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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
WINNEBAGO COUNTY, ILLINOIS

DARIO DZANANOVIC and KEMELLE HOWELL, individually and on behalf of all others similarly situated, *Plaintiffs*, v. BADOO TRADING LIMITED, a United Kingdom company; and BUMBLE TRADING L.L.C., a Delaware limited liability corporation, *Defendants*.	No. 2021-L-307 Hon. Ronald A. Barch

PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, EXPENSES, AND SERVICE AWARDS

Dated: August 30, 2024

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Plaintiffs Dario Dzananovic and Kemelle Howell[1] ("Plaintiffs"), by and through their attorneys, and pursuant to 735 ILCS 5/2-801, hereby move for an award of attorneys' fees and expenses for Class Counsel, as well as service awards for Plaintiffs as Class Representatives in connection with the class action settlement Defendants Badoo Trading Limited and Bumble Trading L.L.C. ("Defendants") (Plaintiffs and Defendants are collectively, the "Parties"). In support of this Motion, Plaintiffs state as follows:

The Settlement that Class Counsel have achieved in this case is an excellent result for Settlement Class Members, as it provides claimants with a significant cash payment. The Parties' Agreement establishes a Settlement Fund of $40,000,000.00 to provide Settlement Class Members who submit valid claims with an equal, *pro rata* distribution of the Settlement Fund for having their biometrics captured by Defendants in alleged violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq*. ("BIPA"). In addition to the substantial financial benefit to the Settlement Class Members, the Settlement also provides meaningful non-monetary relief that eliminates the recurrence of the allegedly unlawful biometric collection and use practices at issue in this case.

The Court preliminarily approved the Settlement on June 6, 2024. Direct and publication notice of the Settlement commenced on July 19, 2024. To date, no Settlement Class Member has objected to the Settlement.

With this Motion, Plaintiffs and Class Counsel respectfully request that the Court approve Service Awards of $5,000 to each of the Plaintiffs, a Fee Award to Class Counsel of 35% of the Settlement Fund, amounting to $14,000,000, and reimbursement for Class Counsel's out of pocket expenses of $103,727.98. As detailed below, the requested awards are appropriate under governing

[1] Plaintiff Garner passed away on May 9, 2024, shortly before the Settlement was finalized.

Illinois law, consistent with the amounts awarded in prior similar settlements, and fairly compensate Class Counsel and the Class Representatives for the work they performed and commendable result they achieved in this high-risk litigation. Both Class Counsel and the Class Representatives have devoted significant time and effort to the prosecution of the Settlement Class Members' claims, and their efforts have yielded an excellent benefit to the Class. The requested attorneys' fees and expenses and Service Awards are amply justified in light of the investment, significant risks, and excellent results obtained for the Settlement Class Members in this three-year-old litigation – which took place in three separate courts and which required two separate mediations – particularly given the substantial uncertainty regarding the state of BIPA when this Settlement was reached, and the continuous, ongoing shifts in the landscape of BIPA litigation.

FACTUAL AND PROCEDURAL BACKGROUND

I. PLAINTIFFS' ALLEGATIONS

Defendants own and operate two of the world's most popular internet dating applications, Badoo and Bumble, with millions of users worldwide, including millions of users in the United States. Plaintiffs allege that, to enable several features of their online dating applications, Defendants rely upon the use of facial recognition technology and, as a result, Defendants captured, collected, or otherwise came into possession of their users' facial geometry templates and then analyzed and compared such templates with others stored in a database. Defendant has always denied that it violated BIPA.

II. PROCEDURAL HISTORY AND THE PARTIES' SETTLEMENT NEGOTIATIONS

The procedural background of the litigation and this Settlement is set forth in detail in Section I of Plaintiffs' Motion for Preliminary Approval and need not be fully set forth again herein. The litigation has consisted of three separate cases being litigated in three separate courts

for approximately three years. The work performed by Class Counsel has been substantial and, most importantly, has yielded excellent results.

After significant litigation efforts, and in an effort to reach a resolution to what would undoubtedly be continued and extensive litigation with an uncertain result, on December 15, 2023, the Parties participated in a full-day mediation before Hon. Layn R. Phillips (Ret.). The Parties were unable to resolve the matter at this mediation but continued discussions regarding a potential resolution of the Related Actions.

On January 23, 2024, the Parties participated in a full-day mediation before Hon. Diane M. Welsh (Ret.) of JAMS Philadelphia. The Parties reached an agreement in principle to resolve the matter at this mediation, and on February 26, 2024, the Parties executed a term sheet confirming the material terms of a settlement. Thereafter, the Parties continued discussions to finalize a settlement agreement based on the term sheet. On May 30, 2024, the Parties finalized and executed the Settlement. On May 23, 2024, Plaintiffs voluntarily dismissed the *Dzananovic* Related Action pending in federal court and filed the current, operative Consolidated Class Action Complaint before this Court. The Court preliminarily approved the Settlement on June 6, 2024. Notice of the Settlement commenced on July 19, 2024.

ARGUMENT

I. THE REQUESTED ATTORNEYS' FEES, COSTS, AND EXPENSES ARE REASONABLE AND SHOULD BE APPROVED.

Pursuant to the Settlement, Class Counsel seek attorneys' fees of 35% of the Settlement Fund, which amounts to $14,000,000, plus $103,727.98 in reimbursable expenses. (Agreement, ¶ 9.1). Such a request is within the range of fees approved in other class actions and is fair and reasonable in light of the work performed by Class Counsel and the outstanding recovery secured on behalf of the Settlement Class Members. It is well settled that attorneys who, by their efforts,

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

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

A. The Court Should Apply The Percentage-of-the-Benefit Method In This Case.

"When 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." *Brundidge v. Glendale Fed. Bank, F.S.B.*, 168 Ill. 2d 235, 244 (1995). In deciding an appropriate fee in such cases, "a trial judge has discretionary authority to choose a percentage[-of-the-benefit] or a lodestar method[.]" *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 58 (citing *Brundidge*, 168 Ill. 2d at 243–44). Here, Plaintiffs submit that the Court should apply the percentage-of-the-benefit approach—the approach used in the vast majority of common fund class actions, including BIPA class actions. It is settled law in Illinois that the Court need not employ

the lodestar method in assessing a fee petition. *Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 59. This is because the lodestar method is disfavored, as it not only adds needless work for the Court and its staff,[2] it misaligns the interests of Class Counsel and the Settlement Class Members. 5 Newberg on Class Actions § 15:65 (5th ed.) ("Under the percentage method, counsel have an interest in generating as large a recovery for the class as possible, as their fee increases with the class's take. By contrast, when class counsel's fee is set by an hourly rate, the lawyers have an incentive to run up as many hours as possible in the litigation so as to ensure a hefty fee, even if the additional hours are not serving the clients' interests in any way"). The percentage-of-the-benefit 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, 720-21 (7th Cir. 2001).

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)); *see also McKinnie v. JP Morgan Chase Bank, N.A.*, 678 F. Supp. 2d 806, 814-15 (E.D. Wis. 2009). In class action litigation, where "the normal practice [is] to negotiate a fee arrangement based on a percentage of the plaintiffs' ultimate recovery,"

[2] *See Langendorf v. Irving Trust Co.*, 244 Ill. App. 3d 70, 80 (1st Dist. 1992), abrogated on other grounds by 168 Ill. 2d 235; *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 924–25 (1st Dist. 1995) (the "[p]ercentage analysis approach eliminates the need for additional major litigation and further taxing of scarce judicial resources").

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 approach is likely what the class members and counsel would have negotiated when counsel agreed to take on the case." *McCormick v. Adtalem Glob. Educ., Inc*, 2022 IL App (1st) 201197-U, ¶ 26; *see also 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*, 274 Ill. App. 3d at 923 (noting that "a percentage fee was the best determinant of the reasonable value of services rendered by counsel in common fund cases") (citation omitted); *Williams v. Gen. Elec. Capital Auto Lease*, No. 94-cv-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) (citing *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984)).

In utilizing the percentage-of-the-benefit approach, a court is not required to perform a lodestar cross-check on Class Counsel's fees. *McCormick*, 2022 IL App (1st) 201197-U, ¶ 24 (rejecting an objector's argument that failure to perform lodestar cross-check rendered class counsel's fee unreasonable and awarding class counsel fees totaling 35% of the common fund, or $15,7000,00); *Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 58 (citing *Brundidge*, 168 Ill.2d at 246) (rejecting an objector's argument that the trial court was required to perform a lodestar cross-check on class counsel's fees and awarding class counsel fees based on a percentage of the common settlement fund).

This Court should likewise apply the percentage-of-the-benefit method, which 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*, 160 F.3d at 363, 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 Kolinek*, 311 F.R.D. at 500-01 ("[T]he normal practice [is] to negotiate a fee arrangement based on a percentage of the plaintiffs' ultimate recovery"). This approach also accurately reflects the contingent nature of the fees negotiated between Class Counsel and Plaintiffs, who agreed *ex ante* that attorneys' fees would be awarded on a contingency basis from any settlement fund created for the benefit of a class, plus reimbursement of costs and expenses. (Declaration of Evan M. Meyers, attached hereto as Exhibit A, ¶ 20.)

Class Counsel are not aware of any BIPA class action settlements involving a monetary common settlement fund where a court relied on the lodestar method to determine attorneys' fees. In fact, to Class Counsel's knowledge, the percentage-of-the-benefit method has been used to determine a reasonable fee award in *every* BIPA class action settlement in every Illinois state court where the defendant – as here – created a monetary common fund. *See, e.g., Gray v. Verificient Technologies,* No. 2018-CH-16054 (Cir. Ct. Cook Cnty., Ill. 2024); *Coleman v. Farm King*, No. 22-LA-0002 (Cir. Ct. McDonough Cnty., Ill. 2024); *King v. PeopleNet Corp.*, No. 2021-CH-01602 (Cir. Ct. Cook County, Ill. 2023); *Jackson v. UKG, Inc.*, No. 2020-L-000031 (Cir. Ct. McLean Cnty., Ill. 2022); *Vega v. Mid-America Taping & Reeling, Inc.*, No. 2019-CH-1136 (Cir. Ct. DuPage Cnty., Ill. 2022).

Accordingly, the Court should adopt and apply the percentage-of-the-benefit approach here. Under this approach, as set forth more fully below, Class Counsel's requested attorneys' fees are eminently reasonable.

B. The Requested Attorneys' Fees, Costs, And Expenses Are Reasonable As A Percentage Of The Class Benefit.

An award to Class Counsel of 35% of the Settlement Fund value is well within the range of fees typically awarded to class counsel by Illinois courts in comparable class action settlements. In fact, higher fee awards of 38-40% have been awarded in dozens of BIPA class action settlements in circuit courts throughout Illinois. *See, e.g., Gray v. Verificient Technologies*, No. 2018-CH-16054 (Cir. Ct. Cook County, Ill. 2024) (awarding 40% of the BIPA class settlement fund in attorneys' fees); *Coleman v. Farm King*, No. 22-LA-0002 (Cir. Ct. McDonough Cnty., Ill. 2024) (same); *Willoughby v. Lincoln Insurance Agency*, No. 22-CH-01917 (Cir. Ct. Cook Cnty., Ill. 2022) (same); *Rapai v. Hyatt Corp.*, No. 2017-CH-14483 (Cir Ct. Cook Cnty., Ill. 2022) (same); *Bodie v. Capitol Wholesale Meats, Inc.*, 22-CH-000020 (Cir. Ct. DuPage Cnty., Ill. 2022) (same); *Knobloch v. ABC Financial Services, LLC et al.*, No. 17-CH-12266 (Cir. Ct. Cook Cnty., Ill. 2021) (same); *Fick v. Timeclock Plus, LLC*, No. 2019-CH-12769 (Ill. Cir. Ct. Cook Cty. 2021) (same); *Prelipceanu v. Jumio Corp.*, No. 18-CH-15883 (Cir. Ct. Cook Cnty. Ill. 2020) (same); *Taylor v. 815 Pallets, Inc.*, No. 2020-CH-03013 (Cir. Ct. Cook Cnty., Ill. 2024) (awarding 38% of the BIPA class settlement fund in attorneys' fees); *McGowan v. Veriff, Inc.*, No. 2021-L-001202 (Cir. Ct. DuPage Cnty., Ill. 2023) (same); *Jackson v. UKG, Inc.*, No. 2020-L-000031 (Cir. Ct. McLean Cnty., Ill. 2022) (awarding 35% of the BIPA class settlement fund in attorneys' fees); *Vega v. Mid-America Taping & Reeling, Inc.*, No. 2019-CH-1136 (Cir. Ct. DuPage Cnty., Ill. 2022) (same); *see also* NEWBURG ON CLASS ACTIONS, *supra*, §15:83 (5th ed. Dec. 2016 update) ("Usually, 50 percent of the fund is the upper limit on a reasonable fee award from a common fund, . . . though

somewhat larger percentages are not unprecedented").

The requested fee of 35% of the Settlement Fund is reasonable in light of the substantial monetary relief obtained by Class Counsel here – despite significant risk – and should be awarded. Thus, Plaintiffs' request of 35% of the Settlement Fund is reasonable and consistent with fees recently approved by Illinois courts in BIPA class action settlements.

1. The requested fee of 35% of the Settlement fund is reasonable.

"When assessing the reasonableness of fees, a trial court may consider a variety of factors, including the nature of the case, the case's novelty and difficulty level, the skill and standing of the attorney, the degree of responsibility required, the usual and customary charges for similar work, and the connection between the litigation and the fees charged." *McNiff v. Mazda Motor of Am., Inc.*, 384 Ill. App. 3d 401, 407 (2008) (quoting *Richardson v. Haddon*, 375 Ill. App. 3d 312, 314–15 (1st Dist. 2007)) (quotations omitted). Here, each of these factors shows the requested fee is reasonable.

i. *Plaintiffs' claims carried substantial litigation risk.*

This case has long presented substantial litigation risk. Nonetheless, despite knowing the risks, Class Counsel took on the case, worked on the case, and even undertook a significant financial risk, with no upfront payment and no guarantee of payment absent a successful outcome. In addition to attorney time spent on the case, Class Counsel also advanced a total of $103,727.98 in out-of-pocket expenses, again with no guarantee of repayment. (Meyers Decl. ¶ 21.) If the case had advanced through class certification, these expenses would have increased many-fold, and Class Counsel would need to advance these expenses potentially for several years to litigate this action through judgment and appeals.

Moreover, Defendants would have contested class certification, and Plaintiffs would have

faced serious risks even before getting to class certification. Indeed, Defendants have denied the allegations in all three cases since the outset of this litigation, continue to deny the material allegations of the Consolidated Amended Complaint, and would have pursued several legal and factual defenses, including but not limited to asserting that: (1) their conduct did not violate BIPA; (2) Plaintiffs consented to Defendants' use of their biometric identifiers and biometric information; (3) Plaintiffs' claims are subject to arbitration; (4) personal jurisdiction is lacking over the Defendants; and (5) even if Plaintiffs can overcome the foregoing defenses, damages are far less than Plaintiffs allege. If successful, Defendants' defenses could have resulted in Plaintiffs and the proposed Settlement Class Members receiving no payment or relief whatsoever.

Further, Defendants most certainly would have sought summary judgment, as well as engaged in extensive and protracted discovery. Despite these risks, the Settlement Agreement provides every Settlement Class Member who completes a simple Claim Form with a *pro rata* cash payment from a $40 million Settlement Fund, after deductions for administrative expenses, attorneys' fees and expenses, and service awards. And Class Members can receive this benefit now, as opposed to receiving it years from now or potentially never. This is an excellent result.

ii. *The skill and standing of the attorneys supports the requested fee.*

The attorneys handling this case are in good standing in their respective jurisdictions. Class Counsel are well-respected attorneys with significant experience litigating similar class action cases in federal and state courts across the country, including many other BIPA cases. (Meyers Decl. ¶¶ 23-30.) Class Counsel have successfully litigated and settled class actions in courts throughout Illinois and throughout the country and have been appointed class counsel by numerous courts in similar BIPA class actions. (*Id.*)

Furthermore, "[t]he quality of the opposition should be taken into consideration in

assessing the quality of the plaintiffs' counsel's performance." *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 362 (E.D.N.Y. 2010). Here, Defendants were represented by the prominent and well-respected law firm of Morrison Foerster. Class Counsel achieved an exceptional result in this case while facing well-resourced and experienced defense counsel. *See In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement").

iii. *The Settlement was the result of arm's-length negotiations between the Parties after a significant exchange of information.*

The Settlement was the result not only of hard-fought litigation, but also of serious and contentious negotiations over an extended period of time. Class Counsel worked with Defendants' counsel to obtain critical information in advance of the mediations and prior to any settlement being reached. (Meyers Decl. ¶ 8.) Class Counsel also prepared for and participated in two separate full-day mediation sessions with Hon. Layn R. Phillips (Ret.) of Phillips ADR Enterprises and Hon. Diane M. Welsh (Ret.) of JAMS and executed a binding term sheet setting out the material terms of this Settlement Agreement only at the conclusion of subsequent negotiations. (*Id.* ¶¶ 7-8.) Through the undertaking of a thorough investigation, litigation in three separate courts, informal discovery, and substantial arm's-length negotiations, Class Counsel obtained a settlement that provides a real and significant monetary benefit to the Class. Since that time, Class Counsel have drafted and negotiated the Settlement Agreement and related notice documents, moved for and obtained preliminary approval, and diligently monitored the successful notice program and claims administration process. (*Id.* ¶¶ 17-18.)

iv. The usual and customary charges for similar work.

When Class Counsel undertake major litigation such as this, it necessarily limits their ability to undertake and dedicate time to other complex litigation cases. During the course of this litigation, Class Counsel devoted significant time and resources to succeed in this case and will continue to do so. (Meyers Decl. ¶¶ 13, 17-19.) Class Counsel had to make this commitment at the outset of this case without knowing how long the case would take to resolve, if ever. Therefore, Class Counsel's willingness to prosecute this action on a contingent fee basis and to advance substantial costs diverted the time and resources expended on this action from other cases. (*Id.* ¶¶ 13-14.) As set forth above, courts regularly award 35-40% in attorneys' fees in BIPA class settlements, and a fee award of 35% is eminently reasonable in this matter.

C. The Requested Fees Do Not Even Include The Value Of The Non-Monetary Benefits In The Settlement.

Importantly, the fee being sought by Class Counsel is limited to a reasonable percentage of the Settlement Fund and does *not* include any amount relating to the non-monetary relief that was obtained as part of the Settlement. As set forth in the Motion for Preliminary Approval, the non-monetary component of the Settlement is multi-pronged. First, although not part of the Settlement Agreement, after Plaintiffs' lawsuits were filed, a pop-up notification was included in the Badoo and Bumble apps that notified Bumble and Badoo app users verifying their photos that facial recognition technology is being used, and that to proceed with photo verification, all users must consent by affirmatively clicking "Take my photo." In addition, the privacy policy implemented around the same time expressly disclosed that the photo verification process "may include the use of facial recognition technology." This disclosure appeared under a bolded section heading stating that photo verification information "**Include[es] Biometric Information.**"

Plaintiffs and Class Counsel believe that their lawsuits undoubtedly led to these changes. (Meyers Decl. ¶ 11.)

Additionally, the non-monetary component of the Settlement consists of Defendants' commitment that within fourteen days of the Effective Date of the Settlement, Defendants will confirm that they have deleted any previously-collected biometric information and/or biometric identifiers of the Settlement Class Members that were obtained during the photo verification or content moderation process (if any) and that, subject to any changes in relevant authority, Defendants will continue to comply with BIPA to the extent that they collect data that falls within the scope of the statute. (Agreement, ¶ 4.3.)

This non-monetary relief obtained by Class Counsel further justifies the reasonableness of the attorneys' fees being sought here. *See Spano v. Boeing Co.*, No. 06-cv-743, 2016 WL 3791123, at *1 (S.D. Ill. Mar. 31, 2016) ("A court must also consider the overall benefit to the Class, including non-monetary benefits, when evaluating the fee request. . . . This is important so as to encourage attorneys to obtain meaningful affirmative relief") (citing *Beesley v. Int'l Paper Co.*, No. 06-cv-703, 2014 U.S. Dist. LEXIS 12037, at *5 (S.D. Ill. Jan 31, 2014)); Manual for Complex Litigation, Fourth, § 21.71, at 337 (2004)); *see also Hall v. Cole*, 412 U.S. 1, 5 n.7 (1973) (awarding attorneys' fees when relief is obtained for the class "must logically extend, not only to litigation that confers a monetary benefit to others, but also litigation which corrects or prevents an abuse which would be prejudicial to the rights and interests of those others"). If the value of the non-monetary relief were to be included in the value of the Settlement, the value would be far in excess of $40 million, given the value of the biometrics collected by Defendant from the Class Members, and the percentage of fees being sought by Class Counsel would then be significantly lower than the 35% being sought from *just* the cash relief being provided.

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

Class Counsel have expended $103,727.98 in reimbursable expenses related to filing fees in three cases, mediation costs for two mediations, travel, and case administration. (Meyers Decl., ¶ 21.) Courts regularly award reimbursement of the expenses counsel incurred in prosecuting the litigation. *See, e.g., Kaplan v. Houlihan Smith & Co.,* No. 12-cv-5134, 2014 WL 2808801, at *4 (N.D. Ill. June 20, 2014) (awarding expenses "for which a paying client would reimburse its lawyer"); *Spicer v. Chicago Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1256 (N.D. Ill. 1993) (detailing and awarding expenses incurred during litigation). Accordingly, this Court should award a total fee and expense award to Class Counsel of $14,103,727.98.

II. THE REQUESTED SERVICE AWARDS ARE REASONABLE AND SHOULD BE APPROVED.

Service awards of $5,000.00 each for Plaintiff Dzananovic and Plaintiff Howell are appropriate here. "In some cases, the amount requested as an incentive award, given the court's knowledge about the advanced stage of the case or other procedural facts, will be so obviously reasonable that only minimal scrutiny will be required for approval, at least in the absence of any objection from class member." 299 F.R.D. 160 at NACA Guideline 5. Courts routinely approve service awards to compensate named plaintiffs for the services they provide and the risks they incur during the course of class action litigation. *See id.* ("Consumers who represent an entire class should be compensated reasonably when their efforts are successful and compensation would not present a conflict of interest").

This case is no different. Plaintiffs' participation has been instrumental in the prosecution and ultimate settlement of this action. Here, Plaintiffs' efforts and participation in prosecuting this case justify the $5,000.00 Service Award sought for each Plaintiff. Even though no award of any

sort was promised to Plaintiffs prior to the commencement of the litigation or any time thereafter, Plaintiffs nonetheless contributed their time and effort in pursuing their own BIPA claims, as well as in serving as representatives on behalf of the Settlement Class Members—exhibiting a willingness to participate and undertake the responsibilities and risks attendant with bringing a representative action. (Meyers Decl., ¶¶ 33-36.) Plaintiffs participated in the initial investigation of their claims and provided documents and information to Class Counsel to aid in preparing the initial pleadings, reviewed the pleadings prior to filing, consulted with Class Counsel on numerous occasions, and provided feedback on a number of other filings including, most importantly, the Settlement Agreement. (*Id*.) Further, agreeing to serve as Class Representatives meant that Plaintiffs publicly placed each of their names on their respective suit and opened themselves to "scrutiny and attention" which, in and of itself, "is certainly worthy of some type of remuneration." *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 600–01 (N.D. Ill. 2011). Were it not for Plaintiffs' willingness to pursue this action on a class-wide basis, their efforts and contributions to the litigation by assisting Class Counsel with their investigation and prosecution of this suit, and their continued participation and monitoring of the case up through settlement, the substantial benefit to the Settlement Class Members afforded under the Settlement Agreement would simply not exist. (Meyers Decl., ¶ 36.)

The requested $5,000.00 Service Awards are well in line with the average service award granted in class actions. Indeed, many courts that have granted final approval in BIPA class action settlements have granted *higher* class representative awards than the payment sought here. *See, e.g., Verificient*, No. 18-CH-16054 (awarding $10,000 service award to the class representative in BIPA class action); *Rapai*, No. 17-CH-14483 (awarding $12,500 service award in BIPA class action); *Roach v. Wal-Mart, Inc.*, No. 19-CH-1107 (Cir Ct. Cook Cnty, Ill.) (awarding $10,000

service award in BIPA class settlement); *Gonzalez v. Silva Int'l, Inc.*, No. 2020-CH-03514 (Cir. Ct. Cook Cnty., Ill.) (awarding $10,000 service award in BIPA class action); *see also Cook,* 142 F.3d 1004 (value of settlement was $14 million; service award to class representative of $25,000); *see also In re Remeron End-Payor Antitrust Litig*., No. 02-cv-2007, 2005 WL 2230314 (D.N.J. Sept. 13, 2005) (value of settlement was $36 million; service payments totaling $75,000 for six named plaintiffs).

Compensating Plaintiffs for the risks and efforts they undertook to benefit the Settlement Class Members is reasonable under the circumstances of this case, especially in light of the exceptional results obtained. As shown above, courts have regularly approved awards in similar class action litigation of at least $10,000.00. Accordingly, a $5,000.00 Service Award for each Plaintiff is reasonable, justified by Plaintiffs' time and effort in this case, and should be approved.

CONCLUSION

For the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court enter an Order: (1) approving an award of attorneys' fees and expenses of $14,103,727.98; and (ii) approving Service Awards of $5,000 for each Plaintiff in recognition of their significant efforts on behalf of the Settlement Class Members.

Dated: August 30, 2024

Respectfully submitted,

DARIO DZANANOVIC AND KEMELLE HOWELL, individually and on behalf of all others similarly situated

By: /s/ *Eugene Y. Turin*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 30, 2024, the foregoing document was filed via the Court's ECF system, which will cause a true and correct copy of the same to be served electronically on all ECF-registered counsel of record.

/s/ Eugene Y. Turin
Eugene Y. Turin

Exhibit A

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
WINNEBAGO COUNTY, ILLINOIS

DARIO DZANANOVIC and KEMELLE HOWELL, individually and on behalf of all others similarly situated, *Plaintiffs*, v. BADOO TRADING LIMITED, a United Kingdom company; and BUMBLE TRADING L.L.C., a Delaware limited liability corporation, *Defendants*.	)	No. 2021-L-307 Hon. Ronald A. Barch

DECLARATION OF EVAN M. MEYERS

I, Evan M. Meyers, hereby aver, pursuant to 735 ILCS 5/1-109, that I am fully competent to make this Declaration, that I have personal knowledge of all matters set forth herein unless otherwise indicated, and that I would testify to all such matters if called as a witness in this matter.

1. I am an adult over the age of 18 and a resident of the state of Illinois. I am an attorney with the law firm McGuire Law, P.C., I am licensed to practice law in the state of Illinois, and I, along with Jonathan M. Jagher of Freed Kanner London & Millen LLC and Katrina Carroll of Lynch Carpenter, LLP (together, Class Counsel"), am one of the attorneys representing Plaintiff Dario Dzananovic and Plaintiff Kemelle Howell in this matter.[1] I am fully competent to make this Declaration and make this Declaration in support of Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, and Service Awards.

[1] Plaintiff Garner passed away on May 9, 2024, shortly before the Settlement was finalized.

The Litigation

2. In 2021, Plaintiffs filed three related class action complaints against the Defendants. Defendants removed all three cases, after which a portion of one case was remanded to this Court. The related actions are captioned as follows: *Dzananovic v. Bumble, Inc., et al.*, No. 1:21-cv-06925 (N.D. Ill.); *Howell v. Bumble, Inc., et al.*, No. 1:21-cv-06898 (N.D. Ill.) ("*Howell*"); *Garner v. Bumble Inc., et al.*, No. 3:21-cv-50457 (N.D. Ill.); and *Garner v. Bumble Inc., et al.*, No. 2021-L-307 (17th Judicial Cir., Winnebago County, Ill.) (the "Related Actions"). The Related Actions all alleged that Defendants collected, captured, received, disclosed, stored and/or profited from the biometric information of Plaintiffs and all other Settlement Class Members in violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 *et seq*. ("BIPA").

3. The *Howell* case was initially filed against Bumble, Inc. and Buzz Holdings, L.P. in state court in Cook County, Illinois, on November 24, 2021. Defendants removed the case to the U.S. District Court for the Northern District of Illinois on December 29, 2021. After Defendants moved to dismiss based on lack of personal jurisdiction in March 2022, Plaintiff filed her First Amended Complaint, adding Bumble Trading, LLC, as a third defendant.

4. In June 2022, Defendants filed their second motion to dismiss based on lack of personal jurisdiction as to all three defendants. In a September 2023 Order and Opinion, Judge Jenkins denied Defendants' motion without prejudice and ordered that the parties conduct limited jurisdictional discovery. *See Howell v. Bumble, Inc. et al.*, No. 21-cv-06898, Dkt. 50 (Sept. 19, 2023). In September 2023, the parties filed a joint motion to stay the case pending mediation, which Judge Jenkins granted in October 2023. On March 31, 2024, rather than require periodic status reports about this Settlement, Judge Jenkins dismissed the case without prejudice, which automatically converted to a dismissal with prejudice on May 30, 2024.

5. The *Dzananovic* case was initially filed against Bumble, Inc. and Buzz Holdings, L.P. in state court in Cook County, IL on November 24, 2021. Those defendants removed the case to the Northern District of Illinois on December 30, 2021. After defendants moved to dismiss on personal jurisdiction grounds in March 2022, Plaintiff filed a First Amended Complaint adding Bumble Trading, LLC as a third defendant. In May 2022, Bumble again moved to dismiss based on personal jurisdiction as to all three defendants. Judge Andrea Wood denied the motion in its entirety in July 2023.

6. The *Garner* case was originally filed before this Court on October 21, 2021 and named Buzz Finco LLC and Buzz Bidco LLC as defendants. On December 3, 2021, the case was removed to the U.S. District Court for the Northern District of Illinois, Western Division. On January 10, 2022, Plaintiff Garner filed a motion to sever and remand his claim under Section 15(a) of BIPA to state court. On February 15, 2022, the defendants filed a motion to dismiss Plaintiff Garner's claims for lack of personal jurisdiction. On March 18, 2022, Plaintiff Garner filed a motion for leave to take jurisdictional discovery. On April 11, 2022, Plaintiff Garner's motion to remand his claim under Section 15(a) of BIPA was granted, and on May 22, 2022, his motion for leave to take jurisdictional discovery was granted. On November 16, 2022, following jurisdictional discovery, Plaintiff Garner filed his First Amended Class Action Complaint in federal court adding a number of defendants' parent and subsidiary entities. On February 15, 2023, the defendants filed a renewed motion to dismiss for lack of personal jurisdiction and lack of proper service. On September 18, 2023, the federal court granted the motion to dismiss and dismissed Plaintiff Garner's claims without prejudice. On October 16, 2023, Plaintiff Garner filed a motion to vacate the federal court's judgment. On March 5, 2024, Plaintiff Garner withdrew his motion to vacate.

7. On December 15, 2023, the Parties participated in a full-day mediation before Hon. Layn R. Phillips (Ret.) in California. The Parties were unable to resolve the matter at this mediation but continued discussions regarding a potential resolution of the Related Actions.

8. On January 23, 2024, the Parties participated in a full-day mediation before Hon. Diane M. Welsh (Ret.) of JAMS Philadelphia. The Parties reached an agreement in principle to resolve the matter at this mediation, and on February 26, 2024, the Parties executed a term sheet confirming the material terms of a settlement. Thereafter, the Parties continued discussions to finalize a settlement agreement based on the term sheet. On May 30, 2024, the Parties finalized and executed the Settlement. On May 23, 2024, Plaintiffs voluntarily dismissed the *Dzananovic* Related Action pending in federal court and filed the operative Consolidated Class Action Complaint before this Court. Class Counsel worked with Defendants' counsel to gather critical information in advance of the mediations and prior to any Settlement being reached.

9. The Court preliminarily approved the Settlement on June 6, 2024.

10. The Settlement is comprised of a monetary component and a non-monetary component. The monetary component of the Settlement is a $40,000,000.00 non-reversionary Settlement Fund established by the Defendants. The Settlement Fund will be used to pay all Settlement Class Member payments, settlement administration expenses, any class representative service awards and attorneys' fees and expenses awarded to Class Counsel.

11. The non-monetary component of the Settlement is multi-pronged. First, although not part of the Settlement Agreement, after Plaintiffs' lawsuits were filed, a pop-up notification was included in the Badoo and Bumble apps that notified Bumble and Badoo app users verifying their photos that facial recognition technology is being used, and that to proceed with photo verification, all users must consent by affirmatively clicking "Take my photo." In addition, the

privacy policy implemented around the same time expressly disclosed that the photo verification process "may include the use of facial recognition technology." This disclosure appeared under a bolded section heading stating that photo verification information "Include[es] Biometric Information." Plaintiffs and Class Counsel believe that these lawsuits undoubtedly led to these changes.

12. Additionally, the non-monetary component of the Settlement consists of Defendants' commitment that within fourteen days of the Effective Date of the Settlement, Defendants will confirm that they have deleted any previously-collected biometric information and/or biometric identifiers of the Settlement Class Members that were obtained during the photo verification or content moderation process (if any) and that, subject to any changes in relevant authority, Defendants will continue to comply with BIPA to the extent that they collect data that falls within the scope of the statute.

13. From the outset of this litigation, the attorneys of McGuire Law, P.C., Freed Kanner London & Millen LLC, and Lynch Carpenter, LLP anticipated spending hundreds of hours litigating the claims in this matter with no guarantee of success. Class Counsel understood that prosecution of this case would require that other work be foregone, that there was significant uncertainty surrounding the applicable legal and factual issues, and that there would be significant opposition from a defendant with substantial resources.

14. Class Counsel assumed a significant risk of non-payment in prosecuting this litigation given the novelty of legal issues involved and the uncertainty in the development of BIPA caselaw against users and vendors of biometric technology; the legal issues involving the applicable statute of limitations to, and potential damages relating to, Plaintiffs' and the Class Members' claims; and the vigorous and nuanced legal defenses that Defendant and its skilled

counsel have raised and were prepared to litigate had this case proceeded further.

15. From the outset of the litigation, Defendants and their counsel have presented strong defenses to Plaintiffs' claims on the merits and the ability to represent a class of those whose biometrics were collected by Defendants. Had the case not settled, the Parties would have continued with extensive discovery, class certification briefing, and summary judgment briefing. Given the financial resources at its disposal, any final decisions favorable to Plaintiffs would have also likely been appealed by Defendants.

16. Defendants are represented by highly experienced attorneys who have made clear that absent a settlement, they were prepared to continue their vigorous defense of this case, including by moving for summary judgment after discovery. Plaintiffs and Class Counsel are also aware that Defendants would have continued to challenge liability, as well as assert a number of defenses, including that: (i) their conduct did not violate BIPA; (ii) Plaintiffs consented to Defendants' use of their biometric identifiers and biometric information; (iii) Plaintiffs' claims are subject to arbitration; (iv) personal jurisdiction is lacking over the Defendants; and (v) even if Plaintiffs can overcome the foregoing defenses, damages are far less than Plaintiffs allege. If successful, these defenses could have resulted in Plaintiffs and the Settlement Class Members receiving no payment or relief whatsoever. Looking beyond trial, Plaintiffs are also keenly aware that Defendants could appeal the merits of any adverse decision, and that in light of the statutory damages in play it would argue – in both the trial and appellate courts – for a reduction of damages based on due process concerns.

17. Class Counsel were able to obtain the substantial benefit provided to the Settlement Class Members through the Settlement, despite the significant risks and defenses raised by Defendants, only as a result of their efforts in investigating Defendants' operations, including

Defendants' biometric capture, collection and use practices; defeating Defendants' motion to dismiss; amending the complaints when appropriate; and, most importantly, playing a central role in the careful and extended negotiations that resulted in the final Settlement Agreement preliminarily approved by this Court, including the drafting and preparation of the Settlement Agreement, all related exhibits, and the Motion for Preliminary Approval.

18. The work that Class Counsel have committed to this case has been substantial. Among other things, Class Counsel have:

a. Investigated Defendants' biometric collection and use practices;

b. Participated in multiple status and motion hearings;

c. Drafted the Complaint and Amended Complaints in the *Howell* matter;

d. Briefed Defendants' Motion to Dismiss in the *Howell* matter;

e. Drafted the Complaint and Amended Complaint in the *Dzananovic* matter;

f. Briefed Defendants' Moton to Dismiss in the *Dzananovic* matter;

g. Drafted the Complaint and Amended Complaint in the *Garner* matter;

h. Drafted a motion to sever and remand to state court in the *Garner* matter;

i. Drafted a motion to take jurisdictional discovery in the *Garner* matter;

j. Briefed Defendants' Motion to Dismiss in the *Garner* matter;

k. Drafted a motion to vacate federal court judgment in the *Garner* matter;

l. Drafted the operative Consolidated Class Action Complaint;

m. Participated in a full-day mediation before Hon. Layn R. Phillips (Ret.) of Phillips ADR in California;

n. Participated in a full-day mediation session before Hon. Diane M. Welsh (Ret.) of JAMS Philadelphia.

o. Engaged in months of continued settlement negotiations, which involved the exchange of settlement drafts and multiple communications with Defendants'

counsel, and which resulted in the drafting and execution of the finalized Settlement Agreement and related documents, including class notice documents;

p. Successfully moved for preliminary approval of the Settlement;

q. Oversaw the implementation of the Settlement, including multiple communications with the Settlement Administrator about class notice and the settlement website; and

r. Engaged in ongoing communications with the Settlement Administrator and with numerous Class Members answering questions about the Settlement and the claims process.

19. Based on my experience in many other class action settlements, I anticipate that Class Counsel will expend substantial additional time and resources over the pendency of this action relating to briefing and filing a motion for final approval of the Settlement, attending the final approval hearing, responding to Class Members' inquiries regarding the Settlement and advising them how to proceed, responding to any objectors, and remaining involved with the Settlement through implementation, including continuous communications with the Settlement Administrator and Class Members relating to benefits distribution.

20. Plaintiffs executed fee agreements with Class Counsel that were contingent in nature. Plaintiffs agreed *ex ante* that attorneys' fees would be awarded on a contingency basis from any settlement fund created for the benefit of a class, plus reimbursement of costs and expenses. Class Counsel would not have brought this action absent the prospect of obtaining a percentage of the recovery to account for the risk inherent in this type of class action.

21. In addition to attorney time expended in pursuit of this case, Class Counsel have collectively incurred $103,727.98 in out-of-pocket expenses related to this litigation, which is comprised primarily of mediation fees for two mediations, travel, filing fees, and case administration expenses. These costs and expenses are reflected in Class Counsel's respective firm records and were necessary to effectively prosecute this litigation and to reach this Settlement.

Cost and expense items are billed separately, and such charges are not duplicated in any firm's billing rates. Being responsible for advancing all expenses, Class Counsel have had a strong incentive not to expend any funds unnecessarily, and Class Counsel undertook these expenses without any guarantee of reimbursement.

22. My firm has extensive experience litigating class actions. A copy of the firm resume of McGuire Law, P.C. was attached to the Motion for Preliminary Approval filed on May 30, 2024.

23. The attorneys of McGuire Law and I have regularly engaged in complex litigation on behalf of consumers and have extensive experience in class action lawsuits similar in size and complexity to the instant case, including dozens of BIPA class actions. McGuire Law attorneys and their firms have been appointed as class counsel in numerous complex class actions, including multiple BIPA class actions, in state and federal courts in Illinois and across the country. *See, e.g*, *McFerren et al., v. AT&T Mobility, LLC* (Sup. Ct. Fulton County, Ga. 2008); *Gray et al. v. Mobile Messenger Americas, Inc. et al.* (S.D. Fla. 2008); *Gresham et al. v. Keppler & Associates, LLC et al*. (Sup. Ct. Los Angeles County, Cal. 2008); *Sims et al. v. Cellco Partnership et al.* (N.D. Cal. 2009); *Van Dyke et al. v. Media Breakaway, LLC et al.* (S.D. Fla. 2009); *Paluzzi, et al. v. mBlox, Inc., et al*. (Cir. Ct. Cook County, Ill. 2009); *Valdez et al. v. Sprint Nextel Corporation* (N.D. Cal. 2009); *Ryan et al. v. Snackable Media, LLC* (Cir. Ct. Cook County, Ill. 2011); *Parone et al. v. m-Qube, Inc. et al.* (Cir. Ct. Cook County, Ill. 2010); *Williams et al. v. Motricity, Inc. et al.* (Cir. Ct. Cook County, Ill. 2011); *Walker et al. v. OpenMarket, Inc. et al.* (Cir. Ct. Cook County, Ill. 2011); *Schulken at al. v. Washington Mutual Bank, et al.* (N.D. Cal. 2011); *In re Citibank HELOC Reduction Litigation* (N.D. Cal. 2012); *Rojas v. Career Education Corp*. (N.D. Ill. 2012); *Murray et al. v. Bill Me Later, Inc.* (N.D. Ill. 2014); *Gomez et al v. Campbell-Ewald Co.* (C.D. Cal. 2014); *Manouchehri, et al. v. Styles for Less, Inc., et al.* (S.D. Cal. 2016); *Valladares et al. v. Blackboard,*

Inc. et al. (Cir. Ct. Cook County, Ill. 2016); *Hooker et al v. Sirius XM Radio, Inc.* (E.D. Va. 2017); *Flahive et al v. Inventurus Knowledge Solutions, Inc.* (Cir. Ct. Cook County, Ill. 2017); *Serrano et al. v. A&M (2015) LLC* (N.D. Ill. 2017); *Vergara et. al. v. Uber Technologies, Inc.* (N.D. Ill. 2018); *Zepeda v. International Hotels Group, Inc. et. al.* (Cir. Ct. Cook County, Ill 2018); *Kovach et al v. Compass Bank* (Cir. Ct. Jefferson County, Ala. 2018); *Svagdis v. Alro Steel Corp.* (Cir. Ct. Cook County, Ill. 2018); *Zhirovetskiy v. Zayo Group, LLC* (Cir. Ct. Cook County, Ill. 2019); *Marshall v. Lifetime Fitness, Inc.* (Cir. Ct. Cook County, Ill. 2019); *McGee v. LSC Communications, Inc. et al.* (Cir. Ct. Cook County, Ill. 2019); *Prather et al. v. Wells Fargo Bank, N.A.* (N.D. Ill. 2019); *Nelson et al v. Nissan North America, Inc.* (M.D. Tenn. 2019); *Smith v. Pineapple Hospitality Co., et al.* (Cir. Ct. Cook County, Ill. 2020); *Garcia v. Target Corp.* (D. Minn. 2020); *Roberts v. Superior Nut and Candy Co., Inc.* (Cir. Ct. Cook County, Ill. 2020); *Rafidia v. KeyMe, Inc.* (Cir. Ct. Cook County, Ill. 2020); *Burdette-Miller v. William & Fudge, Inc.* (Cir. Ct. Cook County, Ill. 2020); *Farag v. Kiip, Inc.* (Cir. Ct. Cook County, Ill. 2020); *Lopez v. Multimedia Sales & Marketing, Inc.* (Cir. Ct. Cook County, Ill. 2020); *Prelipceanu v. Jumio Corp.* (Cir. Ct. Cook County, Ill. 2020); *Williams v. Swissport USA, Inc.* (Cir. Ct. Cook County, Ill. 2020); *Glynn v. eDriving, LLC* (Cir. Ct. Cook County, Ill. 2020); *Pearlstone v. Costco Wholesale Corp.* (E.D. Mo. 2020); *Kusinski v. ADP, LLC* (Cir. Ct. Cook County, Ill. 2021); *Draland v. Timeclock Plus, LLC* (Cir. Ct. Cook County, Ill. 2021); *Harrison v. Fingercheck, LLC* (Cir. Ct. Lake County, Ill. 2021); *Rogers v. CSX Intermodal Terminals, Inc.* (Cir. Ct. Cook County, Ill. 2021); *Freeman-McKee v. Alliance Ground Int'l, LLC* (Cir. Ct. Cook County, Ill. 2021); *Gonzalez v. Silva Int'l, Inc.* (Cir. Ct. Cook County, Ill. 2021); *Salkauskaite v. Sephora USA, Inc.* (Cir. Ct. Cook County, Ill. 2021); *Williams v. Inpax Shipping Solutions, Inc.*, 2018-CH-02307 (Cir. Ct. Cook County, Ill. 2021); *Roberts v. Paramount Staffing, Inc.*, 2017-CH-15522 (Cir. Ct. Cook

County, Ill. 2021); *Roberts v. Paychex, Inc.*, 2019-CH-00205 (Cir. Ct. Cook County, Ill. 2021); *Zanca v. Epic Games, Inc.*, 21-CVS-534 (Superior Ct. Wake County, N.C. 2021); *Rapai v. Hyatt Corp.*, 2017-CH-14483 (Cir Ct. Cook County, Ill. 2022); *Jackson v. UKG, Inc.* (Cir. Ct. McLean County, Ill. 2022); *Vo v. Luxottica of America, Inc.* (Cir. Ct. Cook County, Ill. 2022); *Rogers v. Illinois Central Railroad Co.* (Cir. Ct. Cook County, Ill. 2022); *Stiles v. Specialty Promotions, Inc.* (Cir. Ct. Cook County, Ill. 2022); *Fongers v. CareerBuilder LLC* (Cir. Ct. Cook County, Ill. 2022); *Vega v. Mid-America Taping & Reeling, Inc.* (Cir. Ct. DuPage Cnty., Ill. 2022); *Wood et al. v. FCA US LLC* (E.D. Mich. 2022); *Marzec v. Reladyne, LLC* (Cir. Ct. Cook Cnty., Ill. 2022); *Komorski v. Polmax Logistics, LLC et al.* (Cir. Ct. Cook Cnty., Ill. 2022); *Wordlaw v. Enterprise Holdings, Inc. et al.* (N.D. Ill. 2023); *McGowan et al. v. Veriff, Inc.* (Cir. Ct. DuPage Cnty., Ill. 2023); *Davis v. Cafeteria Alternatives, Inc.* (Cir. Ct. Cook Cnty., Ill. 2023); *Mahmood v. Berbix Inc.* (Cir. Ct. Lake Cnty., Ill. 2023); *King v. PeopleNet Corporation* (Cir. Ct. Cook Cnty., Ill. 2023); *McFarland v. SIU Physicians & Surgeons, Inc.* (Cir. Ct. Jackson Cnty., Ill. 2023); *Romero v. Mini Storage Maintenance, LLC* (Cir. Ct. Cook Cnty., Ill. 2023); *Grabowska v. The Millard Group, LLC* (Cir. Ct. Cook Cnty., Ill. 2023); *Fregoso v. American Airlines, Inc.* (Cir. Ct. Cook Cnty., Ill. 2023); *Martinez v. PowerStop, LLC* (Cir. Ct. Cook Cnty., Ill. 2024); *Gray v. Verificient Technologies, Inc.* (Cir. Ct. Cook Cnty., Ill. 2024); *Lumpkins v. R&M Freight, Inc.* (Cir. Ct. Cook Cnty., Ill. 2024); *Coleman v. Farm King Supply LLC* (Cir. Ct. McDonough Cnty., Ill. 2024); *Taylor v. 815 Pallets, Inc.* (Cir. Ct. Cook Cnty., Ill. 2024).

24. The McGuire Law firm has successfully prosecuted claims on behalf of our clients in both state and federal trial and appellate courts throughout the country, including claims involving allegations of consumer fraud; unfair competition; invasion of privacy; data breach; false

advertising; breach of contract; and various statutory violations, including BIPA and TCPA violations.

25. I received my B.A. from the University of Michigan and graduated from the University of Illinois College of Law in 2002. In addition to my experience with scores of class actions, I have extensive experience in complex commercial litigation, I have been appointed as class counsel in numerous BIPA class actions, and I have regularly litigated cases in state and federal trial and appellate courts across the nation, including in the Circuit Court of Cook County, the Circuit Court of Lake County, the Circuit Court of Winnebago County, the Circuit Court of DuPage County, the U.S. District Court for the Northern District of Illinois, the U.S. District Court for the Eastern District of Michigan, the Ninth Circuit Court of Appeals, the Judicial Panel on Multidistrict Litigation, and the U.S. Supreme Court, where I served as co-lead counsel in a case of seminal importance to class action jurisprudence nationwide. *See Campbell-Ewald Co. v. Jose Gomez*, 136 S. Ct. 663 (2016).

26. My co-counsel, Jonathan M. Jagher of Freed Kanner London & Millen LLC, has extensive experience litigating class actions of similar size, scope, and complexity to the instant action. A copy of the firm resume of Freed Kanner London & Millen LLC was attached to the Motion for Preliminary Approval filed on May 30, 2024.

27. Mr. Jagher has been appointed to leadership positions in several consumer cases including data privacy matters. He was recently appointed as a Co-Chair of the Settlement Committee in *In re: MOVEit Customer Data Security Breach Litigation* MDL No. 1:23-md-03083-ADB (D. MA), one of the largest data breaches in history. Mr. Jagher was appointed as Co-Lead Counsel in *Price, et al. v. Carnival Corporation* 3:23-cv-00236-GPC (S.D Ca.), a class action alleging wiretap violations. He served as Co-Lead Counsel in *Powe v. Dermalogica, LLC*, 2022-

LA-000874 (Cir. Ct. DuPage Cnty., Ill.), a BIPA case resulting in a multi-million-dollar settlement. He was appointed to serve on the Plaintiffs' Steering Committee in *In Re: TikTok, Inc., Consumer Privacy Litigation*, MDL No. 2948 (N.D. Ill.), a class action related to BIPA allegations involving the popular app and the creation of short form videos on mobile devices. In that case, Mr. Jagher was one of the primary negotiators of a $92 million settlement. Mr. Jagher also served as one of the Settlement Class Counsel in *In re Proctor & Gamble Aerosol Products Marketing and Sales Practice Litigation*, 2:22-MD-3025 (SD OH) and was appointed to serve on the Plaintiffs' Executive Committees in *Jones et. al. v. Lemonade Inc*. 1:21-cv-04513 (N.D. Ill.) (a case involving BIPA violations that resulted in a multi-million dollar settlement) and in *In Re: Morgan Stanley Data Security Litigation*, 1:20-CV-05914 (S.D. N.Y.) ($60 million settlement).

28. Mr. Jagher also has an antitrust practice and his recent cases include *Kent et al. v. Women's Health USA, Inc.* FST-CV21-6054676-S (Connecticut Superior Court). In that case, Mr. Jagher was appointed as Co-Lead Counsel and settled the case on behalf of women in Connecticut who were victims of alleged price fixing by IVF clinics. Mr. Jagher was named to the Executive Committee in *Cameron et. al. v. Apple, Inc*. 4:19-cv-03074 (N.D. Cal.), and helped recover $100 million on behalf of app developers. Mr. Jagher also played an active role in *In re Peanut Farmers Antitrust Litigation*, 2:19-cv-00463 (E.D. Va.) (settlements totaled $102.75 million); *In re Automotive Parts Antitrust Litigation*, MDL No. 2311 (E.D. Mich.) (settlements totaled over $550 million); *In re OSB Antitrust Litigation*, Master File No. 06-CV-00826 (E.D. Pa.) (settlements totaled $120 million); *In re Broiler Chicken Antitrust Litigation*, 1:16-cv-08637 (N.D. Ill.) (settlements to date total approximately $170 million); and *In re Pork Antitrust Litigation* 0:18-CV-01776 (D. Minn.) (settlements to date total approximately $100 million).

29. My co-counsel, Katrina Carroll of Lynch Carpenter, LLP, is also highly experienced in class actions. A copy of the firm resume of Lynch Carpenter, LLP was attached to the Motion for Preliminary Approval filed on May 30, 2024. Ms. Carroll has litigated complex matters and class actions for over twenty years and has devoted her career to representing plaintiffs in complex cases. In total, she has litigated over one hundred class actions and has obtained recoveries in excess of $1 billion in all types of cases. She has been recognized as one of the top 25 class action lawyers in the State of Illinois by the National Trial Lawyers Association.

30. Ms. Carroll has significant experience with biometric privacy matters, having litigated some of the earliest biometric privacy cases on record, including cases against Google and Shutterfly that have shaped BIPA jurisprudence across the country. *See e.g., Norberg v. Shutterfly, Inc.*, 152 F. Supp. 3d 1103 (N.D. Ill. 2015) (finding jurisdiction against defendant and that plaintiff stated a claim under BIPA); *Rivera v. Google Inc.*, 238 F. Supp. 3d 1088, 1095-96 (N.D. Ill. 2017) (interpreting meaning of "biometric identifier" within the context of BIPA). She later served as court-appointed Co-Lead counsel in *In re TikTok, Inc. Consumer Priv. Litig.*, No. 1:20-cv-04699 (N.D. Ill. Sept. 28, 2020), a major data privacy litigation against the popular social media app where the court approved a $92 million class action settlement.

31. Since the Court preliminarily approved the Settlement, Class Counsel have worked with the Settlement Administrator, Epiq Systems, Inc. ("Epiq"), to carry out the Court-ordered notice plan. Specifically, Class Counsel helped compile and review the contents of the class notices, reviewed the final claim forms, and reviewed and tested the settlement website before it launched live. Class Counsel also worked with Defendants and Epiq to secure the class list and effectuate notice.

32. Since class notice has been disseminated, Class Counsel have continued to work closely with Epiq to monitor settlement claims and other issues that have arisen and may continue arise, including numerous communications with class members.

The Class Representatives' Contributions to the Case

33. Plaintiffs have been significantly involved in this litigation, have willingly contributed their own time and efforts toward this litigation, and are deserving of the proposed Service Awards. Plaintiffs were instrumental in assisting Class Counsel's investigation into Defendant's biometric practices and have remained fully involved in this case's prosecution. Moreover, Plaintiffs had their biometrics captured and used by Defendant but chose to proceed with their claims on behalf of a class, despite having the financial incentive to pursue their respective claims on an individual basis. Plaintiffs have succeeded in obtaining significant financial relief, as well as important non-monetary relief, on behalf of the class.

34. I believe that Plaintiffs' active involvement in this case was critical to its ultimate resolution. They took their role as class representatives seriously, devoting significant amounts of time and effort to protecting the interests of the class. Without their willingness to assume the risks and responsibilities of serving as class representatives, I do not believe such a strong result could have been achieved.

35. Plaintiffs equipped Class Counsel with critical details regarding their experience with Defendants' apps and the collection of their biometric information. They assisted Class Counsel in investigating their claims, supplying supporting documentation, aiding in drafting the Complaint, and preparing to participate in discovery. Plaintiffs were also prepared to testify at deposition and trial, if necessary, and were actively consulted during the settlement process.

36. Were it not for Plaintiffs' willingness to step forward in this case as the named class

representatives, their efforts and contributions to the litigation by assisting Class Counsel, and their monitoring of the case throughout its litigation, the substantial benefits to the class afforded under this Settlement Agreement would not have been achieved. Plaintiffs have not received any payment in this matter, were never promised any payment, and were not promised that they would receive an award of any kind in this litigation. Rather, the requested Service Awards for each Plaintiff seek only to compensate Plaintiffs for their respective time, effort, and contributions to this case.

I declare under penalty of perjury that the above and foregoing is true and accurate.

Executed this 30th day of August, 2024 in Lake County, Illinois.

/s Evan M. Meyers
Evan M. Meyers