IN THE CIRCUIT COURT OF DUPAGE COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

TAMEKA BURCHETT, individually and on behalf of all others similarly situated, Plaintiff, v. CHATEAU NURSING AND REHABILITATION CENTER, LLC, Defendant.	: : : : : : : .	CASE NO.: 2024LA000900 CLASS ACTION

PLAINTIFF'S UNOPPOSED MOTION AND MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL FEE AND EXPENSE AWARD AND FEES AND PLAINTIFF SERVICE AWARD

I. INTRODUCTION

In this class action BIPA lawsuit, the Plaintiff, Tameka Burchette, has alleged that Defendant Chateau Nursing and Rehabilitation Center, LLC violated the Illinois Biometric Privacy Act (BIPA) by collecting and disseminating the Plaintiff and other employees' biometric information without first obtaining written consent.

On April 22, 2025, this Court preliminarily approved the Parties' classwide Settlement Agreement (copy of that order is attached as **Exhibit A**). That Settlement Agreement had the following key terms:

- Class Size: 657
- Total Settlement Fund: $427,050.00
- Per-Class Member Share: $650.00 (gross), $337.32 (net)
- Structure: opt-out settlement, with uncashed checks reverting to Defendant.

In connection with preliminarily approving the class settlement, the Court appointed the Plaintiff as Class Representative, and undersigned counsel – Mark Hammervold of Hammervold Law and Rachel Dapeer of Dapeer Law, P.A. – as Class Counsel.

Plaintiff now seeks approval of a Fee and Expense Award[1] for Class Counsel equal to 40% of the Settlement Fund, which would be $170,820.00, along with a Service Award of $2,500.00 for the Plaintiff and Class Representative, Ms. Burchette.

As required by this Court's order preliminarily approving the class settlement, *see* Ex. A, ¶ 8, the Settlement Administrator sent the class notice to all Settlement Class Members – by both mail *and* email (where available) – on May 22, 2025. Declaration of Mark Hammervold, Exhibit B, ¶ 15. The class notice informed all class members that Class Counsel was seeking attorneys'

[1] This 40% covers both Class Counsels' fees and costs. Class Counsel is not seeking a separate or additional award of costs.

fees and costs in the amount of 40% of the fund and that the Plaintiff was requesting a $2,500 service fee. *Id.* ¶ 16. To date, no Settlement Class Member has objected to the Settlement and no Settlement Class Member has requested exclusion. *Id.* ¶ 17.

As soon as is practicable Class Counsel will ensure a copy of this Motion is uploaded to the class settlement website,[2] so it will be available for all Settlement Class Members. *Id.* ¶ 18.

Based on the proposed Fee and Expense Award for Class Counsel and Service Award, Plaintiff previously advised this Court that each class member would receive $337.32 net from the settlement.[3] [4] In granting preliminary approval of the Class Settlement this Court specifically found the "expected net amount of $337.32 per class member to be reasonable." Ex. A, ¶ 2.

In summary, this Court should approve a 40% Fee and Expense Award for Class Counsel for the following reasons:

1. The "percentage of the fund" method is the near-universal and preferred method for awarding attorneys' fees for a class settlement like this.
2. 40% of the fund is reasonable, including because:
    a. 40% of the fund is often granted for BIPA class settlements like this;
    b. 40% of the fund is appropriate given Class Counsel's skill and experience, the excellent result achieved here and the risk counsel undertook in litigating this case;
    c. Each Settlement Class Member will receive a reasonable net recovery;
    d. Settlement Class members were given notice of the exact amount Class Counsel is requesting for attorneys' fees and costs and are not expected to object; and

[2] https://chateaubipasettlement.com/
[3] *See* Memorandum in Support of Plaintiff's Renewed Unopposed Motion for Preliminary Approval of Class Action Settlement, filed Apr. 17, 2025, at p. 2.
[4] This is required by local rule 6.11. This Court denied Plaintiff's initial Unopposed Motion for Preliminary Approval of Class Action Settlement because it did not clearly present this information on the first page.

In summary, this Court should approve a $2,500 Service Award for the Plaintiff for the following reasons:

1. This amount is reasonable compared to other awards granted to class representatives in similar class actions;

2. The Plaintiff's efforts and participation were instrumental for the class settlement;

3. The Plaintiff faced reputational risk by suing her former employer and publicly attaching her name to this class action lawsuit;

II. ARGUMENT

Class Counsel's requested 40% Fee and Expense Award and Plaintiff's requested $2,500 Service Award are reasonable, fully supported by Illinois authority, and appropriate considering the risks undertaken, the results achieved, and the notice provided to and lack of objection from Settlement Class Members.

A. The Court Should Approve the Attorney Fee and Expense Award for Class Counsel.

In determining the appropriate method for awarding fees, courts typically apply the percentage-of-the-fund approach, particularly where the settlement creates a common fund for the benefit of the class. Applying that method, Class Counsel's requested 40% Fee and Expense Award is reasonable and customary in BIPA cases and appropriate based on the risk undertaken and value delivered to the Settlement Class in this case.

1. The Percentage-of-the-Fund Method Is Appropriate.

Illinois has adopted the "common fund doctrine" for the payment of attorneys' fees in class action cases. *Wendling v. S. Ill. Hosp. Servs.*, 242 Ill.2d 261, 265 (2011). This "provides that 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." *Id.* (internal quotation omitted). The basis for this is that "successful litigants would be unjustly enriched if their attorneys

were not compensated from the common fund created for the litigants' benefit." *Brundidge v. Glendale Fed. Bank F.S.B.*, 168 Ill. 2d 235, 238 (1995). "By awarding fees payable from the common fund created for the benefit of the entire class, the court spreads the costs of litigation proportionately among those who will benefit from the fund." *Id.* (internal citation omitted).

The Illinois Supreme Court has expressly approved this approach, explaining: "[a]warding attorney fees to plaintiffs' counsel based on a percentage of the fund held by the court is, overall, a fair and expeditious method that reflects the economics of legal practice and equitably compensates counsel for the time, effort, and risks associated with representing the plaintiff class." *Brundidge v. Glendale Federal Bank, F.S.B.*, 168 Ill. 2d 235, 243–44 (1995); *see Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 58 (affirming trial court's fee award to class counsel based on percentage of the fund method).

The percentage-of-the-recovery approach awards fees "based upon a percentage of the amount recovered on behalf of the plaintiff's class." *Brundidge*, 168 Ill. 2d at 238. The lodestar approach awards fees based on the reasonable value of the services rendered and increasing that amount by a "weighted multiplier" determined by a multitude of factors, such as the complexity of litigation, contingency, and benefit conferred upon class members. *Id.* at 239-40.

The percentage-of-the-recovery method is preferred because it 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 in the most efficient timeframe practicable 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 v. City of Chicag*o, 274 Ill. App. 3d 913, 923 (1st Dist. 1995) ("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).

The disfavored lodestar method has been criticized for "increas[ing] the workload of an already overtaxed judicial system, … create[ing] a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law, … [adding] to abuses such as 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*, 274 Ill. App. 3d at 923.

The percentage-of-the-recovery approach makes the most sense for this case and has been used in many other BIPA class action settlements.[5]

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 highly reasonable.

2. 40% is a Reasonable and Customary Award in BIPA Cases.

Under Illinois law, "an attorney is entitled to an award from the fund for the reasonable value of his or her legal services." *Ryan*, 274 Ill. App. 3d at 922. The forty percent (40%) attorneys' fee award proposed here is reasonable and fully consistent with class action awards generally, and BIPA cases specifically.

[5] Class Counsel is not aware of any Illinois BIPA case where the percentage of the fund method was not used. *See, eg., Sekura v. L.A. Tan Enters.*, 2015 CH 1664; *Zepeda v. Kimpton Hotel & Rest.*, 2018 CH 02140 (Cir. Ct. Cook Cty. Dec. 5, 2018); *Taylor v. Sunrise Senior Living Mgmt., Inc.*, 2017-CH-15152 (Cir. Ct. Cook Cty. Feb. 14, 2018); Svagdis, 2017 CH 12566; *Gordon v. IFCO Sys. US LLC*, 2019 L 144 (Will Cty. Cir. Ct.); *Lloyd v. Xanitos*, 18 CH 15351 (Cook Cty. Cir. Ct.); *Dixon v. Smith Senior Living*, 17-cv-08033 (N.D. Ill. 2017); *Thome, et al. v. Novatime Technology, Inc.*, No. 19-cv-06256 (N.D. Ill. Mar. 8, 2021); *Kusinski, et al. v. ADP LLC*, No. 17 CH 12364 (Cir. Ct. Cook Cty. Feb. 10, 2021).

In many BIPA common fund settlements, Illinois courts have awarded forty (40%) percent of the common fund for attorneys' fees to class counsel. *See Sekura v. L.A. Tan Enters*., No. 2015-CH-1664 (Cir. Ct. Cook Cnty. Dec. 1, 2016) (awarding 40% of common fund to class counsel); *Svagdis v. Alro Steel Corp*., No. 2017-CH-12566 (Cir. Ct. Cook Cnty. Jan. 14, 2019) (same); *Zhirovetskiy v. Zayo Group, LLC*, No. 2017-CH-09323 (Cir. Ct. Cook Cnty. Apr. 8, 2019) (same); *McGee v. LSC Comms., Inc.*, No. 2017-CH-12818 (Cir. Ct. Cook Cnty. Aug. 7, 2019) (same); *Zepeda v. Intercontinental Hotels Group, Inc.,* No. 2018-CH-2140 (Cir. Ct. Cook Cnty.) (same); *Smith v. Pineapple Hospitality Grp.*, No. 2018-CH-06589 (Cir. Ct. Cook Cnty. Jan. 22, 2020) (same); *Prelipceanu v. Jumio Corp*., No. 2018-CH-15883 (Cir. Ct. Cook Cnty. July 21, 2020) (same); *Williams v. Swissport USA, Inc.*, No. 2019-CH-00973 (Cir. Ct. Cook Cnty. Nov. 12, 2020) (same); *Glynn v. eDriving, LLC*, No. 2019-CH-08517 (Cir. Ct. Cook Cnty. Dec. 14, 2020) (same); *Fick v. Timeclock Plus, LLC*, No. 2019-CH-12769 (Cir. Ct. Cook Cnty. Apr. 8, 2021) (same); *Freeman-McKee v. Alliance Ground Int'l, LLC*, No. 2017-CH-13636 (Cir. Ct. Cook Cnty. June 15, 2021) (same); *Knobloch v. ABC Financial Services, LLC*, No. 2017-CH-12266 (Cir. Ct. Cook Cnty. June 25, 2021) (same); *Sharrieff v. Raymond Management Co., Inc., et al.*, No. 2018-CH-01496 (Cir. Ct. Cook Cnty. Aug. 1, 2019); *Willoughby v. Lincoln Insurance Agency*, No. 22-CH-01917 (Cir. Ct. Cook Cnty., Ill. 2022) (Cohen, J.) (same); *Andres Marquez v. Bobak Sausage Company*, No. 2020-CH-4259 (Cir. Ct. Cook Cnty. Aug. 21, 2023) (same); *Galan v. Mullins Food Products, Inc,* No. 2021-CH-00898 (Cir. Ct. Cook Cnty. Sept. 30, 2024) (same); *Bennett v. Plant Site Logistics*, No. 2023LA68 (Cir. Ct. Rock Island Cnty. Feb. 19, 2025) (same); *Duncan v. Optimas OE Solutions, LLC*, No. 2024LA000883 (Cir. Ct. DuPage Cnty Mar. 25, 2024) (J. Schwartz) (same); *Zeck v. One Earth Energy,* No. 2024-LA-0002 (Cir. Ct. Ford Cnty Jul. 7, 2025) (same); see also 5 William B. Rubenstein et al., NEWBERG ON CLASS ACTIONS § 15:83 (5th ed. 2020)

(noting that, generally, "50% of the fund is the upper limit on a reasonable fee award from any common fund").

Class Counsel's requested Fee and Expense Award is even more reasonable because many of those cases approved 40% attorneys' fees and additional amounts for costs incurred. Here, Class Counsel is seeking a single 40% award to cover both attorneys' fees and expenses.[6]

3. The Risk Undertaken and the Result Achieved Justify the Requested Award.

Class Counsel are experienced class action attorneys and have been appointed class counsel in numerous actions in federal and state courts, including a long list of BIPA class actions. Hammervold Decl., Ex. B, 7-14. Their request for a Fee and Expense Award of 40% of the Settlement Fund is appropriate based on Class Counsel's skill and experience, the risk of litigating this case for a contingent fee, the value created by the representation here. *Id.* ¶ 22.

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 "hard cash benefit" obtained). The risk of litigating the case on a contingency fee basis must be assessed based on the case's risk at its inception and, in turn, how the market's risk assessment would have affected a hypothetical *ex ante* fee negotiation between counsel and potential client. *Goodell v. Charter Communications, LLC*, 2010 U.S. Dist. LEXIS 85010, at *4 (W.D. Wis. Aug. 17, 2010) ("The question is not how risky the case looks when it is at an end but how the market would have assessed the risks at the outset.").

[6] Class Counsel incurred several thousand dollars in expenses in connection with this case, including costs for mediation,. filing fees, process server and courier fees, research and software fees, mileage, printing and mailing. Hammervold Decl., Ex. B, ¶ 25.

Class Counsel took this case on a contingency, fronting costs and expenses, foregoing other work and accepting the risk they would receive no compensation if unsuccessful. At the time that Plaintiff's Counsel took on the case, success was far from assured for several reasons:

1. The BIPA landscape is unsettled and under constant threat of legislative change. For example, in 2021, the Legislature discussed changes that would retroactively eliminate the cause of action altogether.[7] The Legislature just recently imposed changes that impact BIPA cases and potentially apply retroactively (this issue is unsettled). Class Counsel has lost money, and received no fee (or a nominal fee), representing plaintiffs and other putative classes in other BIPA cases.[8]
2. The Plaintiff and Class' BIPA claims against Defendant were highly risky because the Defendant presented multiple credible and dispositive defenses to both class certification and on the merits, including consent, NLRB preemption, and the healthcare exemption under BIPA.
3. Even if Class Counsel defeated each of those defenses, certified the class over Defendant's objection, and prevailed on the merits, the Supreme Court has ruled that BIPA damages are discretionary. *Cothron v. White Castle System, Inc.*, 2023 IL 128004 ¶ 42 (noting damages under BIPA are "discretionary rather than mandatory").

Despite the significant risks inherent in any litigation, and the particular risks presented in this litigation, Class Counsel were able to obtain an outstanding result for the Settlement Class. In

[7] https://businesslawtoday.org/2021/04/will-proposed-amendments-biometric-information-privacy-act-bipa-retroactive/

[8] For example, in one recent case – concluding just *one day* prior to the filing of this Motion – undersigned counsel spent over a hundred hours, and advanced all case expenses, in a BIPA case for a contingent attorney fee of only $3,832.76. The case turned out to be non-viable as a class action, so it had to be pursued as an individual claim. Before an individual settlement could be completed, the plaintiff died intestate, and his sole heir was his minor son. Undersigned counsel then became ensnared in a contentious custody battle over the minor son between the decedent's mother and his ex-wife, which complicated completion of the settlement and required motion practice regarding probate and family law matters and multiple court appearances involving to eventually bring the case to conclusion.

the class settlement for this case, each class member will receive $650 gross. In two other class actions against related facilities represented by the same Defense Counsel and covered by the same insurance policies (*Sandra Morse v. Westmont Manor HRC, LLC*, No. 2020-CH-05550 and *Oscar Enriquez Galvez v. Spring Creek Nursing & Rehab Center, LLC*, No. 20-L-680), the settlements in those cases resulted in gross payments of $575 and $595 per class member, respectively. Hammervold Decl., Ex. B, ¶¶ 20.

The requested Fee and Expense Award would fairly and reasonably compensate Class Counsel for agreeing to take on this litigation in the face of substantial risks, and expending substantial time and other resources, including out-of-pocket litigation expenses, to achieve an excellent result on behalf of the Settlement Class in the face of those risks.

4. The Net Amount Settlement Class Members Will Receive is Reasonable.

Each Settlement Class Member will receive a net payment of $337.32 under the proposed allocation—an amount this Court has already determined to be reasonable in granting preliminary approval. Hammervold Decl., Ex. B, ¶ 23; Ex. A ¶ 2 ("Specifically, the Court finds the expected net amount of $337.32 per class member to be reasonable."). This reinforces the appropriateness of the requested Fee and Expense Award and the Plaintiff Service Award.

5. There Has Been No Objection to Class Counsel's Requested Fee and Expense Award.

Settlement Class Members have not objected to Class Counsel's requested Fee and Expense Award. Hammervold Decl., Ex. B, ¶ 17. This further supports that the award is reasonable and appropriate.

The class notice informed all Settlement Class Members of the specific amount of attorneys' fees Class Counsel would be requesting and the estimated amount Settlement Class Members would receive. *Id.* ¶ 16. Class Members had the opportunity to object to Class Counsel's

fees before the deadline for objections, but to date, no class member has opted-out, or objected to the settlement or the request for attorneys' fees and costs. *Id.* ¶ 17.

This Court required Plaintiff and Class Counsel to file this Service Award and Fee and Expense Motion two weeks before the deadline for objections and opt-outs to the Class Settlement (July 9, 2025 v. July 23, 2025), so that class members could have the opportunity to object to this Motion for attorneys' fees and costs and the Plaintiff service award, or to simply opt-out. Ex. A, ¶ 27. Class Counsel does not expect any class member to object to this Motion. Hammervold Decl., Ex. B, ¶ 18.

B. The Court Should Approve the Service Award for Plaintiff.

The requested $2,500.00 Service Award for Plaintiff 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 v. Boeing Co.*, No. 06-cv-743, 2016 WL 3791123, at *4 (S.D. Ill. Mar. 31, 2016) (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 action suits.").

Here, Plaintiff's efforts and participation in prosecuting this case justify the $2,500.00 Service Award sought for her. 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 claims and 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. Hammervold Decl., Ex. B, ¶ 24.

Plaintiff participated in the initial investigation of her claim 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 a Class Representative meant that Plaintiff publicly attached her name to this suit's caption and opened herself up to "scrutiny and attention" which, in and of itself, "is certainly worthy of some type of remuneration," particularly against her former employer. *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. *Id.*

The requested $2,500.00 Service Award for Plaintiff is well in line with the average service award granted in class actions. Indeed, many courts that have granted final approval in class action settlements have granted higher class representative awards than the payment sought here. *See, e.g., Shaun Fauley, Sabon, Inc.*, 2016 IL App. (2d) 150236, ¶ 15 (affirming trial court's approval of settlement which included incentive awards of $15,000 to the class representatives); *Aranda v. Caribbean Cruise Lince, Inc.*, No. 12 C 4069, 2017 U.S. Dist. LEXIS 54080, at *3 (N.D. Ill. Apr. 10, 2017) (awarding $10,000 to each of the class representatives). Compensating Plaintiff for the risks and effort she 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 class action litigation of at least $10,000.00. Moreover,

no objection to the Service Award has been raised to date. Accordingly, a $2,500.00 Service Award to the Plaintiff is reasonable, justified by Plaintiff's time and effort in this case, and should be approved.

III. CONCLUSION

For the foregoing reasons, Plaintiff and Class Counsel respectfully request that the Court enter an Order approving a Fee and Expense Award for Class Counsel in the amount of $170,820.00 and a Service Award of $2,500 for Plaintiff, in recognition of her significant efforts on behalf of the Settlement Class.

Dated: July 9, 2025

Respectfully submitted,

/s/ Mark Hammervold
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Counsel for the Plaintiff and the Class

[9] Ms. Dapeer filed a Rule 707 statement on February 14, 2025.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 9, 2025, a true and correct copy of this pleading was filed via *Odyssey eFileIL* e-filings portal and was sent via email to all counsel of record.

/s/ Mark Hammervold

Exhibit A

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5.

IN THE CIRCUIT COURT OF DUPAGE COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

TAMEKA BURCHETT, individually, and on behalf of all others similarly situated, Plaintiff, v. CHATEAU NURSING AND REHABILITATION CENTER, LLC, Defendant.	CASE NO.: 2024-LA-000900 CLASS ACTION

PRELIMINARY APPROVAL ORDER

This matter having come before the Court on Plaintiff's Unopposed Motion in Support of Preliminary Approval of Class Action Settlement ("Motion"), the Court having reviewed and considered the Motion, the Class Action Settlement Agreement ("Settlement Agreement") between Plaintiff Tameka Burchett ("Plaintiff" or "Class Representative") and Defendant Chateau Nursing and Rehabilitation Center, LLC ("Defendant") (together "the Parties"), and all other papers that have been filed with the Court related to the Settlement Agreement, including all exhibits and attachments to the Motion and Settlement Agreement, and the Court being fully advised in the premises, IT IS HEREBY ORDERED, as follows:

1. Capitalized terms used in this Order that are not otherwise defined herein have the same meaning assigned to them as in the Settlement Agreement. The Court adopts and incorporates terms of the Settlement Agreement herein.

2. The terms of the Settlement Agreement are preliminarily approved as fair, reasonable, and adequate and are fully incorporated and adopted herein. **Specifically, the Court finds the expected net amount of $337.32 per class member to be reasonable.** There is good cause to find that the Settlement Agreement was negotiated at arms-length between the Parties, who were represented by experienced counsel.

3. For settlement purposes only, the Court finds that the prerequisites to class action treatment under Section 2-801 of the Illinois Code of Civil Procedure — including numerosity, commonality and predominance, adequacy, and appropriateness of class treatment of these claims — have been preliminarily satisfied.

4. The Court hereby conditionally certifies, pursuant to Section 2-801 of the Illinois Code of Civil Procedure, and for the purposes of settlement only, the following Settlement Class consisting of: "all individuals who used a finger scan timekeeping system at Chateau Nursing and Rehabilitation Center, LLC at any time between February 6, 2019 to May 22, 2023. Excluded from the Settlement Class are: (1) Defendant's officers and directors, (2) Class counsel, (3) any judge presiding over this Action and members of their families, (3) persons who properly execute and file a timely request for exclusion from the class, (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released, and (5) the legal representatives, successors or assigns of any such excluded persons.

5. For settlement purposes only, Plaintiff Tameka Burchett is hereby appointed as the Class Representative.

6. For settlement purposes only, Mark Hammervold of Hammervold Law and Rachel Dapeer of Dapeer Law P.A. are hereby appointed as Class Counsel.

7. The Court recognizes that, pursuant to the Settlement Agreement, Defendant and Released Parties retain all rights to object to the propriety of class certification in the Litigation in all other contexts and for all other purposes should the Settlement not be finally approved. Therefore, as more fully set forth below, if the Settlement is not finally approved, and Litigation resumes, this Court's preliminary findings regarding the propriety of class certification shall be of no further force or effect whatsoever, and this Order will be vacated in its entirety.

8. The Court approves, in form and content, the Notice, attached to the Settlement Agreement as Exhibit A, and finds that it meets the requirements of Section 2-803 of the Illinois Code of Civil Procedure and satisfies Due Process requirements under the U.S. and Illinois Constitutions. **The notice must be sent by both mail and email, where available.**

9. The Court finds that the planned Notice set forth in the Settlement Agreement meets the requirements of Section 2-803 of the Illinois Code of Civil Procedure and constitutes the best notice practicable under the circumstances, where Class Members are current or former employees of Defendant or worked with or for Defendant and may be readily ascertained by Defendant's records, and satisfies fully the requirements of Due Process, and any other applicable law, such that the Settlement Agreement and Final Approval Order will be binding on all Settlement Class Members. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this action. The Parties, by agreement, may revise the Class Notice in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

10. Verita Global is hereby appointed Settlement Administrator to supervise and administer the notice process, as well as to oversee the administration of the Settlement, as more

fully set forth in the Settlement Agreement.

11. The Settlement Administrator may proceed with the distribution of Class Notice as set forth in the Settlement Agreement.

12. Settlement Class Members who wish to receive benefits under the Settlement Agreement are required to deposit their Direct Checks within one hundred and eighty (180) days in order to receive a monetary benefit.

13. Settlement Class Members shall be bound by all determinations and orders pertaining to the Settlement, including the release of all claims to the extent set forth in the Settlement Agreement, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. Settlement Class Members who do not timely and validly request exclusion shall be so bound even if they have previously initiated or subsequently initiate litigation or other proceedings against Defendant or the Released Parties relating to the Released Claims under the terms of the Settlement Agreement.

14. Any person within the Settlement Class may request exclusion from the Settlement Class by expressly stating their request for exclusion in writing. To be considered timely, such written exclusion requests must be mailed to the Settlement Administrator by first class mail, postage prepaid, and postmarked no later than thirty (30) days from the Notice Date.

15. In order to exercise the right to be excluded, a person within the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing their name, address, telephone number, the case name and number of this Litigation, and a statement that they wish to be excluded from the Settlement Class, and must be personally signed by the

person requesting exclusion. No person within the Settlement Class, or any person acting on behalf of, in concert with, or in participation with that person within the Settlement Class, may request exclusion from the Settlement Class on behalf of any other person within the Settlement Class.

16. Any person in the Settlement Class who elects to be excluded shall not: (i) be bound by any orders or the Final Approval Order; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement.

18. Class Counsel may file any motion seeking an award of attorneys' fees plus their reasonable costs and expenses, as well as a service award for the Class Representative, no later than 15 days prior to Final Approval Hearing.

19. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who wishes to object to any aspect of the Settlement Agreement, including the amount of the attorneys' fees, costs, and expenses that Class Counsel intends to seek and the payment of the service award to the Class Representative, may do so, either personally or through an attorney, by filing a written objection, together with the supporting documentation set forth in this Order, with the Clerk of the Court, and served upon Class Counsel, Defendant's Counsel, and the Settlement Administrator no later than twenty (20) days before the Final Approval Hearing.

20. Any Settlement Class Member who has not requested exclusion and who intends to object to the Settlement must state, in writing, all objections and the basis for any such objection(s), and must also state in writing: (i) their full name, address, and telephone number;

(ii) the case name and number of this Litigation; (iii) the date range during which they were employed by Defendant; (iv) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (v) the identification of any other objections they have filed, or have had filed on their behalf, in any other class action cases in the last five years; and (vi) the objector's signature. Objections not filed and served in accordance with this Order shall not be received or considered by the Court. Any Settlement Class Member who fails to timely file and serve a written objection in accordance with this Order shall be deemed to have waived, and shall be forever foreclosed from raising, any objection to the Settlement, to the fairness, reasonableness, or adequacy of the Settlement, to the payment of attorneys' fees, costs, and expenses, to the payment of the Service Award, and to the Final Approval Order and the right to appeal same.

21. A Settlement Class Member who has not timely requested exclusion from the Settlement Class and who has properly submitted a written objection in compliance with the Settlement Agreement may appear at the Final Approval Hearing in person or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement and/or Plaintiff's Counsel's Fee and Expense Application and/or the request for the service award to the Class Representative are required to indicate in their written objection their intention to appear at the Final Approval Hearing on their own behalf or through counsel. For any Settlement Class Member who files a timely written objection and who indicates their intention to appear at the Final Approval Hearing on their own behalf or through counsel, such Settlement Class Member must also

include in their written objection the identity of any witnesses they may call to testify, and all exhibits they intend to introduce into evidence at the Final Approval Hearing, which shall be attached.

22. No Settlement Class Member shall be entitled to be heard, and no objection shall be considered, unless the requirements set forth in this Order and in the Settlement Agreement are fully satisfied. Any Settlement Class Member who does not make their objection to the Settlement in the manner provided herein, or who does not also timely provide copies to the designated counsel of record for the Parties at the addresses set forth in the Settlement Agreement, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Final Approval Order.

23. All papers in support of the Final Approval of the proposed settlement shall be filed no later than fifteen days before the Final Approval Hearing.

24. A Final Approval Hearing shall be held before the Court on **August 21, 2025 at 10:00 a.m.** for the following purposes:

(a) to finally determine whether the applicable prerequisites for settlement class action treatment under 735 ILCS 5/2-801 have been met;

(b) to determine whether the Settlement is fair, reasonable and adequate, and should be approved by the Court;

(c) to determine whether the judgment as provided under the Settlement Agreement should be entered, including an order prohibiting Settlement Class Members from further pursuing Released Claims that have been released in the Settlement Agreement;

(d) to consider the application for an award of attorneys' fees, costs and expenses of Class Counsel;

(e) to consider the application for the Service Award to the Class Representative;

(f) to consider the distribution of the Settlement Fund pursuant to the Settlement Agreement; and

(g) to rule upon such other matters as the Court may deem appropriate.

25. The Final Approval Hearing may be postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class. At or following the Final Approval Hearing, the Court may enter a judgment approving the Settlement Agreement and a Final Approval Order in accordance with the Settlement Agreement that adjudicates the rights of all Settlement Class Members.

26. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

27. For clarity, the deadlines set forth above and in the Agreement are as follows:

- Class List Sent to Administrator by: May 6, 2025
- Notice to be completed by: May 22, 2025
- Service Award and Fee and Expense Motion/Application: July 9, 2025
- Objection and Opt-Out Deadline: July 23, 2025
- Motion for final approval: August 6, 2025
- Final Approval Hearing: August 21, 2025 at 10:00 am

28. All discovery and other proceedings in the Litigation as between Plaintiff and Defendant are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Settlement Agreement and this Order.

IT IS SO ORDERED.

ENTERED:

Honorable

4/22/25

Date

Exhibit B

IN THE CIRCUIT COURT OF DUPAGE COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

TAMEKA BURCHETT, individually and on behalf of all others similarly situated, Plaintiff, v. CHATEAU NURSING AND REHABILITATION CENTER, LLC, Defendant.	:	CASE NO.: 2024LA000900 CLASS ACTION

DECLARATION OF MARK HAMMERVOLD IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, Mark Hammervold, declare as follows:

1. I am co-lead counsel for Plaintiff in this matter. I reside and practice law in DuPage County. My DuPage Bar number is #387431. I have continuously been licensed to practice law in Tennessee since 2012, in Florida since 2013 and in Illinois since 2015. I remain in good standing in all three states. I have litigated cases in both state and federal courts throughout the nation. I respectfully submit this declaration in support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

CASE BACKGROUND

2. In this putative class action, Plaintiff Tameka Burchett alleges that Defendant Chateau Nursing and Rehabilitation Center, LLC violated Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/15(a) and 14/15(b) by requiring her and its other Illinois workers to "clock" in and out using their fingerprints.

3. I have been involved in all stages of litigation, taking lead on many tasks and providing a review and input into all other tasks in this litigation.

4. After filing this case on July 24, 2024, Counsel for the Plaintiff engaged in substantial efforts to conduct informal discovery and negotiate a resolution for the Plaintiff and Class' claims. On November 14, 2024, we participated in a global mediation with Judge James Holderman (Ret.).[1] The Parties did not complete a settlement at the mediation, but continued arm's-length negotiations on a potential class settlement. The Parties ultimately agreed on a class settlement on January 29, 2025.

EDUCATION AND EXPERIENCE

7. I have continuously been licensed to practice law in Tennessee since 2012, in Florida since 2013 and in Illinois since 2015. I remain in good standing in all three states.

8. I am also admitted in the federal district courts for the Middle District of Florida, Southern District of Florida, Northern District of Illinois, Middle District of Tennessee, Eastern District of Texas, Northern District of Texas, and Western District of Wisconsin. I am also admitted in the U.S. Courts of Appeals for the Third, Fifth, and Sixth Circuits.

9. I attended Vanderbilt University Law School on an academic scholarship and graduated in 2012. I previously attended Northwestern University on a merit scholarship for policy debate and graduated with honors in 2008.

10. After graduating, I first practiced with the law firm of Gideon Cooper & Essary, PLC from 2012 to 2015.

11. I thereafter established my own law firm – Hammervold Law – in 2015.

12. In 2020, I began associating with Kotchen & Low, L.L.P. as Of Counsel.

[1] The global mediation included the following cases: Townsend v. The Estates of Hyde Park, LLC, Case No. 2019-CH-11849, Brandon v. Extended Care Consulting, LLC, et al., Case No. 2024-CH-00777, Morse v. Westmont Manor HRC, LLC, Case No. 2020-CH-05550, Galvez v. Spring Creek Nursing Home, Case No. 20-L-680, Burchett v. Chateau Nursing and Rehabilitation Center, Case No. 2024-LA-000900, Pickett v. Countryside Nursing and Rehab, Case No. 2024-CH-06911, Wilkerson v. Prairie Manor Nursing Home (unfiled)

13. At Gideon Cooper, I primarily defended health care providers and companies in complex litigation across the country. For example, I was part of the small team of lawyers that represented the Tennessee healthcare provider defendants in *In Re: New England Compounding Pharmacy, Inc., Products Liability Litigation*, MDL No. 2419 (D. Mass), who ultimately settled for approximately $200 million.

11. Since shifting to primarily representing plaintiffs in 2015, I have litigated hundreds of cases in both state and federal court and have recovered tens of millions of dollars for my clients.

12. Since early 2020, I have primarily focused my practice on representing plaintiffs in employment and consumer class actions. Since that time, I have spent thousands of hours representing plaintiffs in putative and certified class action cases. Here are a couple of such cases:

a. In *Palmer, et al. v. Cognizant*, No. 17-6848-DMG (PLAx), the district court appointed me and several of my colleagues at Kotchen & Low to represent a class of over 2,000 former employees, whose collective damages likely exceed $1 billion. Dkt. 384 (C.D. Cal. Oct. 27, 2022) (granting plaintiffs' motion for class certification and appointing undersigned counsel). On October 4, 2024, the jury returned a verdict for the class on all three issues presented at the conclusion of a two-week Phase I *Teamsters* trial.[2]

b. In *Ladd, et al. v. Nashville Booting*, No. 3:20-cv-00626, the district court appointed me and several of my colleagues at Kotchen & Low to represent a class that is estimated to be between 2,000 and 5,000 consumers. Dkt. 80 (M.D. Tenn. May 11, 2023) (granting plaintiffs' motion for class certification and appointing undersigned counsel). I have also taken a lead role in representing the Plaintiffs and Class, and the Court approved a $1,000,000 class settlement and consent judgment. *See* Dkt. 116, 117.

13. In February 2023, I began focusing a significant portion of my practice on representing plaintiffs in Illinois BIPA class actions similar to this case. I have filed several dozen

[2] The jury found that the Defendant (1) engaged in a pattern or practice of race discrimination from 2013 to 2021; (2) engaged in a pattern or practice of national origin discrimination from 2013 to 2021; and that (3) defendant's conduct met the standard for punitive damages. Under the *Teamsters* framework, damages are determined in Phase II proceedings.

putative class action BIPA cases and have previously served as Class Counsel in many other BIPA cases. In connection with my substantial personal and professional investment in this area, I have carefully studied and continue to closely monitor the settlement landscape of similar BIPA class actions.

14. In this case, I am working with Rachel Dapeer, of Dapeer Law P.C., to represent the Plaintiff and putative class. I have known her for many years and have worked with her on many other cases. She is an incredible lawyer and has extensive experience successfully representing plaintiffs in class action cases.

15. On April 22, 2025, the Court preliminarily approved the classwide Settlement Agreement in this matter. Following that order, the Settlement Administrator disseminated the Court-approved Notice to all Settlement Class Members via U.S. mail and email (where available) on May 22, 2025.

16. The Notice expressly stated that Class Counsel would seek attorneys' fees and costs in the amount of 40% of the Settlement Fund and that Plaintiff would seek a $2,500 service award, as well as the estimated amount Settlement Class Members would receive.

17. As of the date of this Declaration, no Settlement Class Member has submitted an objection to the Settlement, the requested Fee and Expense Award, or the requested Service Award. No Settlement Class Member has submitted a request for exclusion.

18. As soon as practicable following the filing of the Motion for Attorneys' Fees and Service Award, I will ensure that a copy of the motion is uploaded to the settlement website, so it is accessible to all Settlement Class Members. I do not expect any class member to object to the Motion.

19. The litigation of this matter involved risk at multiple stages. At the time Plaintiff's counsel accepted the case, there was no guarantee of recovery. Defendants asserted several significant defenses, including the "healthcare operations" exemption under BIPA, consent defenses, and potential preemption by the National Labor Relations Act. Legislative amendments to BIPA, including those discussed in 2021 and again recently, posed a material risk to retroactively extinguish or diminish class members' rights or damages. Plaintiff's counsel has litigated and lost other BIPA cases where no recovery was obtained, underscoring the real contingency risk.

20. During settlement negotiations, Defendant's Counsel shared information regarding Defendant's financial situation and insurance policies. Defendant's financial records showed that Defendant would not have substantial assets to pay a class judgment, even if the Class was successful after years of hard-fought litigation. Moreover, it is very possible that the Defendant would have to declare bankruptcy and the Class would have significant difficulty collecting on any judgment. While the Defendant has several insurance policies, those insurers have disputed coverage and those policies are shared with several other facilities against which there were also pending BIPA class actions.[3] Based on review of the policies, it appears that the total amount of insurance coverage is less than $500 per class member when considering all of the class actions against the related entities. As such, Defendant's (in)ability to pay weighs heavily in favor of approving the Class settlement, including because the Class are receiving a higher *pro rata* amount than is available from the insurance policies limit, when divided by all of the total number of putative class members in all of the pending BIPA class actions. In two other class actions against a related facility represented by the same Defense Counsel and covered by the same insurance policies (*Sandra Morse v. Westmont Manor HRC, LLC*, No. 2020-CH-05550 and *Oscar Enriquez*

[3] *See supra* n. 1.

Galvez v. Spring Creek Nursing & Rehab Center, LLC, No. 20-L-680), class counsel in that case settled for only $575 and $595 per class member, respectively. *See* Exhibit E and F to Plaintiff's Memorandum of Law in Support of Renewed Unopposed Motion for Preliminary Approval.

21. Based on my experience and familiarity with the settlement landscape in BIPA class actions, I firmly believe that the outcome achieved in this case is excellent.

22. Class Counsel's request for a Fee and Expense Award of 40% of the Settlement Fund is appropriate based on their skill and experience, the contingency risk undertaken, and the significant value created for the Settlement Class.

23. Based on the proposed allocation of the $427,050.00 common fund, with a 40% Fee and Expense Award and a 2,500 Plaintiff Service Award, Settlement Class Members will each receive an estimated net payment of $337.32 after the deduction of fees, expenses, the service award, and administration costs.

24. Plaintiff Tameka Burchette played an active and meaningful role in this case. She provided factual background to counsel, helped in the investigation of the claims, reviewed the Complaint before filing, remained in communication with counsel throughout the litigation and settlement negotiations, and reviewed the Settlement Agreement and final approval papers. She was never promised any financial reward and undertook reputational risk by suing her former employer under her real name.

25. In connection with this case, Hammervold Law and Dapeer Law P.A. have incurred several thousand dollars of expenses in connection with this case, including costs for mediation, filing fees, process server and courier fees, research and software fees, mileage, printing and mailing. However, Class Counsel is requesting a single 40% Fee and Expense Award to cover both their reasonable attorneys' fees and reimbursement for all expenses.

I declare under penalty of perjury under the laws of the state of Illinois and the United States of America that the foregoing is true and correct.

EXECUTED at Elmhurst, Illinois, this 9th day of July, 2025.

s/ Mark Hammervold