

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

RICARDO GALAN, individually and on)
behalf of a class of similarly situated)
individuals,)

Plaintiff,)

v.)

MULLINS FOOD PRODUCTS, INC., an)
Illinois corporation,)

Defendant.)

No. 2021-CH-00898
Consolidated with 2023-CH-07953

Hon. Eve M. Reilly

**PLAINTIFFS’ MOTION & MEMORANDUM OF LAW IN SUPPORT OF
APPROVAL OF ATTORNEYS’ FEES, EXPENSES, & SERVICE AWARD**

Plaintiffs Otis Winslow (“Winslow”) and Ricardo Galan (“Galan” or collectively, “Plaintiffs” or “Class Representatives”), by and through their attorneys, and pursuant to 735 ILCS 5/2-801, hereby move for an award of attorneys’ fees and expenses for Class Counsel, as well as service awards for Plaintiffs as the Class Representatives in connection with the class action settlement with Mullins Food Products, Inc. In support of this Motion, Plaintiffs submit the following memorandum of law.

Dated: August 26, 2024

Evan M. Meyers
MCGUIRE LAW, P.C.
(Firm ID: 56618)
55 West Wacker Drive, 9th Fl.
Chicago, Illinois 6060
Tel: (312) 893-7002
emeyers@mcgpc.com

Arun Ravindran
HEDIN LLP
1395 Brickell Ave., Ste. 1140
Miami, FL 33131
Tel: (312) 356-3200
aravindran@hedinllp.com

Mark Hammervold
HAMMERVOLD LAW, LLC
155 S. Lawndale Ave.
Elmhurst, IL 60126
Tel: (405) 509-0372
mark@hammervoldlaw.com

Rachel Dapeer
DAPEER LAW, P.A.
20900 NE 30th Ave., Ste. 417
Aventura, FL 33180
Tel: (305) 610-5223
rachel@dapeerlaw.com

Manuel S. Hiraldo
HIRALDO P.A.
401 E. Las Olas Blvd., Ste. 1400
Ft. Lauderdale, FL 33301
Tel: (954) 400-4713
mhiraldo@hiraldoalaw.com

Counsel for Plaintiffs and Class Counsel

FILED DATE: 8/26/2024 9:20 PM 2021CH00898

TABLE OF CONTENTS

I. INTRODUCTION1

II. THE CASE AND PROCEDURAL HISTORY2

 A. Plaintiff’s Allegations.....2

 B. Procedural History and the Parties’ Settlement Negotiations2

 1. *Galan* Action 2-3

 2. *Winslow* Action3

III. THE SETTLEMENT4

 A. The Settlement Provides Settlement Class Members With Exceptional Monetary Benefits.....4

 B. Pursuant To The Settlement Administrator’s Notice Plan, Notice Has Been Sent To The Class Members.....5

IV. ARGUMENT.....5

 A. The Court Should Award Class Counsel’s Requested Attorneys’ Fees5

 B. Class Counsel’s Requested Fees Are Reasonable Under The Percentage-Of-The-Recovery Method Of Calculating Attorneys’ Fees8

 1. *The requested attorneys’ fees amount to 40% of the Settlement Fund—a percentage within the range found reasonable in similar cases*9

 2. *The requested percentage of attorneys’ fees is appropriate given the significant risks involved in continued litigation*10

 3. *The substantial relief obtained on behalf of the Settlement Class Members further justify the requested percentage of attorneys’ fees*10

 C. The Court Should Also Award Class Counsel’s Requested Reimbursable Litigation Expenses11

 D. The Agreed-Upon Service Awards For Plaintiffs Are Reasonable And Should Be Approved12

V. CONCLUSION14

TABLE OF AUTHORITIES

Cases

Baksinski v. Northwestern Univ.
231 Ill. App. 3d 7 (1st Dist. 1992) 6

Bodie v. Capitol Wholesale Meats, Inc.,
22-CH-000020 (Cir. Ct. DuPage Cnty., Ill. 2022) 9

Boeing Co. v. Van Gemert,
444 U.S. 472 (1980)..... 6

Brundidge v. Glendale Federal Bank, F.S.B.,
168 Ill. 2d 235 (1995) 6

Court Awarded Attorney Fees, Report of the Third Circuit Task Force,
108 F.R.D. 237 (3d. Cir. 1985)..... 7-8

Fick v. Timeclock Plus, LLC,
No. 2019-CH-12769 (Ill. Cir. Ct. Cook Cty. 2021) 9

Fiorito v. Jones,
72 Ill.2d 73 (1978) 6

Fregoso v. American Airlines, Inc.,
No. 2017-CH-15328 (Cir. Ct. Cook County, Ill. Nov. 8, 2023) 8

Glynn v. eDriving, LLC,
2019-CH-08517 (Cir. Ct. Cook Cnty., Ill. Dec. 14, 2020) 9

Gonzalez v. Silva Int'l, Inc.,
2020-CH-03514 (Cir. Ct. Cook County, Ill. June 24, 2021) 13-14

GMAC Mortg. Corp. of Pa. v. Stapleton,
236 Ill. App. 3d 486 (1st Dist. 1992) 12

Gray v. Verificient Technologies, Inc., 8
18-CH-16054 (Cir. Ct. Cook County, Ill. Jul. 5, 2024).

Hall v. Cole,
412 U.S. 1 (1973)..... 11

Kaplan v. Houlihan Smith & Co.,
No. 12 C 5134, 2014 WL 2808801 (N.D. Ill. June 20, 2014) 12

King v. PeopleNet Corp.,
No. 2021-CH-01602 (Cir. Ct. Cook County, Ill. Aug. 10, 2023) 8

Knobloch v. ABC Financial Services, LLC et al.,
No. 17-CH-12266 (Cir. Ct. Cook Cnty., Ill. 2021) 9

<i>Langendorf v. Irving Trust Co.</i> , 244 Ill. App. 3d 70, 80 (1st Dist. 1992)	6
<i>Marquez v. Bobak Sausage Co.</i> , No. 2020-CH-04259 (Cir. Ct. Cook County, Ill. Aug. 21, 2023)	8
<i>Marzec v. Reladyne, LLC</i> , No. 2018-CH-14101 (Cir. Ct. Cook County, Ill. Dec. 15, 2022)	8
<i>McGee v. LSC Commc's</i> , 17-CH-12818 (Cir. Ct. Cook Cnty., Ill. 2019)	9
<i>Prelipceanu v. Jumio Corp.</i> , No. 18-CH-15883 (Cir. Ct. Cook Cnty. Ill. 2020)	9
<i>Rapai v. Hyatt Corp.</i> , 2017-CH-14483 (Cir Ct. Cook County, Ill. Jan. 26, 2022)	8
<i>Roach v. Wal-Mart, Inc.</i> , No. 19-CH-1107 (Cir. Ct. Cook Cnty.)	13
<i>Ryan v. City of Chicago</i> , 274 Ill. App. 3d 913 (1st Dist. 1995)	7
<i>Schulte v. Fifth Third Bank</i> , 805 F. Supp. 2d 560 (N.D. Ill. 2011)	13
<i>Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.</i> , 2016 IL App (2d) 150236	6
<i>Skelton v. Gen. Motors Corp.</i> , 860 F.2d 250, 252 (7th Cir. 1988)	6
<i>Smith v. Pineapple Hospitality Grp.</i> , No. 18-CH-06589 (Cir. Ct. Cook Cnty., Ill. 2020)	9
<i>Spano v. Boeing Co.</i> , No. 06-cv-743, 2016 WL 3791123 (S.D. Ill. Mar. 31, 2016).....	11
<i>Spicer v. Chicago Bd. Options Exch., Inc.</i> , 844 F. Supp. 1226 (N.D. Ill. 1993)	12
<i>Sutton v. Bernard</i> , 504 F.3d 688 (7th Cir. 2007)	6
<i>Svagdis v. Alro Steel Corp.</i> , No. 2017-CH-12566 (Cir. Ct. Cook Cnty., Ill.).....	9
<i>Wendling v. S. Ill. Hosp. Servs.</i> , 242 Ill. 2d 261 (2011)	4-5
<i>Willoughby v. Lincoln Insurance Agency</i> , No. 22-CH-01917 (Cir. Ct. Cook Cnty., Ill. 2022)	9

Zhirovetskiy et al. v. Zayo Group LLC,
No. 17-CH-09323 (Cir. Ct. Cook Cnty., Ill., 2019) 9

Statutes

740 ILCS 14/1..... 1
740 ILCS 14/15..... 3

I. INTRODUCTION

The Settlement¹ that Class Counsel have achieved in this case is an excellent result for Settlement Class Members, as it will provide them with hundreds of dollars in cash payments with no need to submit a claim form. The Parties' Agreement has established a Settlement Fund of \$1,000,000.00 to provide each Settlement Class Member an equal, *pro rata* distribution of the Settlement Fund for having their biometrics collected by Defendant Mullins Food Products, Inc. ("Defendant") in alleged violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA"). In addition to the substantial financial benefit to the Settlement Class Members, the Settlement also provides non-monetary relief designed to prevent the recurrence of the allegedly unlawful biometric collection and use practices at issue in this case.

The Court preliminarily approved the Settlement on July 5, 2024. Direct notice of the Settlement commenced on August 1, 2024. To date, no Settlement Class Member has objected to the Settlement and no Settlement Class Member has requested exclusion.

With this Motion, Class Counsel request a fee of 40% of the total Settlement Fund, amounting to \$400,000.00, plus their litigation expenses. As explained in detail below, Class Counsel's requested fee award is justified given the excellent 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.

Both Class Counsel and the Class Representatives have devoted significant time and effort to the prosecution of the Settlement Class Members' claims, and their efforts have yielded an

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 Plaintiffs' previously filed Motion for Preliminary Approval.

excellent benefit to the Class. The requested attorneys' fees and costs and Service Awards are amply justified in light of the investment, significant risks, and excellent results obtained for the Settlement Class Members in this nearly three-year-old litigation, particularly given the substantial uncertainty regarding the state of BIPA when this Settlement was reached, and the continuous, ongoing shifts in the landscape of BIPA litigation. Plaintiffs and Class Counsel respectfully request that the Court approve attorneys' fees and reasonable expenses of \$423,083.78 and the agreed-upon Service Award of \$4,500.00 each for Plaintiff Winslow and Plaintiff Galan (totaling \$9,000.00 in Service Awards) as Class Representatives.

II. THE CASE AND PROCEDURAL HISTORY

A. Plaintiff's Allegations

Defendant is a manufacturer and packager of custom sauces and spreads located in Broadview, Illinois. Plaintiffs allege that while they worked for Defendant, Defendant required them to use a biometric-reliant timekeeping system in order to verify their identities when clocking in and out of work shifts. Each time Plaintiffs clocked in or out using Defendant's timekeeping system, Defendant collected scans of their fingers, a biometric identifier, or information therefrom (*i.e.* biometric information). Plaintiffs further allege that Defendant has failed to comply with BIPA because despite capturing, storing, using, and obtaining Plaintiffs' biometrics, Defendant: (1) failed to obtain written consent; (2) failed to establish a publicly available retention schedule and guidelines for permanently destroying biometrics; and (3) failed to obtain informed consent to disclose or disseminate Plaintiffs' biometrics to its third-party payroll and timekeeping vendors. Defendant denies Plaintiffs' allegations and denies any violation of or liability under BIPA.

B. Procedural History and the Parties' Settlement Negotiations.

1. Galan Action

Plaintiff Galan filed his Class Action Complaint on February 24, 2021, in the Circuit Court of Cook County, Illinois (“*Galan Action*”). Plaintiff Galan’s Complaint asserts claims against Defendant under Section 15(a), (b), (c) and (d) of BIPA. 740 ILCS 14/15(a)-(d). On April 2, 2021, Defendant moved to stay the case pending (1) the Illinois Supreme Court’s resolution of *McDonald v. Symphony Bronzeville Park, LLC*, No. 126511; (2) the Illinois First District Appellate Court’s resolution of *Tims v. Black Horse Carriers, Inc.*, No. 127801; and (3) the Illinois Third District Appellate Court’s resolution of *Marion v. Ring Container Technologies, LLC*, No. 3-20-0184. On April 12, 2021, the Court stayed the case pending the Illinois Supreme Court’s decision in *McDonald* and continuing Defendant’s request as to *Tims* and *Marion*.

On February 10, 2023, following the Illinois Supreme Court’s resolution of *McDonald* and *Tims*, the Court entered an Order lifting the stay. Thereafter, on May 18, 2023, the Parties engaged in a full-day, arm’s-length mediation session with Hon. James Holderman (Ret.) of JAMS, a former Chief Judge of the U.S. District Court for the Northern District of Illinois. However, the parties were unable to reach a settlement.

On June 9, 2023, Defendant filed a Motion to Dismiss, arguing: (1) that Plaintiff failed to state a claim under Section 15(c) of BIPA; and (2) that Plaintiff failed to sufficiently plead the requisite negligence or recklessness. On October 6, 2023, following full briefing and oral argument, the Court dismissed Plaintiff Galan’s Section 15(c) claim with prejudice, but otherwise denied Defendant’s Motion to Dismiss. On November 3, 2023, Defendant filed its Answer and Affirmative Defenses, and the Parties proceeded with written discovery.

2. Winslow Action

On September 5, 2023, Plaintiff Winslow filed his Class Action Complaint against Defendant in the Circuit Court of Cook County (“*Winslow Action*”). The case was assigned to Hon. Clare J. Quish, case number 2023-CH-07953. On December 14, 2023, Plaintiff Winslow filed a Motion for Preliminary Approval of Class Action Settlement. On December 20, 2023, Judge Quish entered an Order continuing Plaintiff Winslow’s Motion for hearing for February 22, 2024. The Parties informally exchanged relevant information surrounding the alleged claims and the Class in an effort to achieve a Settlement.

Thereafter, Plaintiff Galan’s counsel and Plaintiff Winslow’s counsel agreed to coordinate with respect to negotiating a global resolution with Defendant encompassing both cases. On April 8, 2024, Defendant filed an unopposed Motion before Presiding Chancery Division Judge Sophia Hall to consolidate the *Galan Action* and the *Winslow Action*, and on April 26, 2024, Judge Hall granted Defendant’s Motion. Following consolidation, the Parties engaged in further good faith, arm’s-length negotiations, and were ultimately able to agree upon the terms of a settlement which the Court preliminarily approved on July 5, 2024. Notice of the Settlement commenced on August 1, 2024.

III. THE SETTLEMENT

A. **The Settlement Provides Settlement Class Members With Exceptional Monetary Benefits.**

Class Counsel’s prosecution of this litigation has culminated in this class-wide Settlement that provides exceptional monetary relief to the Settlement Class Members. The Settlement establishes a \$1,000,000.00 Settlement Fund (Agreement, § II(B)(1)(A)), and each Class Member will receive – without the need to submit a claim – an equal share of the fund after deductions of administration costs and the Court-approved attorneys’ fees and Service Awards. After such

deductions, it is estimated that each Settlement Class Member will receive approximately \$700-\$800.²

The Settlement also provides valuable non-monetary relief to the Settlement Class, as Defendant has agreed to continue to take steps to ensure that it complies with BIPA. (*Id.*, § II(B)(2)). This additional relief benefits both the Settlement Class Members and future Illinois workers who use Defendant's timekeeping equipment.

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 via U.S. Mail has been provided to the Settlement Class Members. (*See* Declaration of Evan M. Meyers, attached hereto as Exhibit 1, ¶ 11). In addition, the Settlement Website is operational and makes available the detailed Long Form Notice (including a Spanish-language version), and all relevant case information to Settlement Class Members. To date, no Class Members have opted out or 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 attorneys' fees in the amount of \$400,000.00, which amounts to 40% of the Settlement Fund, plus \$23,083.78 in reimbursable expenses. (Agreement, § II(D)(2)). Such a request is within the range of fees approved in other class actions and is fair and reasonable in light of the work performed by Class Counsel and the outstanding recovery secured on behalf of the Settlement Class Members. It is well settled that attorneys who, by their efforts, create a common fund for the benefit of a class are entitled to

² The Settlement Class comprises 757 individuals (Agreement, § I(DD)).

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

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

In deciding an appropriate fee in such cases, “a trial judge has discretionary authority to choose a percentage[-of-the-recovery] or a lodestar method[.]” *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 58 (citing *Brundidge v. Glendale Federal Bank, F.S.B.*, 168 Ill. 2d 235, 243–44 (1995)). Here, Plaintiffs submit that the Court should apply the percentage-of-the-recovery approach—the approach used in the vast majority of common fund class actions, including BIPA class actions. It is settled law in Illinois that the Court need not employ the lodestar method in assessing a fee petition. *Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 59. This is because the lodestar method is disfavored, as it not only adds needless work for the Court and its staff,³ it misaligns the interests of Class Counsel and the Settlement Class Members.

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.

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 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 in common fund class settlements 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-of-the-recovery 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)). This approach also accurately reflects the contingent nature of the fees negotiated between Class Counsel and Plaintiffs, who agreed *ex ante* that up to 40% of any settlement fund plus reimbursement of costs and expenses would represent a fair award of attorneys’ fees from a fund recovered for the Class. (Meyers Decl., ¶ 14.)

Class Counsel are not aware of any BIPA class action settlements involving a monetary common settlement fund where a court relied on the lodestar method to determine attorneys’ fees. In fact, to Class Counsel’s knowledge, the percentage-of-the-recovery method has been used to determine a reasonable fee award in *every* BIPA class action settlement in the Circuit Court of Cook County where the defendant – as here – created a monetary common fund. *See, e.g., Marquez v. Bobak Sausage Co.*, No. 2020-CH-04259 (Cir. Ct. Cook County, Ill. Aug. 21, 2023); *Rapai v. Hyatt Corp.*, No. 2017-CH-14483 (Cir Ct. Cook County, Ill. Jan. 26, 2022); *Marzec v. Reladyne, LLC*, No. 2018-CH-14101 (Cir. Ct. Cook County, Ill. Dec. 15, 2022); *King v. PeopleNet Corp.*, No. 2021-CH-01602 (Cir. Ct. Cook County, Ill. Aug. 10, 2023); *Fregoso v. American Airlines, Inc.*, No. 2017-CH-15328 (Cir. Ct. Cook County, Ill. Nov. 8, 2023); *Gray v. Verificent Technologies, Inc.*, No. 18-CH-16054 (Cir. Ct. Cook County, Ill. Jul. 5, 2024).

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 “hard cash 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 amount to 40% of the Settlement Fund—a percentage within the range found reasonable in similar cases.*

The requested fee award of \$400,000.00 represents 40% of the Settlement Fund. This percentage is within the range of attorneys’ fee awards that courts, including this Court and numerous other judges within the Circuit Court of Cook County, have found reasonable in other class action settlements. In fact, fee awards of 40% have been awarded in numerous separate BIPA class action settlements in the Circuit Court of Cook County and other Illinois courts. *See, e.g., Gray v. Verificient Technologies*, No. 2018-CH-16054 (Cir. Ct. Cook County, Ill. 2024) (Reilly, J.) (awarding 40% of the BIPA class settlement fund in attorneys’ fees); *Willoughby v. Lincoln Insurance Agency*, No. 22-CH-01917 (Cir. Ct. Cook Cnty., Ill. 2022) (Cohen, J.) (same); *Rapai*, No. 17-CH-14483 (Cir. Ct. Cook Cnty., Ill. 2022) (Demacopoulos, J.) (same); *Bodie v. Capitol Wholesale Meats, Inc.*, 22-CH-000020 (Cir. Ct. DuPage Cnty., Ill. 2022) (same); *Knobloch v. ABC Financial Services, LLC et al.*, No. 17-CH-12266 (Cir. Ct. Cook Cnty., Ill. 2021) (Loftus, J.) (same); *Fick v. Timeclock Plus, LLC*, No. 2019-CH-12769 (Ill. Cir. Ct. Cook Cty. 2021) (Hall, J.) (same); *Prelipceanu v. Jumio Corp.*, No. 18-CH-15883 (Cir. Ct. Cook Cnty. Ill. 2020) (Mullen, J.) (same); *Smith v. Pineapple Hospitality Grp.*, No. 18-CH-06589 (Cir. Ct. Cook Cnty., Ill. 2020) (Moreland, J.) (same); *Glynn v. eDriving, LLC*, No. 2019-CH-08517 (Ill. Cir. Ct. Cook Cty. 2020) (Walker, J.) (same); *McGee v. LSC Commc’s*, 17-CH-12818 (Cir. Ct. Cook Cnty., Ill. 2019) (Atkins, J.) (same); *Zhirovetskiy et al. v. Zayo Group LLC*, No. 17-CH-09323 (Cir. Ct. Cook Cnty., Ill., 2019) (Flynn, J.) (same); *Svagdis v. Alro. Steel Corp*, No. 17-CH-12566 (Cir. Ct. Cook Cnty.,

Ill., 2018) (Larsen, J.) (same). Thus, Plaintiffs' request of 40% of the Settlement Fund is reasonable and consistent with fees recently approved by courts in this Circuit in BIPA class action settlements.

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

The Settlement in this case, which has now been pending for nearly three years, represents an excellent result for the Settlement Class, especially given that Defendant has expressed a firm denial of Plaintiffs' material allegations and demonstrated the intent to raise several defenses, including that an award of damages to Plaintiffs and the Settlement Class would be unconstitutional, that Plaintiffs and Settlement Class Members consented to the use of their biometrics, and that Defendant otherwise adequately complied with every aspect of BIPA. Any of these defenses, if successful, would likely result in Plaintiffs and many of the proposed Settlement Class Members receiving no payment whatsoever—a risk that is only increased by the ever-changing BIPA landscape.

In the face of these obstacles and unknowns, Class Counsel succeeded in negotiating and securing a settlement on behalf of the Settlement Class which creates a \$1,000,000.00 Settlement Fund and provides Class Members with the ability to automatically receive hundreds of dollars in compensation. The Settlement's provision of excellent monetary relief to each Settlement Class Member now, as opposed to years from now, or perhaps never, represents a truly excellent result.

3. *The substantial relief obtained on behalf of the Settlement Class Members further justifies the requested percentage of attorneys' fees.*

Despite the significant risks inherent in any litigation, and the particular risks presented in this litigation as discussed above, Class Counsel were able to obtain an outstanding result for the Settlement Class. As stated above, the Settlement Agreement provides for the creation of a \$1,000,000.00 Settlement Fund, which will be split equally among the Settlement Class Members

after Court-approved fees and costs.

Additionally, under the terms of the Settlement Agreement, Defendant represents that it has taken steps to become BIPA compliant and will remain BIPA compliant going forward. (Agreement, § II(B)(2)). 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.”).

Given the significant monetary compensation obtained for the Settlement Class Members as well as the non-monetary benefits, an attorneys' fee award of 40% of the Settlement Fund plus expenses is reasonable and fair compensation—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, ¶ 59.⁴

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

Class Counsel have expended \$23,083.78 in reimbursable expenses related to filing fees,

⁴ To the extent this Court nonetheless has any concerns as to the application of the percentage-of-the-recovery approach in awarding attorneys' fees and wishes to conduct a lodestar analysis, Class Counsel will submit their respective lodestars.

mediation costs, and case administration. (Meyers Decl., ¶ 13.) Courts regularly award reimbursement of the expenses counsel incurred in prosecuting the litigation. *See, e.g., Kaplan v. Houlihan Smith & Co.*, No. 12-cv-5134, 2014 WL 2808801, at *4 (N.D. Ill. June 20, 2014) (awarding expenses “for which a paying client would reimburse its lawyer”); *Spicer v. Chicago Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1256 (N.D. Ill. 1993) (detailing and awarding expenses incurred during litigation). . Accordingly, this Court should award a total fee and expense award to Class Counsel of \$423,083.78.

D. The Agreed-Upon Service Awards For Plaintiffs Are Reasonable And Should Be Approved.

The requested \$4,500.00 Service Award each for Plaintiff Winslow and Plaintiff Galan (totaling \$9,000.00 in Service Awards) 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 actions suits.”).

Here, Plaintiffs’ efforts and participation in prosecuting this case justify the \$4,500.00 Service Award sought for each Plaintiff. Even though no award of any sort was promised to Plaintiffs prior to the commencement of the litigation or any time thereafter, Plaintiffs nonetheless contributed their time and effort in pursuing their own BIPA claims, as well as in serving as representatives on behalf of the Settlement Class Members—exhibiting a willingness to participate

and undertake the responsibilities and risks attendant with bringing a representative action. (Meyers Decl., ¶¶ 15-16).

Plaintiffs participated in the initial investigation of their claims and provided documents and information to Class Counsel to aid in preparing the initial pleadings, reviewed the pleadings prior to filing, consulted with Class Counsel on numerous occasions, and provided feedback on a number of other filings including, most importantly, the Settlement Agreement. (*Id.*)

Further, agreeing to serve as Class Representatives meant that Plaintiffs publicly placed each of their names on their respective suit and opened themselves to “scrutiny and attention” which, in and of itself, “is certainly worthy of some type of remuneration,” particularly against their former employer. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 600–01 (N.D. Ill. 2011). Were it not for Plaintiffs’ willingness to pursue this action on a class-wide basis, their efforts and contributions to the litigation by assisting Class Counsel with their investigation and prosecution of this suit, and their continued participation and monitoring of the case up through settlement, the substantial benefit to the Settlement Class Members afforded under the Settlement Agreement would simply not exist. (Meyers Decl., ¶ 16.)

The requested \$4,500.00 Service Award each for Plaintiff Winslow and Plaintiff Galan is well in line with the average service award granted in class actions. Indeed, many courts that have granted final approval in BIPA class action settlements have granted higher class representative awards than the payment sought here. *See, e.g., Verificent*, 18-CH-16054, Jul. 5, 2024 Final Order and Judgment, ¶ 20 (Reilly, J.) (awarding \$10,000 service award to the class representative in BIPA class action); *Rapai*, 17-CH-14483, Jan. 26, 2022 Final Order and Judgment, ¶ 20 (Demacopoulos, J.) (awarding \$12,500 incentive award in BIPA class action); *Roach v. Wal-Mart, Inc.*, No. 19-CH-1107, June 16, 2021 Final Approval Order, ¶ 14 (Cir Ct. Cook Cnty, Ill.)

(Meyerson, J.) (awarding \$10,000 incentive award in BIPA class settlement); *Gonzalez v. Silva Int'l, Inc.*, No. 2020-CH-03514, June 24, 2021 Final Order and Judgment, ¶ 19 (Cir. Ct. Cook Cnty., Ill.) (Conlon, J.) (awarding \$10,000 incentive award in BIPA class action). Compensating Plaintiffs for the risks and efforts they undertook to benefit the Settlement Class Members is reasonable under the circumstances of this case, especially in light of the exceptional results obtained. As shown above, courts have regularly approved awards in similar class action litigation of at least \$10,000.00. Moreover, no objection to the Service Award has been raised to date. Accordingly, a \$4,500.00 Service Award each to Plaintiff Winslow and Plaintiff Galan is reasonable, justified by Plaintiffs' time and effort in this case, and should be approved.

V. CONCLUSION

For the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court enter an Order: (1) approving an award of attorneys' fees and expenses of \$423,083.78; and (ii) approving Service Awards of \$4,500 for each Plaintiff in recognition of their significant efforts on behalf of the Settlement Class Members.

Dated: August 26, 2024

Respectfully submitted,

RICARDO GALAN and OTIS WINSLOW,
individually and on behalf of similarly
situated individuals

By: /s/ Chandne Jawanda
One of Plaintiffs' Attorneys

Evan M. Meyers
MCGUIRE LAW, P.C.
(Firm ID: 56618)
55 West Wacker Drive, 9th Fl.
Chicago, Illinois 6060
Tel: (312) 893-7002
emeyers@mcgpc.com

Arun Ravindran
HEDIN LLP
1395 Brickell Ave., Ste. 1140
Miami, FL 33131
Tel: (312) 356-3200
aravindran@hedinllp.com

Mark Hammervold
HAMMERVOLD LAW, LLC
155 S. Lawndale Ave.
Elmhurst, IL 60126
Tel: (405) 509-0372
mark@hammervoldlaw.com

Rachel Dapeer
DAPEER LAW, P.A.
20900 NE 30th Ave., Ste. 417
Aventura, FL 33180
Tel: (305) 610-5223
rachel@dapeerlaw.com

Manuel S. Hiraldo
HIRALDO P.A.
401 E. Las Olas Blvd., Ste. 1400
Ft. Lauderdale, FL 33301
Tel: (954) 400-4713
mhiraldo@hirdolaw.com

Counsel for Plaintiffs and Class Counsel

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on August 26, 2024, a copy of the foregoing *Plaintiffs' Motion & Memorandum of Law in Support of Approval of Attorneys' Fees, Expenses, & Service Award* was filed electronically with the Clerk of Court, with a copy sent by Electronic Mail to all counsel of record.

/s/ Chandne Jawanda

EXHIBIT 1

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

RICARDO GALAN, individually and on behalf of a class of similarly situated individuals,)

Plaintiff,)

v.)

MULLINS FOOD PRODUCTS, INC., an Illinois corporation,)

Defendant.)

No. 2021-CH-00898
Consolidated with 2023-CH-07953

Hon. Eve M. Reilly

DECLARATION OF EVAN M. MEYERS

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

1. I am an adult over the age of 18 and a resident of the state of Illinois. I am an attorney with the law firm McGuire Law, P.C., I am licensed to practice law in the state of Illinois, and I, along with Arun Ravindran of Hedin, LLP; Manuel S. Hiraldo of Hiraldo, P.A.; Mark Hammervold of Hammervold Law, LLC; and Rachel Dapeer of Dapeer Law, P.A. (together, Class Counsel”), am one of the attorneys representing Plaintiff Otis Winslow and Ricardo Galan and the putative class in this matter. I am fully competent to make this Declaration and make this Declaration in support of Plaintiffs’ Motion and Memorandum of Law in Support of Approval of Attorneys’ Fees, Expenses, and Service Award.

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

3. 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 BIPA class actions. McGuire Law attorneys have been appointed as class counsel in scores of complex class actions, including many BIPA class actions, in state and federal courts across the country, including the Circuit Court of Cook County, the Circuit Court of Lake County, and the U.S. District Court for the Northern District of Illinois. *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); *Mahmood v. Berbix Inc.* (Cir. Ct. Lake Cnty., Ill. 2023); *King v. Peoplenet Corporation* (Cir. Ct. Cook Cnty., Ill. 2023); *McFarland v. SIU Physicians & Surgeons, Inc.* (Cir. Ct. Jackson Cnty., Ill. 2023); *Romero v. Mini Storage Maintenance, LLC* (Cir. Ct. Cook Cnty., Ill. 2023); *Grabowska v. The Millard Group, LLC* (Cir. Ct. Cook Cnty., Ill. 2023); *Fregoso v. American Airlines, Inc.* (Cir.

Ct. Cook Cnty., Ill. 2023); *Martinez v. PowerStop, LLC* (Cir. Ct. Cook Cnty., Ill. 2024); *Gray v. Verificent Technologies, Inc.* (Cir. Ct. Cook Cnty., Ill. 2024); *Lumpkins v. R&M Freight, Inc.* (Cir. Ct. Cook Cnty., Ill. 2024).

4. 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.

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

Class Counsel's Contribution to the Case

6. From the outset of this litigation, the attorneys of McGuire Law, P.C., Hedin, LLP, Hiraldo, P.A., Hammervold Law, LLC, and Dapeer Law, P.A 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. *See* Declaration of Mark Hammervold, attached hereto as Exhibit A, ¶ 6.

7. Class Counsel assumed a significant risk of non-payment in prosecuting this litigation given the novelty of legal issues involved and the uncertainty in the development of BIPA caselaw against vendors of biometric technology; the legal issues involving the applicable statute of limitations to Plaintiffs' and the Class Members' claims; and the vigorous and nuanced legal defenses that Defendant and its skilled counsel have raised and were prepared to litigate had this case proceeded further.

8. From the outset of the litigation, Defendant and its counsel indicated that they planned to present a strong defense to Plaintiffs' claims on the merits and the ability to represent a class of those whose biometrics were collected by Defendant. Had the case not settled, the Parties would have continued with extensive discovery, class certification briefing, and summary judgement briefing. Given the financial resources at its disposal, any final decisions favorable to Plaintiffs would have also likely been appealed by Defendant.

9. Class Counsel were able to obtain the substantial benefit provided to the Settlement Class Members through the Settlement, despite the significant risks and defenses raised by Defendant, only as a result of their efforts in investigating Defendant's operations, including Defendant's biometric capture, collection and use practices 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.

10. The work that Class Counsel have committed to this case has been substantial.

Among other things, Class Counsel have:

- a. Investigated Defendant's biometric collection and use practices;
- b. Participated in multiple status and motion hearings;
- c. Fully briefed Defendant's Motion to Stay and Defendant's Motion to Dismiss;
- d. Propounded written discovery;
- e. Participated in settlement negotiations with Defendant, including the attorneys of McGuire Law, P.C. and Hedin LLP attending a mediation session with the Hon. James Holderman (Ret.) of JAMS Chicago;
- f. Engaged in months of continued settlement negotiations, which involved the exchange of settlement drafts and multiple communications with Defendant's counsel, and which resulted in the drafting and execution of the finalized Settlement Agreement and related documents, including class notice documents;
- g. Successfully moved for preliminary approval of the Settlement; and
- h. Oversaw the implementation of the Settlement, including multiple communications with the Settlement Administrator about class notice and the settlement website.

See Ex. A, ¶ 10.

11. Following the Court's entry of its Preliminary Approval Order, Defendant and the Settlement Administrator, KCC Class Action Services, LLC, 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 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. The Settlement Administrator has advised me that there have been no objections or requests for exclusion to date. It is estimated that Settlement Class Members will each be able to receive between \$700 and \$800 in cash compensation under the Settlement.

12. Based on my experience in other class action settlements, I anticipate that Class Counsel will expend substantial additional time and resources over the pendency of this action

relating to briefing and filing a motion for final approval of the Settlement, attending the final approval hearing, responding to Class Members' inquiries regarding the Settlement and advising them how to proceed, responding to any objectors, and remaining involved with the Settlement through implementation, including continuous communications with the Settlement Administrator relating to benefits distribution.

13. In addition to attorney time expended in pursuit of this case, Class Counsel have collectively incurred \$23,083.78 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 have had a strong incentive not to expend any funds unnecessarily.

14. Plaintiffs executed a fee agreement with Class Counsel that was contingent in nature. Plaintiffs agreed 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 themselves and a class. Class Counsel would not have brought this action absent the prospect of obtaining a percentage of the recovery to account for the risk inherent in this type of class action.

The Class Representatives' Contributions to the Case

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

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

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

Executed on August 26, 2024, in Lake County, Illinois.

/s/ Evan M. Meyers
Evan M. Meyers, Esq.

EXHIBIT A

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

RICARDO GALAN, individually and on)
behalf of a class of similarly situated)
individuals,)

Plaintiff,)

v.)

MULLINS FOOD PRODUCTS, INC., an)
Illinois corporation,)

Defendant.)

No. 2021-CH-00898
Consolidated with 2023-CH-07953

Hon. Eve M. Reilly

DECLARATION OF MARK HAMMERVOLD

I, Mark Hammervold, 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 co-lead counsel for Plaintiff in this matter. 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 country. I respectfully submit this declaration in support of Plaintiff's Motion for Approval of Attorneys' Fees, Expenses and Service Award. 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.

2. I have litigated hundreds of cases in both state and federal court and have recovered tens of millions of dollars for my clients.

3. 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 few examples 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). I have taken a lead role in representing that class, including during a three-week phase one trial in June 2023.¹

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 recently preliminarily approved a \$1,000,000 class settlement and consent judgment. *See* Dkt. 112.

c. In *Newhalfen v. Upstaging*, No. 2023LA00077, Rachel Dapeer and I recently represented a class of 294 individuals in a similar BIPA class action that we had filed in Dekalb County. We were appointed as Class Counsel on December 7, 2023. On March 20, 2024, the court granted final approval of a \$500,000 settlement we obtained for the Class.

4. In February 2023, I began focusing a portion of my practice on representing plaintiffs in Illinois BIPA class actions similar to this case. 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.

¹ The jury was deadlocked 6-2 in favor of the class, so the court declared a hung jury and mistrial and has reset the case to be tried again in September 2024.

5. Based on my experience and familiarity with settlement of similar BIPA class action cases, I firmly believe that the settlement now before this Court is fair, reasonable, adequate, and in the best interests of members of the proposed settlement class.

Class Counsel's Contribution to the Case

6. From the outset of this litigation, the attorneys of McGuire Law, P.C., Hedin, LLP, Hiraldo, P.A., Hammervold Law, LLC, and Dapeer Law, P.A 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.

7. Class Counsel assumed a significant risk of non-payment in prosecuting this litigation given the novelty of legal issues involved and the uncertainty in the development of BIPA caselaw against vendors of biometric technology; the legal issues involving the applicable statute of limitations to Plaintiffs' and the Class Members' claims; and the vigorous and nuanced legal defenses that Defendant and its skilled counsel have raised and were prepared to litigate had this case proceeded further.

8. From the outset of the litigation, Defendant and its counsel indicated that they planned to present a strong defense to Plaintiffs' claims on the merits and the ability to represent a class of those whose biometrics were collected by Defendant. Had the case not settled, the Parties would have continued with extensive discovery, class certification briefing, and summary judgement briefing. Given the financial resources at its disposal, any final decisions favorable to Plaintiffs would have also likely been appealed by Defendant.

9. Class Counsel were able to obtain the substantial benefit provided to the Settlement

Class Members through the Settlement, despite the significant risks and defenses raised by Defendant, only as a result of their efforts in investigating Defendant's operations, including Defendant's biometric capture, collection and use practices 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.

10. The work that Class Counsel have committed to this case has been substantial.

Among other things, Class Counsel have:

- a. Investigated Defendant's biometric collection and use practices;
- b. Participated in multiple status and motion hearings;
- c. Fully briefed Defendant's Motion to Stay and Defendant's Motion to Dismiss;
- d. Propounded written discovery;
- e. Participated in settlement negotiations with Defendant, including the attorneys of McGuire Law, P.C. and Hedin LLP attending a mediation session with the Hon. James Holderman (Ret.) of JAMS Chicago;
- f. Engaged in months of continued settlement negotiations, which involved the exchange of settlement drafts and multiple communications with Defendant's counsel, and which resulted in the drafting and execution of the finalized Settlement Agreement and related documents, including class notice documents;
- g. Successfully moved for preliminary approval of the Settlement; and
- h. Oversaw the implementation of the Settlement, including multiple communications with the Settlement Administrator about class notice and the settlement website.

11. Based on my experience in other class action settlements, I anticipate that Class Counsel will expend substantial additional time and resources over the pendency of this action relating to briefing and filing a motion for final approval of the Settlement, attending the final approval hearing, responding to Class Members' inquiries regarding the Settlement and advising

them how to proceed, responding to any objectors, and remaining involved with the Settlement through implementation, including continuous communications with the Settlement Administrator relating to benefits distribution.

The Class Representatives' Contributions to the Case

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

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

Executed on August 26, 2024, in DuPage County, Illinois.

s/ Mark Hammervold