlement. *See id*. ¶¶ 14-15.[4] Accordingly, the fourth and sixth factors weigh in favor of granting final approval.

E. The Settlement Was The Result Of Arm's-Length Negotiations Between The Parties After A Significant Exchange Of Information

The fifth factor considers the presence of any collusion by the Parties in reaching the proposed settlement. *See City of Chicago*, 206 Ill. App. 3d at 972.

There is an initial presumption that a proposed settlement is fair and reasonable when it was the result of arm's-length negotiations. *See Newberg*, § 11.42; *see also Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 21, 52 N.E.3d 427, 441 (finding no collusion where there was "no evidence that the proposed settlement was not the product of 'good faith, arm's-length negotiations'"). Here, the Settlement was reached only after arm's-length negotiations between counsel for the Parties. *See* Fraietta Decl. ¶¶ 11-12, 25. Moreover, negotiations began only after an exchange of information in formal discovery regarding the size and composition of the Settlement Class. *See id*. ¶¶ 9-10. Such an involved process underscores the non-collusive nature of the proposed Settlement. Finally, given the fair result for the Settlement Class in terms of the monetary and prospective relief, it is clear that this Settlement was reached as a result of good-faith negotiations rather than any collusion between the Parties.

[4] The deadline for Class Members to object to or request to be excluded from the Settlement was May 15, 2023. *See* Fraietta Decl. Ex. 2, 03/10/2023 Preliminary Approval Order ¶¶ 16-17, 21.

Accordingly, this factor weighs in favor of preliminary approval.

F. The Settlement Agreement Has Support Of Experienced Class Counsel

The seventh factor is the opinion of competent counsel as to the fairness, reasonableness, and adequacy of the proposed settlement. *See City of Chicago*, 206 Ill. App. 3d at 972. Courts rely on affidavits in assessing proposed class counsel's qualifications under this factor. *Id*. Class Counsel believes that the Settlement is in the best interest of the Settlement Class Members because the Settlement Class Members will be provided an immediate payment instead of having to wait for lengthy litigation and any subsequent appeals to run their course. Further, due to the defenses Defendant has indicated that it would raise should the case proceed through litigation – and the resources Defendant has committed to defend and litigate this matter – it is possible that the Settlement Class Members would receive no benefit whatsoever in the absence of this Settlement. Given Class Counsel's extensive experience litigating similar class action cases in federal and state courts across the country, including other BIPA cases, this factor also weighs in favor of granting preliminary approval. *See* Fraietta Decl. ¶¶ 21-24; *id*., Ex. 3 (firm resume); *see also GMAC*, 236 Ill. App. 3d at 497 (finding that the court should give weight to the fact that class counsel supports the class settlement in light of its experience prosecuting similar cases).

G. The Parties Exchanged Information Sufficient To Assess The Adequacy Of The Settlement

The eighth factor is structured to permit the Court to consider the extent to which the court and counsel were able to evaluate the merits of the case and assess the reasonableness of the settlement. *See City of Chicago*, 206 Ill. App. 3d at 972. Here, the Parties exchanged information regarding the facts and size of the class during formal discovery, and thoroughly investigated the facts and law relating to Plaintiff's allegations and Defendant's defenses. *See* Fraietta Decl. ¶¶ 9-10. Accordingly, this factor also weighs in favor of preliminary approval.

II. THE UNOPPOSED MOTION FOR A SERVICE AWARD AND FEE AWARD SHOULD BE APPROVED

Because no objections were filed in opposition to Plaintiff's Motion for Attorneys' Fees, Costs, Expenses, and Service Award (the "Fee Petition"), and because all factors in favor of granting final approval of the Settlement have been met, the Court should also approve the requested Service Award to Plaintiff, and the Fee Award to Class Counsel.

The Fee Petition was filed on May 1, 2023, and was uploaded to the Settlement website that same day, as directed by this Court's Order granting preliminary approval. *See* Fraietta Decl. Ex. 2, Order ¶ 7; *see also* Barazesh Decl. ¶ 7. In addition, the Class Notice was sent to all Settlement Class Members even before the Fee Petition was filed and fully informed the Settlement Class Members of the maximum amount of the Service Award and Fee Award that Class Counsel and Plaintiff would seek. *See* Barazesh Decl. ¶ 7; *see also* Settlement ¶¶ 4.1(b)(i), 4.1(c), 4.2, Ex. C. Accordingly, Settlement Class Members had ample opportunity to consider the merits of the Fee Petition. However, no objections to the Fee Petition were filed, and no Settlement Class Members even informally expressed any dissatisfaction with the requested Service Award or Fee Award. The lack of any opposition is not surprising because, as discussed above, the Settlement provides substantial cash benefits to the Settlement Class and will result in meaningful changes to Defendant's BIPA compliance going forward.

Moreover, the request for 40% of the Settlement Fund (*i.e.*, $26,730) in attorneys' fees, costs, and expenses is well within the range of fee awards approved by courts in Cook County in BIPA cases. *See, e.g.*, *Sekura v. L.A. Tan Enters., Inc.*, No. 2015-CH-16694 (Ill. Cir. Ct., Cook Cnty. Dec. 1, 2016) (Garcia, J.) (40% fee award based on percentage-of-the-fund); *Zepeda v. Intercontinental Hotels Group, Inc.*, No. 2018-CH-02140 (Ill. Cir. Ct., Cook Cnty. 2018) (Atkins, J.) (same); *Svagdis v. Alro Steel Corp.*, No. 2017-CH-12566 (Ill. Cir. Ct., Cook Cnty.

2018) (Larsen, J.) (same); *Zhirovetskiy v. Zayo Group, LLC*, No. 2017-CH-09323 (Ill. Cir. Ct., Cook Cnty. Apr. 8, 2019) (Flynn, J.) (same); *McGee v. LSC Commc'ns, Inc.*, No. 2017-CH-12818 (Ill. Cir. Ct., Cook Cnty. Nov. 11, 2019) (Atkins, J.) (same); *Smith v. Pineapple Hospitality Grp.*, No. 2018-CH-06589 (Ill. Cir. Ct., Cook Cnty. Jan. 22, 2020) (Moreland, J.) (same); *Prelipceanu v. Jumio Corp.*, No. 2018-CH-15883 (Ill. Cir. Ct., Cook Cnty. July 21, 2020) (Mullen, J.) (same); *Williams v. Swissport USA, Inc.*, No. 2019-CH-00973 (Ill. Cir. Ct., Cook Cnty. Nov. 12, 2020) (Moreland, J.) (same); *Glynn v. eDriving, LLC*, No. 2019-CH-08517 (Ill. Cir. Ct., Cook Cnty. Dec. 14, 2020) (Walker, J.) (same); *Fick v. Timeclock Plus, LLC*, No. 2019-CH-12769 (Ill. Cir. Ct., Cook Cnty. Apr. 8, 2021) (Hall, J.) (same); *Freeman-McKee v. Alliance Ground Int'l, LLC*, No. 2017-CH-13636 (Ill. Cir. Ct., Cook Cnty. June 15, 2021) (Demacopoulos, J.) (same); *Knobloch v. ABC Financial Services, LLC*, No. 2017-CH-12266 (Ill. Cir. Ct., Cook Cnty. June 25, 2021) (Loftus, J.) (same); *Willoughby v. Lincoln Insurance Agency, Inc.*, No. 2022-CH-01917 (Ill. Cir. Ct., Cook Cnty. Oct. 4, 2022) (Cohen, J.) (same).

For the reasons stated in the unopposed Fee Petition, and because no Settlement Class Member has voiced any opposition or objection to the requested Fee Award or Service Award, Plaintiff and Class Counsel respectfully request that the Court approve the requested Service Award and Fee Award.

CONCLUSION

For the reasons stated above and in the unopposed Fee Petition, Plaintiff respectfully requests that the Court enter an Order granting final approval of the Settlement and approving the requested Service Award and Fee Award.[5]

Dated: June 15, 2023 Respectfully submitted,

[5] A proposed Final Order and Judgment is submitted herewith.

/s/ Carl V. Malmstrom
WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLC
Carl V. Malmstrom
Attorney No. 38819
111 W. Jackson Blvd., Suite 1700
Chicago, IL 60604
Tel: (312) 984-0000
Fax: (212) 686-0114
E-mail: malmstrom@whafh.com

Local Counsel for Plaintiff and the Putative Class

BURSOR & FISHER, P.A.
Joseph I. Marchese (*Pro Hac Vice* Forthcoming)
Philip L. Fraietta (#6337165)
1330 Avenue of the Americas, 32nd Floor
New York, NY 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
Email: jmarchese@bursor.com
pfraietta@bursor.com

BURSOR & FISHER, P.A.
Julia K. Venditti (*Pro Hac Vice*)
1990 N. California Boulevard, Suite 940
Walnut Creek, CA 94596
Tel: (925) 300-4455
Fax: (925) 407-2700
Email: jvenditti@bursor.com

Class Counsel