UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PRESTON KYLES, individually and on behalf of all others similarly situated, *Plaintiff*, v. PAPA JOHN'S INTERNATIONAL, INC., *Defendant*.	Case No. 1:20-cv-07146 Judge: Hon. John Robert Blakey

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARD

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1. INTRODUCTION

Plaintiff Preston Kyles filed this lawsuit under the Biometric Information Privacy Act, 740 ILCS 14/1–99 ("BIPA"), over five years ago. Since that time, Class Counsel has invested tens of thousands of dollars of expenses and hundreds of thousands of dollars of attorney time pursuing the Class's claims. Plaintiff, for his part, has gone above and beyond compared to most BIPA plaintiffs, producing hundreds of pages of documents, sitting for his deposition, and attending both the settlement conference with Magistrate Judge Appenteng and the mediation with the Hon. James Epstein (Ret.) of JAMS Chicago. As a result of that investment and effort, Plaintiff and Class Counsel were able to negotiate a settlement that exceeds most other BIPA settlements with technology vendors.

Having secured an above-market, common-fund recovery, Plaintiff now moves under Fed. R. Civ. P. 23(h) for payment of attorneys' fees, expenses, and an incentive award from the common fund. Specifically, Plaintiff seeks attorneys' fees of $729,944 (one-third of the Net Settlement Fund[1]), expenses of $13,890.42, and an incentive award of $10,000.

2. BACKGROUND

Plaintiff worked for Hoosier Papa, LLC—a franchisee of Papa John's International, Inc.—in Ottawa, Illinois in 2017 and 2018. ECF No. 145, ¶ 3. As a franchisee, Hoosier Papa used Papa John's proprietary FOCUS point-of-sale system. ECF No. 162 at 4–5. Hoosier Papa required Plaintiff to use the FOCUS system's integrated finger-scan function to clock in and out of shifts, and to clock deliveries in and out. ECF No. 142 at 7. On December 3, 2020, Plaintiff sued Hoosier

[1] Net Settlement Fund means the amount in the settlement fund ($2.25 million) minus the administration costs ($50,168) and any incentive award.

Papa and Papa John's, alleging that both entities had obtained and possessed his biometric data without the notices and consent required by BIPA Sections 15(a) and (b). ECF No. 1.

Papa John's moved to dismiss, ECF No. 12, and to stay pending resolution of several appeals, ECF No. 14. Plaintiff amended as of right. ECF No. 17. The Court held that the amended complaint mooted the motion to dismiss, but it granted the motion to stay. ECF No. 22. The stay lifted, and on October 15, 2021, Papa John's again moved to dismiss. ECF No. 26. The Court denied the motion to dismiss on March 30, 2023, ECF No. 60, and the parties renewed discovery.

Discovery took approximately fourteen months. Larry Decl. ¶ 16. Combined, the parties served and responded to hundreds of requests, produced thousands of pages of documents, took eight depositions, and briefed several discovery disputes. *Id.* ¶¶ 16–19; ECF Nos. 64–66, 80–96. Shortly after the close of discovery, Plaintiff moved for class certification and Papa John's moved for summary judgment. ECF Nos. 120, 129.

Meanwhile, during discovery, the parties had exchanged settlement proposals on the Court's order. *See* ECF No. 107. The parties were referred to Magistrate Judge Appenteng for a settlement conference, which took place on October 30, 2024. ECF No. 140. While the settlement conference was unsuccessful, the parties continued to discuss settlement as they completed renewed briefing on summary judgment and class certification. Larry Decl. ¶ 22; ECF Nos. 141–191. With briefing completed on those motions, the parties renewed their settlement negotiations and scheduled a mediation with the Honorable James R. Epstein (ret.) of JAMS Chicago. Larry Decl. ¶ 23. The mediation took place by videoconference on August 18, 2025, and was attended by Plaintiff, his counsel, and counsel and a representative from Papa John's. *Id.* ¶ 24. The session ended with a mediator's proposal, which the parties agreed to four days later. *Id.* The parties then

negotiated the full terms of the Settlement Agreement and developed the notice plan with the Settlement Administrator. *Id.*

The Court preliminarily approved the settlement on December 17, 2025, ECF No. 210. The Settlement Administrator disseminated the Court-approved notice on February 16, 2026. Larry Decl. ¶ 25. To date, no Class member has requested exclusion, and none has objected to the settlement. *Id.* ¶ 26.

3. ARGUMENT

Given the results achieved by the Settlement, Class Counsel now moves for an award of attorneys' fees of one-third of the Net Settlement Fund ($729,944), along with $13,890.42 in unreimbursed expenses, and an incentive award to Plaintiff of $10,000.

3.1. The Court should award the requested attorneys' fees.

Rule 23 authorizes courts to "award reasonable attorneys' fees … that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). With common-fund settlements, attorneys' fees should be based on the "market rate," which is determined by "approximating the terms that would have been agreed to *ex ante*, had negotiations occurred." *In re Snythroid Mktg. Litig.*, 264 F.3d 712, 719 (7th Cir. 2001). That approximation involves "weigh[ing] the available market evidence … assess[ing] the amount of work involved, the risks of nonpayment, and the quality of representation." *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011). Here, each of those factors supports the requested fee award.

3.1.1. The fees sought are on the lower end of the market range.

"To determine the market for attorney's fees, the court should look to 'actual fee contracts that were privately negotiated for similar litigation, information from other cases, and data from class-counsel auctions.'" *Williams*, 658 F.3d at 624 (quoting *Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir. 2005)). Those factors show that the market for an attorney-fee contract on this

litigation would be calculated on a percentage-of-the-fund basis, and would be at least one third of the net settlement fund, as Class Counsel seeks here.

To start, Plaintiff's engagement agreement with his attorneys provides that they shall be paid up to 40 percent of the common fund, while the settlement provides for fees of up to one-third of the net settlement fund. Larry Decl. ¶ 28; ECF No. 206-1, ¶ 4.1.1;[2] *Gehrich v. Chase Bank, N.A.*, 316 F.R.D. 215, 235 (N.D. Ill. 2016). And the last factor—class-counsel auctions in similar cases—offers little guidance. Class Counsel are unaware of any class-counsel auctions in BIPA or similar cases. Rather, auction data typically comes from the securities class-action context, and "auctions in securities actions have little bearing on this case." *Heekin v. Anthem, Inc.*, No. 05-cv-1908, 2012 WL 5878032, at *4 n.2 (S.D. Ind. Nov. 20, 2012).

The remaining factor, evidence from similar cases, is given the most weight, and offers the greatest support for the request here. *See, e.g.*, *Taubenfeld*, 415 F.3d at 600 ("[A]ttorneys' fees from analogous class action settlements are indicative of a rational relationship between the record in this similar case and the fees awarded by the district court."). To start, awards in similar cases establish that "[t]he approach favored in the Seventh Circuit is to compute attorneys' fees as a percentage of the benefit conferred on the class." *William v. Gen. Elec. Cap. Auto Lease*, No. 94-cv-7410, 1995 WL 765266, at *9 (N.D. Ill. Dec. 26, 1995). To Class Counsel's knowledge, the percentage-of-the-fund method has been used to determine the fee award in every BIPA class action that has resulted in a monetary recovery.

Within the percentage-of-the-fund model, fees of one-third of the fund are on the low end of the market for BIPA settlements. Within the Northern District, higher fee awards are common,

[2] Under the terms of the Settlement, Papa John's retains the right to oppose the fee request. ECF No. 206-1, ¶ 4.1.1.

if not the norm. *See, e.g.*, *Cothron v. White Castle System, Inc.*, No. 19-cv-382, ECF No. 212 (N.D. Ill. Aug. 5, 2024) (37.5% of fund); *Howe v. Speedway, LLC*, No. 19-cv-1374, ECF No. 218 (N.D. Ill. Oct. 22, 2025) (37.5% of fund); *Nosal v. Rich Prods. Corp.*, No. 20-cv-4972, ECF No. 74 (N.D. Ill. Sept. 5, 2024) (37.5% of fund); *Johnson v. Ralph's Grocery Co.*, No. 22-cv-2409, ECF No. 75 (N.D. Ill. May 29, 2024) (35% of fund). And Illinois state courts regularly award even larger amounts.[3]

An award of one-third of the Net Settlement Fund, therefore, is supported by the market in similar cases.

3.1.2. The risk of non-recovery and the work required to obtain the result further justifies the fee award.

The risks of non-recovery, and the work required to overcome those risks, further support the requested fee award. When Plaintiff filed his complaint in December 2020, Class Counsel faced a substantial risk that they would not recoup their fees and costs. Merits risks included the possibility that the information collected through the FOCUS system would not be considered biometric identifiers or information under BIPA, and that Papa John's did not possess or obtain that data. *See* ECF Nos. 155, 183. The case also presented class-certification risk, as discovery could have shown that Papa John's directly or through its franchisees obtained BIPA-compliant consent from some portion of the putative class, that the functionality of the FOCUS system's

[3] *See, e.g.*, *Zepeda v. Intercontinental Hotels Group, Inc.*, No. 2018-CH-02140 (Cir. Ct. Cook Cnty., Ill., Dec. 5 2018) (attorneys' fee award of 40% of settlement fund in BIPA class settlement); *Svagdis v. Alro Steel Corp.*, No. 2017-CH-12566 (Cir. Ct. Cook Cnty., Ill., Jan. 14, 2019 (same); *Zhirovetskiy v. Zayo Grp., LLC,* No. 2017-CH-09323 (Cir. Ct. Cook Cnty., Ill., Apr. 8 2019) (same); *McGee v. LSC Commc'ns*, No. 2017-CH-12818 (Cir. Ct. Cook Cnty., Ill., Aug. 7 2019) (same); *Smith v. Pineapple Hosp. Grp.*, No. 2018-CH-06589 (Cir. Ct. Cook Cnty., Ill., Jan. 22 2020) (same); *Prelipceanu v. Jumio Corp.*, No. 2018-CH-15883 (Cir. Ct. Cook Cnty. Ill., Jul. 21 2020) (same); *Freeman-McKee*, No. 2017-CH-13636 (Cir. Ct. Cook Cnty., Ill., June 25, 2021) (same); *Knobloch v. ABC Fin. Servs., LLC et al.*, No. 2017-CH-12266 (Cir. Ct. Cook Cnty., Ill. June 25, 2021).

fingerprint scanner changed during the class period, or that individualized issues otherwise predominated. *See* ECF No. 161. Class Counsel was also aware of the risks posed by pending appeals and potential amendments to BIPA, including that the statute of limitations could limit the class size, *see Tims v. Black Horse Carriers, Inc.*, 2023 IL 127801; *Cothron v. White Castle Sys., Inc.*, 2023 IL 128004, that recoveries could be limited, *see Cothron*, 2023 IL 128004; 2024 Ill. S.B. 2979, or that BIPA could be amended in a way that barred Plaintiff's recovery entirely. *See, e.g.*, 2023 Ill. H.B. 2252.

Despite those risks, Class Counsel put significant work into the case to secure the Class's recovery. Prior to filing, Class Counsel had to identify and investigate the technology used by Papa John's franchisees. Larry Decl. ¶ 29. Then Class Counsel then went through full discovery on both class certification and the merits. *Id*. Class Counsel had to brief class certification and summary judgment. *See* ECF Nos. 142, 162, 179. All the while, Class Counsel was engaging in periodic settlement discussions with Papa John's (including a settlement conference with Magistrate Judge Appenteng in October 2024, and the mediation with Judge Epstein that led to settlement), and engaging in and briefing discovery disputes with Papa John's. *See* ECF Nos. 64, 65, 80–96. And since preliminary approval, Class Counsel has continued to work on the Class's behalf, working with the settlement administrator to ensure prompt dissemination of notice and to review the validity of the claims submitted. Larry Decl. ¶ 27.

All told, the risks that Class Counsel accepted in taking on the litigation, and the work put in to secure a recovery, further support the requested fee award

3.1.3. The recovery for the Class supports the requested fee award.

"[I]n determining the reasonableness of the attorneys' fee … the central consideration is what class counsel for the members of the class." *Redman*, 768 F.3d at 633. Here, Class Counsel was able to recover $2,250,000 on the Class's behalf, or $205 per class member. *See* ECF Nos.

205, 206-1. That recovery exceeds the typical recoveries in other BIPA cases against companies that provided biometric-clocking software. *See, e.g.*, *Bernal v. ADP LLC, et al.*, No. 2017-CH-12364 (Ill. Cir. Ct. Feb. 10, 2021) (gross recovery of $78.13 per class member); *Sayas v. Biometric Impressions Corp.*, No. 2020-CH-00201 (Ill. Cir. Ct. Mar. 6, 2024) (gross recovery of $108.50 per class member); *Franchini et al. v. Accu-Time Systems, Inc.*, No. 21-cv-5075, ECF No. 83 (N.D. Ill. Sept. 15, 2025) (preliminary approval of gross recovery of $125 per member); *Heard v. OmniCell, Inc.*, No. 2019-CH-6817 (Ill. Cir. Ct. Apr. 6, 2023) (gross recovery of $114 per class member); *Neals v. PAR Tech. Corp.*, No. 19-cv-5660, ECF Nos. 136, 140 (N.D. Ill. July 20, 2022) (gross recovery of $222.03 per member for class of only 3,558 members); *Figueroa v. Kronos Inc.*, No. 19-cv-1306, ECF No. 380 (Dec. 20, 2022) (gross recovery of $186.50 per member); *Thome v. NOVAtime Tech., Inc.*, No. 19-cv-6256, ECF No. 90 (N.D. Ill. Mar. 8, 2021) ($66.13 gross per class member); *Bryant v. Compass Grp. USA, Inc.*, No. 19-cv-6622, ECF No. 125 (N.D. Ill. Sept. 8, 2022) ($102.78 gross per class member).

The class's gross recovery of $205 per member is even stronger in light of the fact that the settlement does not provide a release to Papa John's franchisees, *see* ECF No. 206-1, ¶ 1.31, meaning that each class member retains any separate BIPA claims they have against the franchisees who employed them and obtained or possessed their biometrics without obtaining the BIPA-requisite consent. By contrast, some BIPA settlements have released vendors (as Papa John's effectively is here) *and* employers, with no additional compensation for the class members. *See, e.g.*, *Bryant*, No. 19-cv-6622, ECF No. 125.

Class Counsel's obtainment of above-average relief, while retaining class members' ability to pursue claims against individual franchisees, further supports the requested fee of one third of the Net Settlement Fund.

3.1.4. A lodestar cross-check confirms the propriety of the fee award.

Though the market analysis above justifies Class Counsel's fee request on its own, the propriety of the request is bolstered by the fact that the fee request generates a lodestar multiplier well within the normal range in common-fund class actions, and BIPA settlements specifically. "Although it is true that a lodestar cross-check is not necessary in determining the reasonableness of attorneys fees, nevertheless, courts often refer to the lodestar in making this determination." *N.P. v. Standard Innovation Corp.*, No. 16-cv-8655, 2017 WL 10544061, at *4 (N.D. Ill. July 25, 2017) (collecting cases). "The purpose of a lodestar cross-check is simply to determine whether a proposed fee award is excessive relative to the hours reportedly worked by counsel, or whether the fee is within some reasonable multiple of the lodestar." *In re TransUnion Corp. Privacy Litig.*, No. 00-cv-4729, 2009 WL 4799954, at *17 (N.D. Ill. Dec. 9, 2009) (collecting cases), *order modified and remanded on other grounds*, 629 F.3d 741 (7th Cir. 2011).

Here, the "lodestar cross-check confirms [Class] Counsel's requested fees are appropriate." *Woods v. Club Cabaret, Inc.*, No. 15-cv-1213, 2017 WL 4054523, at *10 (C.D. Ill. May 17, 2017). Class Counsel's lodestar, based on their hourly rates and hours billed as detailed in their supporting declarations, totals $324,460.40. *See* Larry Decl. ¶ 32; Declaration of Thomas R. Kayes ("Kayes Decl."), filed contemporaneously herewith, ¶ 10. That generates a lodestar multiplier of 2.25, which will only decrease as additional work is completed, including final approval briefing and working with the settlement administrator to ensure claiming class members receive their payments.

"In practice, most multipliers fall between one and four." *In re TikTok, Inc., Consumer Privacy Litig.*, 617 F. Supp. 3d 904, 943 (N.D. Ill. 2022) (collecting cases); *Corzo v. Brown Univ.*, No. 22-cv-2024 WL 3506498, at *7 (N.D. Ill. July 20, 2024) ("When performing lodestar cross-checks, courts have approved multipliers between one and four."). That range holds true

for BIPA litigation, where multipliers regularly exceed two and occasionally exceed four. *In re TikTok*, 617 F. Supp. 3d at 943 (2.04 multiplier); *see also In re Facebook Biometric Info. Privacy Litig.*, 522 F. Supp. 3d 617, 633 (N.D. Cal. 2021), *aff'd*, 21-15553, 2022 WL 822923 (9th Cir. Mar. 17, 2022) (4.71 multiplier); *Howe v. Speedway, LLC*, No. 19-cv-1374, ECF Nos. 213, 218 (N.D. Ill. Oct. 22, 2025) (2.6 multiplier); *Cothron v. White Castle Sys., Inc.*, No. 19-cv-382, ECF Nos. 208, 212 (N.D. Ill. Aug. 5, 2024) (4.3 multiplier).

Here, given the substantial risks present in the case and detailed in the class-certification and summary-judgment briefing, *see* Section 3.1.2, *supra*, and the above-average recovery against a technology-provider defendant, *see* Section 3.1.3, *supra*, the proposed multiplier of, at most, 2.25 is both reasonable and justified.

3.2. Class Counsel's expenses should be reimbursed from the fund.

Rule 23(h) and the common-fund doctrine both allow for recovery of litigation expenses from a common fund. Fed. R. Civ. P. 23(h); *Holbrook v. Pitt*, 748 F.2d 1168, 1176 (7th Cir. 1984). Reasonable expenses are those "that are consistent with market rates and practices and are … supported by the facts and circumstances of [the] case." *In re Ready-Mixed Concrete Antitrust Litig.*, No. 05-cv-979, 2010 WL 3282591, at *3 (S.D. Ind. Aug. 17, 2010).

Here, Class Counsel seeks reimbursement of $13,890.42 in unreimbursed litigation expenses. Those expenses included mediation costs, filing fees, service of process, deposition transcripts, printing and delivery of filings, consulting-expert costs, and travel costs. Larry Decl. ¶ 34.[4] Those expenses were, in Class Counsel's experience, ordinarily priced, *see id.* ¶ 36, and

[4] The amount sought does not include an additional $12,183.70 in court reporter and deposition fees that, due to a clerical error, were not included in the expense total stated in the class-notice documents, and which therefore will not be recovered from the common fund. Larry Decl. ¶ 35.

were necessarily incurred as part of the litigation that secured the Class's recovery. *Id.* Because those expenses were incurred for the Class's benefit, they should be reimbursed from the common fund.

3.3. The Court should approve the requested incentive award.

Plaintiff also seeks an incentive award of $10,000 for serving as a class representative. *See* ECF No. 206-1, ¶ 4.2. Incentive awards are appropriate in class actions to compensate individuals for spending their own time to achieve benefits for the broader class. *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998). Because a named plaintiff is essential to any class action, "[i]ncentive awards are justified when necessary to induce individuals to become named representatives." *Spano v. The Boeing Co.*, No. 06-cv-743, 2016 WL 3791123, *4 (S.D. Ill. Mar. 31, 2016) (approving incentive awards of $25,000 and $10,000 for class representatives) (internal citation omitted).

Throughout the case, Plaintiff conferred with Class Counsel, provided information and documentation to prepare the pleadings, reviewed the complaints, answered Papa John's interrogatories, produced relevant documents, sat for a deposition, and engaged in the settlement process, including attending the settlement conference with Magistrate Judge Appenteng and the mediation with Judge Epstein, both of which took place by videoconference. Larry Decl. ¶ 37. These efforts from Plaintiff were necessary to secure the recovery. *Id.* Plaintiff was also willing to attach his name to this litigation, which is a matter of public record, and which has resulted in the publication of his name and involvement to the world at large, subjecting him to "scrutiny and attention," which is "certainly worth some remuneration." *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 601 (N.D. Ill. July 29, 2011).

Additionally, Plaintiff's requested incentive award is in line with or below the amounts often awarded in BIPA cases. *See, e.g.*, *Rogers v. CSX Intermodal Terminals, Inc.*, 2019-CH-04168, Final Order and Judgment, ¶ 21 (Cir. Ct. Cook Cnty., Ill., May 13, 2021) ($15,000 incentive award in BIPA settlement); *Gonzalez v. Silva Int'l, Inc.*, No. 2020-CH-03514, Final Order and Judgment, ¶ 19 (Cir. Ct. Cook Cnty., Ill., June 24, 2021) ($10,000 incentive award in BIPA settlement); *Davis v. Heartland Emp. Servs., LLC*, No. 19-cv-00680, ECF No. 130 (N.D. Ill. Oct. 25, 2021) ($10,000 incentive award in BIPA settlement); *see also* Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303, 1348 (2006) (finding that "[t]he average award per class representative was $15,992").

Accordingly, Plaintiff's requested incentive award warrants approval.

4. CONCLUSION

For the foregoing reasons, Plaintiff Preston Kyles respectfully requests that the Court enter an order: (1) awarding Class Counsel attorneys' fees of $729,944, to be paid from the settlement fund; (2) awarding Class Counsel expenses of $13,890.42, to be paid from the settlement fund; (3) awarding Plaintiff an incentive award of $10,000, to be paid from the settlement fund; and (4) granting such other and further relief as the Court deems reasonable and just.

Dated: April 3, 2026

Respectfully submitted,

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