IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
JACKSON COUNTY, ILLINOIS

SHARON J. MCFARLAND, individually and on behalf of all similarly situated individuals,	)	
Plaintiff,	)	Case No. 2021L64
v.	)	Hon. Michael A. Fiello
SIU PHYSICIANS & SURGEONS, INC., an Illinois Corporation,	)	
Defendant.	)	

PLAINTIFF'S MOTION & MEMORANDUM OF LAW IN SUPPORT OF APPROVAL OF ATTORNEYS' FEES, EXPENSES, & SERVICE AWARD

Plaintiff Sharon McFarland, by and through her attorneys, and pursuant to 735 ILCS 5/2-801, hereby moves for an award of attorneys' fees and expenses for Class Counsel, as well as a Service Award for Plaintiff as the Class Representative, in connection with the class action settlement with SIU Physicians & Surgeons, Inc. In support of this Motion, Plaintiff submits the following memorandum of law.

Dated: June 28, 2023

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I. INTRODUCTION

The Settlement[1] that Class Counsel have achieved in this case is an excellent result for the Settlement Class Members, as the Settlement provides them with the opportunity to recover up to $2,800.00 in compensation for losses incurred in connection with a third party's unauthorized access to Defendant SIU Physicians & Surgeons, Inc.'s Accellion electronic file transfer service; provides them with the ability to claim one year of Experian Identity Works 3B credit monitoring free of charge (a service that normally retails for $24.99 per month); and also provides valuable non-monetary relief through Defendant's enhancement of its data security measures, including the replacement of the Accellion file transfer application subject to the Data Incident. As described in further detail below, the Settlement and benefits provided thereunder represent an excellent resolution of this high-risk, complex litigation.

The Court preliminarily approved the Settlement on May 1, 2023. Direct notice of the Settlement commenced on May 31, 2023. As of the filing of this Motion, hundreds of claims have already been submitted, with approximately eight weeks remaining before the Claims Deadline. To date, no Settlement Class Member has objected to any aspect of the Settlement.

With this Motion, Class Counsel request an award of attorneys' fees and litigation expenses in the amount of $243,500.00. As explained in detail below, Class Counsel's requested fee and expense award is justified given the outstanding monetary and non-monetary relief provided under the Settlement, is consistent with Illinois law and fee awards granted in other cases in Illinois courts, and is also reasonable given the time Class Counsel have committed to resolving this litigation for the benefit of the Settlement Class Members. Importantly, if approved, Defendant's

[1] Unless otherwise indicated, capitalized terms have the same meaning as those terms are used in the Settlement Agreement ("Agreement"), which is attached as Exhibit 1 to Plaintiff's previously filed Motion for Preliminary Approval.

payment of the fee and expense request to Class Counsel and Service Award to Plaintiff will have no impact on the settlement consideration made available to the Settlement Class Members under the Settlement Agreement.

Both Class Counsel and the Class Representative devoted significant time and effort to the prosecution of the Settlement Class Members' claims, and their efforts have yielded an outstanding benefit to the Class. The requested attorneys' fees and costs and Service Award are amply justified in light of the investment, significant risks, and excellent results obtained for the Settlement Class Members, particularly given the substantial uncertainty and fluid landscape regarding data breach-related law. Plaintiff and Class Counsel respectfully request that the Court approve attorneys' fees and reasonable expenses of $243,500.00 and the agreed-upon Service Award of $7,500.00 for Plaintiff as Class Representative.

II. BACKGROUND

A. The Case And Procedural History

Defendant discovered in January 2021 that sensitive patient data of many Illinois individuals – including but not limited to names, dates of birth, Social Security numbers, medical record numbers, health insurance information, and medical treatment or diagnosis information – was compromised in a data security breach of its File Transfer Appliance ("FTA"), which was provided to Defendant by Accellion, USA, LLC ("Accellion"). Plaintiff received a notice on or about April 13, 2021 informing her that her personal information was subject to the data security breach.

On September 15, 2021, Plaintiff filed this case against Defendant in the Circuit Court of the First Judicial Circuit, Jackson County, Illinois. On January 21, 2022, Plaintiff filed a First Amended Complaint, asserting claims against Defendant under six counts for: (1) negligence; (2)

breach of implied contract; (3) breach of the implied covenant of good faith and fair dealing; (4) violations of the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), 815 ILCS 505/1, *et seq*.; (5) unjust enrichment; and (6) invasion of privacy – public disclosure of private facts.

On February 28, 2022, Defendant moved to dismiss Plaintiff's First Amended Complaint. On March 31, 2022, Plaintiff filed her opposition to the motion to dismiss, and on July 12, 2022, following full briefing and oral argument, the Court entered an Order granting in part and denying in part Defendant's Motion. Counts I, II, and VI were dismissed, but the Court sustained Counts III (breach of the implied covenant of good faith and fair dealing); IV (violation of the ICFA); and V (unjust enrichment) of Plaintiff's Complaint. On August 10, 2022, Defendant filed its Answer and Affirmative Defenses. On September 13, 2022, the Court entered an Agreed Scheduling Order setting forth initial fact and expert discovery deadlines, and on September 30, 2022, Plaintiff propounded her First Set of Requests for Production and First Set of Interrogatories.

B. The Parties' Settlement Negotiations

On November 15, 2022, in an effort to reach an early resolution to what would otherwise continue to be highly-contested litigation, the Parties participated in a full-day, arm's-length mediation overseen by the Honorable Diane Joan Larsen (Ret.) of JAMS., a former Judge of the Circuit Court of Cook County, Illinois. With the assistance of Judge Larsen, the Parties ultimately reached a settlement in principle. Counsel for Plaintiff and for Defendant expended significant efforts to reach a settlement, including but not limited to exchanging formal mediation submissions, identifying potential class members, and participating in arm's-length negotiations. Only after agreeing upon the relief to be provided to the Settlement Class Members did the Parties negotiate the amount of attorneys' fees and expenses and Service Award that Plaintiff and Class

Counsel would be authorized to seek under the Settlement Agreement. The Parties continued negotiating certain terms over the following months even after reaching an agreement in principle and were ultimately able to agree upon the terms of a settlement which the Court preliminarily approved on May 1, 2023.

III. THE SETTLEMENT

A. The Settlement Provides Settlement Class Members With Exceptional Monetary And Non-Monetary Relief.

Class Counsel's prosecution of this litigation has culminated in this class-wide Settlement that provides exceptional monetary relief to the Settlement Class Members. Settlement Class Members who submit a valid and timely Claim Form are eligible for up to $2,800.00 to compensate for losses (Agreement, § 3.1). More specifically, Settlement Class Members will be eligible to claim up to $300.00 for unreimbursed ordinary losses, such as money paid out of pocket for credit monitoring, including up to $75.00 of undocumented lost time. In addition, Settlement Class Members will be able to claim up to an additional $2,500.00 for extraordinary losses arising from identity theft or other fraud. (*Id.*, § 3.1(a)-(b)). Additionally, all Class Members are entitled to obtain one year of Experian Identity Works 3B credit monitoring. (*Id.*, § 3.2). As other courts have noted, this Experian service carries a retail value of $24.99 per month and includes several features not typically available in "free" credit monitoring services.[2]

The Settlement also provides valuable non-monetary relief to the Settlement Class. Defendant represents that it has taken reasonable steps to enhance its data security measures, including replacing the breaching Accellion file transfer application. (Ex. 1, § 3.3). This will

[2]*See Identity Protection Plans*, EXPERIAN, https://www.experian.com/consumer-products/compare-identity-theft-products.html (last accessed April 11, 2023); *In re Equifax Inc. Customer Data Security Breach Litigation*, No. 17-md-02800, Order Granting Final Approval of Settlement, Certifying Settlement Class, and Awarding Attorneys' Fees, Expenses and Service Awards, Dkt. 956 (N.D. Ga. Jan. 13, 2020).

benefit the Settlement Class Members and individuals who provide their personal information to Defendant in the future.

B. Pursuant to the Settlement Agreement's Notice Plan, Notice Has Been Sent To The Class Members.

Under the Settlement Agreement's Notice Plan, which has already gone into effect, direct notice has been provided to the Settlement Class Members via U.S. Mail. (*See* Declaration of Eugene Y. Turin ("Turin Decl."), attached hereto as Exhibit 1, ¶ 16). The Settlement Website is operational and makes available the Claim Form, detailed Long Form Notice (including a Spanish-language version), and all relevant case information to Settlement Class Members, and permits Class members to submit claims online. To date, hundreds of claims have been submitted for Settlement benefits and no Class Members have objected to the Settlement. (*Id.*).

IV. ARGUMENT

A. The Court Should Award Class Counsel's Requested Attorneys' Fees.

Pursuant to the Settlement, Class Counsel seek an award of $243,500.00, inclusive of $5,109.51 in reimbursable expenses. (Agreement, § 8.1). Such a request is well within the range of fees and expenses approved in other class actions and is fair and reasonable in light of the work performed by Class Counsel and the excellent recovery secured on behalf of the Settlement Class Members. It is well settled that attorneys who, by their efforts, create a common recovery 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)). "When determining a fee award in class action litigation, the trial court has discretion to use either the percentage-of-recovery or lodestar methods." *McCormick v. Adtalem Glob. Educ., Inc.*, 2022 IL App (1st) 201197-U, ¶ 24 (citing *Brundidge v. Glendale Federal Bank, F.S.B.*, 168 Ill. 2d 235, 243–44 (1995)). Under the percentage-of-the-recovery approach, the attorneys' fees

awarded are "based upon a percentage of the amount recovered on behalf of the plaintiff class." *Brundidge*, 168 Ill. 2d at 238. Alternatively, when applying the lodestar approach, the attorneys' fees to be awarded are calculated by determining the total amount of hours spent by counsel in order to secure the relief obtained for the class at a reasonable hourly rate, multiplied by a "weighted" "risk multiplier" that takes into account various factors such as "the contingency nature of the proceeding, the complexity of the litigation, and the benefits that were conferred upon the class members." *Id.* at 240.

Here, Plaintiff submits that the Court should apply the percentage-of-the-recovery approach—the approach used in the vast majority of privacy class actions, including data breach 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; *McCormick v. Adtalem Glob. Educ., Inc.*, 2022 IL App (1st) 201197-U, ¶ 26 (noting that "numerous criticisms have been lodged against the lodestar method"). This is because the lodestar method is disfavored, as it not only adds needless work for the Court and its staff,[3] 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 lodestar method has been long criticized by Illinois courts as "increas[ing] the workload of an already overtaxed judicial system . . . creat[ing] a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law . . . le[ading] to abuses such as

[3] *See Langendorf v. Irving Trust Co.*, 244 Ill. App. 3d 70, 80 (1st Dist. 1992), abrogated on other grounds by 168 Ill. 2d 235.

lawyers billing excessive hours … not provid[ing] the trial court with enough flexibility to reward or deter lawyers so that desirable objectives will be fostered . . . [and being] confusing and unpredictable in its administration." *Ryan v. City of Chicago,* 274 Ill. App. 3d 913, 923 (1st Dist. 1995).

Conversely, the use of the percentage-of-the-recovery approach flows from, and is supported by, the fact that the percentage-of-the-recovery approach promotes early resolution of the matter, as it disincentivizes protracted litigation driven solely by counsel's efforts to increase their lodestar. *Brundidge*, 168 Ill.2d at 242. For this reason, a percentage method best aligns the interests of the class and its counsel, as class counsel are encouraged to seek the greatest amount of relief possible for the class rather than simply seeking the greatest possible amount of attorney time regardless of the ultimate recovery obtained for the class. Applying a percentage-of-the-recovery approach is also generally more appropriate in cases like this one because it best reflects the fair market price for the legal services provided by the class counsel. *See 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") (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force*, 108 F.R.D. 237, 255–56 (3d. Cir. 1985); *Sutton v. Bernard*, 504 F.3d 688, 693 (directing district court on remand to consult the market for legal services so as to arrive at a reasonable percentage of the common fund recovered). This approach also accurately reflects the contingent nature of the fees negotiated between Class Counsel and Plaintiff, who agreed *ex ante* that up to 40% of any recovery for the Class plus reimbursement of costs and expenses would represent a fair award of attorneys' fees. (Turin Declaration, ¶ 19); *see also In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 795 (N.D. Ill. 2015) (applying the percentage-of-

the-recovery approach and noting that class members would typically negotiate fee arrangements based on percentage method rather than lodestar).

Moreover, the percentage-of-the-recovery method is commonly used by Illinois courts to determine a reasonable fee award in privacy-related settlements such as this. *See, e.g., Monegato v. Fertility Centers of Illinois, PLLC*, No. 22-CH-00810 (Cir. Ct. Cook Cnty., Ill. Apr. 20, 2023) (awarding $275,000 to class counsel in data breach class settlement as a percentage of the value of each claimable settlement benefit); *Willis v. iHeartMedia Inc.*, No. 16-CH-02455 (Cir. Ct. Cook Cnty., Ill. Aug. 11, 2016) (awarding attorneys' fees and costs using the percentage method in a TCPA class settlement); *Jackson v. UKG Inc.*, No. 2020L0000031 (Cir. Ct. McLean Cnty., Ill. May 20, 2022) (awarding attorneys' fees and costs using the percentage-of-the-recovery method in BIPA class settlement); *Lark v. McDonald's USA, LLC*, No. 17-L-559 (Cir. Ct. St. Clair Cnty., Ill. Feb. 28, 2022) (awarding attorneys' fees and costs using the percentage-of-the-recovery method in reversionary BIPA class settlement). Accordingly, the Court should adopt and apply the percentage-of-the-recovery approach here. Under this approach, as set forth more fully below, Class Counsel's requested attorneys' fees are eminently reasonable.

B. Class Counsel's Requested Fees Are Reasonable Under The Percentage-Of-The-Recovery Method Of Calculating Attorneys' Fees.

When assessing a fee request under the percentage-of-the-recovery method, courts often consider the magnitude of the recovery achieved for the Settlement Class Members and the risk of non-payment in bringing the litigation. *See Ryan*, 274 Ill. App. 3d at 924 (affirming district court's attorney fee award due to the contingency risk of pursuing the litigation, and the benefit obtained). As set forth below, this Settlement provides excellent relief for the Settlement Class Members and in the context of such an excellent result, and weighed against the risk of continuing, protracted litigation, Class Counsel's fee request is fair.

1. *The requested attorneys' fees and expenses amount to less than 1/3 of the Settlement's recovery—a percentage within, if not well below, the range found reasonable in similar cases.*

The requested award of $243,500.00 is reasonable in relation to the value of the Settlement, which makes available millions of dollars in value to the Settlement Class Members. Considering the $24.99 retail value of just *one month* of Experian Identity Works 3B credit monitoring made available to the approximately 40,000 Settlement Class Members (and they are entitled to a full year of such coverage) – and not factoring in the additional ability to claim up to $300.00 for unreimbursed ordinary losses, including up to $75.00 of undocumented lost time, or up to an additional $2,500 for extraordinary loss – the Settlement relief is easily valued in excess of $10,000,000.

Fee awards of 33% of the recovery or greater are commonly awarded in class action settlements approved by courts throughout Illinois, including data breach settlements such as this. *See Hestrup v. DuPage Medical Grp., Ltd.*, No. 2021L937 (Cir. Ct. DuPage Cnty., Ill. Nov. 14, 2022) (approving class counsel's request for 33% of the settlement value, plus their litigation expenses, in data breach settlement); *McNicholas v. Illinois Gastroenterology Group, P.L.L.C.*, No. 22-LA-173 (Cir. Ct. Lake Cnty., Ill. May 3, 2023) (approving class counsel's request of 36.4% of the benefits made available to the Settlement Class in data breach settlement); *Willoughby v. Lincoln Insurance Agency*, No. 22-CH-01917 (Cir. Ct. Cook Cnty., Ill. 2022) (awarding 40% of the BIPA class settlement fund in attorneys' fees); *Rapai v. Hyatt Corp.*, No. 17-CH-14483 (Cir. Ct. Cook Cnty., Ill. 2022) (same); *Knobloch v. ABC Financial Services, LLC et al.*, No. 17-CH-12266 (Cir. Ct. Cook Cnty., Ill. 2021) (same); *Bodie v. Capitol Wholesale Meats, Inc.*, 22-CH-000020 (Cir. Ct. DuPage Cnty., Ill. 2022) (same); *Rogers v. CSX Intermodal Terminals, Inc.*, No. 19-CH-04168 (Cir. Ct. Cook Cnty. 2021) (attorneys' fee award of 38% of settlement fund in class

settlement); *see Retsky Family Ltd. P'ship v. Price Waterhouse LLP,* No. 97-cv-7694, 2001 WL 1568856, at *4 (N.D. Ill. Dec. 10, 2001) (noting that a "customary contingency fee" ranges "from 33 1/3% to 40% of the amount recovered") (citing *Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986)); *Meyenburg v. Exxon Mobil Corp.,* No. 05-cv-15, 2006 WL 2191422, at *2 (S.D. Ill. July 31, 2006) ("33 1/3% to 40% (plus the cost of litigation) is the standard contingent fee percentages in this legal marketplace for comparable commercial litigation"). Thus, Class Counsel's request of $243,500.00, inclusive of their litigation expenses, is reasonable and well within, if not substantially less than, the range of fees approved by Illinois courts as reasonable in privacy-related class action settlements.

2. *The requested attorneys' fees are appropriate given the significant risks involved in continued litigation.*

The Settlement in this case, which has now been pending for almost two years, represents an excellent result for the Settlement Class, especially given that Defendant has expressed a firm denial of Plaintiff's material allegations and the intent to raise several affirmative defenses which, if successful, would likely result in Plaintiff and the Settlement Class Members receiving no compensation whatsoever. Indeed, Defendant already successfully challenged several of Plaintiff's claims at the pleadings stage. While Plaintiff and Plaintiff's Counsel are confident in the strength of Plaintiff's remaining claims, they are also pragmatic in their awareness of the various defenses available, and the risks inherent to litigation. Data breach cases are, by nature, especially risky and expensive, including what would likely be contentious expert discovery. And in addition to any defenses on the merits Defendant can raise, Plaintiff would also otherwise be required to prevail on a class certification motion, which would be highly contested and for which success would certainly not be guaranteed. As in any data breach class action, establishing causation and damages on a class-wide basis is largely unchartered territory and full of uncertainty.

In the face of these obstacles and unknowns, and due to their significant efforts in identifying cognizable claims and prevailing in part on Defendant's Motion to Dismiss, Class Counsel succeeded in negotiating and securing a settlement where every Settlement Class Member will be able to submit a claim for up to $2,800.00 in compensation for actual losses and receive one year of free credit monitoring worth nearly $300 at retail. The Settlement's provision of excellent monetary relief to each valid claimant now, as opposed to years from now, or perhaps never, represents a truly excellent result.

3. *The substantial monetary and non-monetary relief obtained on behalf of the Settlement Class Members further justify the requested percentage of attorneys' fees.*

As stated above, under the Settlement Agreement Class Members are eligible to claim up to $300.00 for unreimbursed ordinary losses, including up to $75.00 of undocumented lost time, up to an additional $2,500.00 for extraordinary losses arising from identity theft or other fraud, and are *additionally* entitled to obtain one year of Experian Identity Works 3B credit monitoring. This relief compares favorably to the relief provided in other finally-approved data breach settlements. *See, e.g.*, *Perdue v. Hy-Vee, Inc.*, 550 F. Supp. 3d 572, 574 (C.D. Ill. 2021) (finally approving class settlement where class members could seek reimbursement for only $225 in ordinary expenses, including three hours of documented lost time valued at only $20 per hour, and the settlement did not offer the ability to receive free credit monitoring); *In re: CaptureRX Data Breach Litigation*, No. 5:21-cv-00523 (S.D. Fla.) (finally approving settlement in medical data breach class action that made benefits available to the class of approximately $1.96 per class member); *In re Anthem, Inc. Data Breach Litigation*, No. 5:15-md-02617 (N.D. Cal.) (finally approving settlement making available benefits to the settlement class at approximately $1.45 per class member).

In addition to the monetary compensation that Class Counsel have obtained for the Settlement Class Members, the Settlement also provides for valuable non-monetary relief. Defendant represents that it has taken reasonable steps to enhance its data security measures, including replacing the breached Accellion file transfer application. (Ex. 1, § 3.3). This will benefit the Settlement Class Members and individuals who provide their personal information to Defendant in the future.

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."); *Clarke v. Lemonade Inc. et al.*, No. 2022LA000308 (Cir. Ct. DuPage Cnty., Ill. Aug. 25, 2022) (awarding class counsel's attorney fee request of 28% of the cash settlement fund combined with the estimated value of the injunctive relief).

Given the outstanding monetary compensation obtained for the Settlement Class Members and the non-monetary relief here, an award of $243,500.00, inclusive of Class Counsel's litigation expenses, is eminently reasonable—particularly, as discussed above, in light of the uncertainty and fluid nature of the relevant law, the "substantial risk in prosecuting this case under a contingency

fee agreement" and the "defenses asserted by [Defendant]." *Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 59.

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

Class Counsel have expended $5,109.51 in reimbursable expenses related to mediation expenses, filing fees, and case administration. (Turin Decl., ¶ 18). 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). Therefore, Class Counsel request that the Court approve as reasonable the incurred expenses as part of their overall request of $243,500.00.

D. The Agreed-Upon Service Award For Plaintiff Is Reasonable And Should Be Approved.

The requested $7,500.00 Service Award is reasonable compared to other awards granted to class representatives in similar class actions. 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*, 2016 WL 3791123, at *4 (approving awards of $25,000 and $10,000 for class representatives) (internal citation omitted); *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 497 (1st Dist. 1992) (noting that incentive awards "are not atypical in class action cases . . . and serve to encourage the filing of class actions suits.").

Here, Plaintiff's efforts and participation in prosecuting this nearly two-year-old case justify the $7,500.00 Service Award sought. Even though no award of any sort was promised to Plaintiff prior to the commencement of the litigation or any time thereafter, Plaintiff nonetheless

contributed her time and effort in pursuing her own claims, as well as in serving as a representative on behalf of the Settlement Class Members—exhibiting a willingness to participate and undertake the responsibilities and risks attendant with bringing a representative action. (Turin Decl., ¶¶ 20-21).

Plaintiff participated in the initial investigation of her claim and provided documents and information to Class Counsel, such as the data breach notice she received from Defendant, 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 the Class Representative meant that Plaintiff publicly placed her name on this suit and opened herself to "scrutiny and attention" which, in and of itself, "is certainly worthy of some type of remuneration," particularly in the context of a lawsuit against one of her employer's vendors. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 600–01 (N.D. Ill. 2011). Were it not for Plaintiff's willingness to pursue this action on a class-wide basis, her efforts and contributions to the litigation by assisting Class Counsel with their investigation and prosecution of this suit, and her 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. (Turin Decl., ¶ 22).

The $7,500.00 Service Award requested for Plaintiff is well in line with the average service award granted in class actions. Indeed, many courts that have granted final approval in privacy class action settlements have granted higher awards than the payment sought here. *See, e.g., Sabon*, 2016 IL App (2d) 150236, ¶ 15 (affirming trial court's approval of settlement which included incentive awards of $15,000 to the class representatives); *Rogers*, 19-CH-04168 (Cir. Ct. Cook

Cnty., Ill. May 13, 2021) (awarding $15,000 service award in BIPA class action settlement); *Rapai*, 17-CH-14483 (Cir. Ct. Cook Cnty., Ill., Jan. 26, 2022) (awarding $12,500 incentive award in class action settlement); *Crawford Lumber Co. v. Interline Brands, Inc.*, No. 11-cv-4462, 2015 WL 1399367, at *6 (N.D. Ill. Mar. 23, 2015) (awarding $25,000 incentive award in TCPA class settlement). Compensating Plaintiff for the risks and efforts she undertook to benefit the Settlement Class Members is reasonable under the circumstances of this case, especially in light of the excellent results obtained. As shown above, courts have regularly approved awards in similar class action litigation of at least $7,500.00. Moreover, no objection to the Service Award has been raised to date. Accordingly, a Service Award of $7,500.00 to Plaintiff is reasonable, justified by Plaintiff's time and effort in this case, and should be approved.

V. CONCLUSION

For the foregoing reasons, Plaintiff and Class Counsel respectfully request that the Court enter an Order: (1) approving an award of attorneys' fees and expenses of $243,500; and (ii) approving a Service Award in the amount of $7,500.00 to Plaintiff in recognition of her significant efforts on behalf of the Settlement Class Members.

Dated: June 28, 2023

Respectfully submitted,

SHARON J. MCFARLAND, individually and on behalf of a class of similarly situated individuals

By: /s/ Timothy P. Kingsbury
One of Plaintiff's Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that, on June 28, 2023, I filed the foregoing *Plaintiff's Motion and Memorandum of Law in Support of Attorneys' Fees, Expenses, and Service Award* using the Court's CM/ECF Filing System, with a copy sent via electronic mail to the below counsel of record.

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/s/ Timothy P. Kingsbury

EXHIBIT 1

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
JACKSON COUNTY, ILLINOIS

SHARON J. MCFARLAND, individually and on behalf of all similarly situated individuals, *Plaintiff*, v. SIU PHYSICIANS & SURGEONS, INC., an Illinois Corporation, *Defendant.*	)	Case No. 2021L64 Hon. Michael A. Fiello

DECLARATION OF EUGENE Y. TURIN

I, Eugene Y. Turin, 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 fully competent to make this Declaration and do so in support of Plaintiff's Motion and Memorandum of Law in Support of Approval of Attorneys' Fees, Expenses, and Service Award.

2. I am an attorney at McGuire Law, P.C. and I, along with my colleagues, Timothy P. Kingsbury and Chandne Jawanda, have been appointed as Class Counsel, representing Plaintiff Sharon McFarland and the Settlement Class in this matter.

3. McGuire Law, P.C. is a law firm based in Chicago, Illinois that focuses on class action litigation, representing clients in both state and federal trial and appellate courts throughout the country.

4. I and the other attorneys of McGuire Law 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 numerous consumer privacy class actions, and

recently obtained the first-ever jury verdict in plaintiffs' favor in a BIPA class action. *See Rogers v. BNSF Railway Co*. (N.D. Ill. 2022). McGuire Law attorneys and their firms have been appointed as class counsel in numerous complex class actions, including consumer data breach class actions, in state and federal courts across the country, including including in Illinois state courts, Illinois federal courts, and other courts throughout the country. *See, e.g*, *Paluzzi, et al. v. mBlox, Inc., et al*. (Cir. Ct. Cook Cnty., Ill. 2009); *Parone et al. v. m-Qube, Inc. et al.* (Cir. Ct. Cook Cnty., Ill. 2010); *Satterfield v. Simon & Schuster* (N.D. Cal. 2010); *Lozano v. Twentieth Century Fox Film Corp, et al.* (N.D. Ill. 2011); *Schulken 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); *In re Jiffy Lube Int'l, Inc. Text Spam Litigation* (S.D. Cal. 2013); *Robles v. Lucky Brand Jeans* (N.D. Cal. 2013); *Murray et al v. Bill Me Later, Inc.* (N.D. Ill. 2014); *Valladares et al. v. Blackboard, Inc*. *et al.* (Cir. Ct. Cook Cnty., 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 Cnty., Ill. 2017); *Serrano et al. v. A&M (2015) LLC* (N.D. Ill. 2017); *Zepeda et al. v. Intercontinental Hotels Group, Inc.* (Cir. Ct. Cook Cnty., Ill. 2018); *Vergara et al. v. Uber Technologies, Inc.* (N.D. Ill. 2018); *Sheeley v. Wilson Sporting Goods Co.*, 18-CH-04770 (Ill. Cir. Ct. 2018); *Zhirovetskiy v. Zayo Group, LLC* (Cir. Ct. Cook Cnty., Ill. 2019); *McGee et al v. LSC Communications, Inc., et al.* (Cir. Ct. Cook Cnty., 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 Cnty., Ill. 2020); *Garcia v. Target Corp.* (D. Minn. 2020); *Burdette-Miller v. William & Fudge, Inc.* (Cir. Ct. Cook Cnty., Ill 2020); *Farag v. Kiip, Inc.* (Cir. Ct. Cook Cnty., Ill. 2020); *Lopez v. Multimedia Sales & Marketing, Inc.* (Cir. Ct. Cook Cnty., Ill. 2020); *Prelipceanu v. Jumio Corp.* (Cir. Ct. Cook Cnty., Ill. 2020); *Williams v. Swissport USA, Inc.* (Cir. Ct. Cook Cnty., Ill.

2020); *Glynn v. eDriving,* LLC (Cir. Ct. Cook Cnty., Ill. 2020); *Pearlstone v. Wal-Mart Stores, Inc.* (E.D. Mo. 2021); *Kusinski v. ADP, LLC* (Cir. Ct. Cook Cnty., Ill. 2021); *Draland v. Timeclock Plus, LLC* (Cir. Ct. Cook Cnty., Ill. 2021); *Harrison v. Fingercheck, LLC* (Cir. Ct. Lake Cnty., Ill. 2021); *Rogers v. CSX Intermodal Terminals, Inc.* (Cir. Ct. Cook Cnty., Ill. 2021); *Freeman-McKee v. Alliance Ground Int'l, LLC* (Cir. Ct. Cook Cnty., Ill. 2021); *Gonzalez v. Silva Int'l, Inc.* (Cir. Ct. Cook Cnty., Ill. 2021); *Salkauskaite v. Sephora USA, Inc.* (Cir. Ct. Cook Cnty., Ill. 2021); *Williams v. Inpax Shipping Solutions, Inc.* (Cir. Ct. Cook Cnty., Ill. 2021); *Roberts v. Paramount Staffing, Inc.* (Cir. Ct. Cook Cnty., Ill. 2021); *Roberts v. Paychex, Inc.* (Cir. Ct. Cook Cnty., Ill. 2021); *Zanca v. Epic Games, Inc.* (Superior Ct. Wake Cnty., N.C. 2021); *Rapai v. Hyatt Corp.* (Cir Ct. Cook Cnty., Ill. 2022); *Jackson v. UKG, Inc.* (Cir. Ct. McLean Cnty., Ill. 2022); *Vo v. Luxottica of America, Inc.* (Cir. Ct. Cook Cnty., Ill. 2022); *Rogers v. Illinois Central Railroad Co.* (Cir. Ct. Cook Cnty., Ill. 2022); *Stiles v. Specialty Promotions, Inc.* (Cir. Ct. Cook Cnty., Ill. 2022); *Fongers v. CareerBuilder LLC* (Cir. Ct. Cook Cnty., 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 v. Veriff, Inc.* (Cir. Ct. DuPage Cnty., Ill. 2023); *Davis v. Cafeteria Alternatives, Inc.* (Cir. Ct. Cook Cnty., Ill. 2023).

5. The attorneys of McGuire Law have intimate knowledge of the law in the fields of technology and privacy. Recognized as pioneers in the field of privacy-based consumer class actions, including class actions involving the TCPA and BIPA, McGuire Law attorneys have served as counsel of record for groundbreaking rulings involving technology at the state and federal district and appellate court levels, including at the U.S. Supreme Court. *See, e.g., Shen v.*

Distributive Networks, Inc. (N.D. Ill. 2007); *Weinstein et al. v. The Timberland Co. et al.* (N.D. Ill. 2008); *Satterfield et al. v. Simon & Schuster*, *Inc.* (9th Cir. 2009); *Espinal et al. v. Burger King Corporation et al.* (S.D. Fla. 2010); *Abbas et al. v. Selling Source, LLC* (N.D. Ill. 2010); *Damasco et al. v. Clearwire Corp.* (7th Cir. 2011); *Ellison et al. v. Steven Madden, Ltd.* (C.D. Cal. 2013); *Robles et al. v. Lucky Brand Dungarees, Inc. et al.* (N.D. Cal. 2013); *In re Jiffy Lube Spam Text Litigation* (S.D. Cal. 2013); *Lee, et al. v. Stonebridge Life Ins. Co. et al*. (N.D. Cal. 2013); *Elikman et al. v. Sirius XM Radio, Inc.* (N.D. Ill. 2015); *Campbell-Ewald Co. v. Gomez et al.*, 136 S. Ct. 663 (2016); *Bolds v. Arro Corp., et al.* (Cir. Ct. Cook Cnty. Ill. 2019); *Rogers v. BNSF Railway Co*. (N.D. Ill. 2019); *Wordlaw v. Enterprise Holdings, Inc.* (N.D. Ill. 2020); *Fleury v. Union Pacific. R.R. Co.* (N.D. Ill. 2021).

6. 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.

7. I have substantial experience litigating class action cases in state and federal courts, including as the lead attorney in dozens of class action suits across the country involving violations of consumer privacy rights, and have been appointed class counsel in Illinois state court, the U.S. District Court for the Northern District of Illinois, the U.S. District Court for the District of Minnesota, and the U.S. District Court for the Central District of California. I am a graduate of Loyola University of Chicago and the Loyola University of Chicago School of Law. I have been admitted to practice in the Illinois Supreme Court, the Supreme Court of California, and in multiple federal courts throughout the country, including the Ninth Circuit Court of Appeals and the

Seventh Circuit Court of Appeals.

8. My colleague, Timothy P. Kingsbury, is an associate at McGuire Law with experience as the primary attorney in numerous putative class actions pending in Illinois state and federal courts and has been appointed class counsel in many finally-approved privacy-related class settlements. Mr. Kingsbury received his B.A. from Princeton University and his J.D. from the University of Illinois College of Law. Mr. Kingsbury has been admitted to practice in the Illinois Supreme Court and in multiple federal courts nationwide, including the Fourth Circuit Court of Appeals and Seventh Circuit Court of Appeals.

9. My colleague, Chandne Jawanda, is an associate at McGuire Law and has experience in several putative class actions pending in Illinois state and federal courts. Ms. Jawanda received her B.A. from the University of Arkansas and her J.D. from the University of Illinois Chicago School of Law.

Class Counsel's Contribution to the Case

10. From the outset of this litigation, the attorneys and support staff of McGuire Law, P.C. 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.

11. McGuire Law, P.C. assumed a significant risk of non-payment in prosecuting this litigation given the novelty of legal issues involved and the uncertainty in the field of data breach class litigation; the legal issues involving Plaintiff's and the Class Members' standing; and the other vigorous and nuanced legal defenses that Defendant and its skilled counsel have raised and were prepared to litigate had this case proceeded further.

12. From the outset of the litigation, Defendant and its counsel indicated that they planned to present strong defenses to Plaintiff's claims on the merits and the ability to represent a class of those whose personal information Plaintiff alleges was compromised following third-party hackers' unauthorized access to Defendant's Accellion electronic file transfer service. Indeed, prior to settlement, Defendant successfully moved to dismiss several of Plaintiff's claims, and had this case not settled, the Parties would have engaged in additional motion practice, including at the summary judgment stage, preceded by substantial merits discovery. In addition, the Parties would have had to undergo lengthy class discovery and briefing on class certification, which Defendant would have aggressively contested. Given the financial resources at its disposal, any final decisions favorable to Plaintiff would have also likely been appealed by Defendant.

13. Class Counsel were able to obtain the substantial benefits provided to the Settlement Class Members through the Settlement, despite the significant risks, only as a result of their efforts in investigating the facts surrounding the compromise of the Accellion file transfer service, carefully preparing the pleadings in this matter, defeating Defendant's Motion to Dismiss Plaintiff's claims in their entirety 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.

14. The work that the attorneys of McGuire Law, P.C. have committed to this case has been substantial. Among other things, the attorneys of McGuire Law have:

a. Investigated the compromise of Defendant's Accellion file transfer service;

b. Drafted and filed Plaintiff's Class Action Complaint;

c. Drafted and filed Plaintiff's First Amended Class Action Complaint;

d. Briefed, argued, and prevailed on Defendant's Motion to Dismiss Plaintiff's First Amended Class Action Complaint;

e. Drafted and filed Plaintiff's Answer to Defendant's Affirmative Defenses;

f. Prepared and served written discovery requests to Defendant;

g. Prepared for and attended a full-day mediation session with the Hon. Diane Joan Larsen (Ret.) of JAMS Chicago, a former Judge of the Circuit Court of Cook County, Illinois;

h. Engaged in months of continued settlement communications and negotiations, and exchanged settlement drafts with Defendant's counsel, which resulted in the drafting and execution of the finalized Settlement Agreement and related documents, including class notice and claim form documents;

i. Attended multiple court hearings;

j. Prepared numerous stipulations and other case filings;

k. Successfully moved for preliminary approval of the Settlement; and

l. Oversaw the implementation of the Settlement, including multiple email communications with the Settlement Administrator about class notice, the settlement website, and claims submission.

15. In addition to the above efforts taken by Class Counsel to secure the Settlement reached here for the Settlement Class Members, pursuant to the terms of the Settlement and this Court's Preliminary Approval Order, McGuire Law has been primarily responsible for monitoring the effectuation of notice to Class Members and responding to Class Member inquiries.

16. Following the Court's entry of its Preliminary Approval Order, Defendant and the Settlement Administrator, RG2 Claims Administration, created a Class List pursuant to the Settlement Agreement, and since that time, the Settlement Administrator has informed me that direct notice of this Settlement has been sent out to approximately 40,000 Settlement Class Members with determinable addresses via U.S. Mail. In addition, the Settlement Website is active and features all relevant case documents in electronic format, including an electronic claims

submission portal. The Settlement Admninistrator has advised me that to date there have been no objections to the Settlement, approximately 563 Claim Forms have already been received, and there have been only 26 requests for exclusion.

17. Based on my experience in other class action settlements, I anticipate that our firm 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, reviewing submitted claims rejected by Defendant and/or the Settlement Administrator, and remaining involved with the Settlement through implementation, including continuous communications with the Settlement Administrator relating to claims submissions and benefits distribution.

18. In addition to attorney time expended in pursuit of this case, McGuire Law, P.C. has incurred $5,109.51 in expenses related to this litigation, which is comprised primarily of mediation fees, filing fees, and case administration expenses. Being responsible for advancing all expenses, Class Counsel had a strong incentive not to expend any funds unnecessarily.

19. Plaintiff executed a fee agreement with my firm that was contingent in nature. Plaintiff agreed *ex ante* that up to 40% of any settlement fund, plus reimbursement of all costs and expenses, would represent a fair award of attorneys' fees from a fund recovered on behalf of herself and a class. My colleagues and I 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.

The Class Representative's Contributions to the Case

20. Plaintiff has been significantly involved in this litigation and has willingly contributed her own time and efforts toward this litigation, and is deserving of the proposed Service

Award. Plaintiff was instrumental in alerting Class Counsel to the compromise of Defendant's Accellion file transfer system and assisting Class Counsel's investigation into Defendant's response to that data security incident. Moreover, Plaintiff's sensitive information was subject to the security incident but Plaintiff chose to proceed with her claims on behalf of a class, despite having the financial incentive to pursue her claims on an individual basis, and has succeeded in obtaining significant financial relief, as well as important non-monetary relief, on behalf of the class.

21. Plaintiff has consistently made herself available to consult with Class Counsel in person, over the phone, and by email and did so on numerous occasions. Plaintiff also reviewed pleadings and settlement documents, produced information, and devoted her time for the benefit of the class.

22. Were it not for Plaintiff's willingness to step forward in this case as the named class representative, her efforts and contributions to the litigation by assisting Class Counsel, and her monitoring of the case throughout its litigation, the substantial benefit to the class afforded under this Settlement Agreement would not have been achieved. Plaintiff has not received any payment in this matter, was never promised any payment, and was not promised that she would receive an award of any kind in this litigation. Rather, the requested Service Award seeks only to compensate Plaintiff for her time, effort, and contributions to this case.

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

Executed on June 28, 2023 in Chicago, Illinois.

/s/ Eugene Y. Turin
Eugene Y. Turin, Esq.