

Firm No. 39042

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

PORCHIA HEIDELBERG, *individually and
on behalf of all others similarly situated,*

Plaintiff,

v.

FORMAN MILLS INC.,

Defendant.

Case No. 2020CH04079
Hon. Joel Chupack
Presiding Judge

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**PLAINTIFF’S MOTION FOR AWARD OF ATTORNEYS’ FEES AND EXPENSES,
AND CLASS REPRESENTATIVE SERVICE AWARD**

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I. INTRODUCTION

On April 7, 2023, this Court preliminarily approved a proposed class action settlement between Plaintiff Porchia Heidelberg (“Plaintiff”) and Defendant Forman Mills, Inc., (“Forman”). This Settlement creates a \$2,387,325.00 common fund to compensate approximately 3,435 current and former employees for Forman’s alleged violations of the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*

If finally approved, all Settlement Class Members who do not timely exclude themselves from the Settlement will automatically receive an equal, *pro rata* distribution of the Settlement Fund, without the need to file a claim or any other paperwork. After deductions for Notice and Administration Expenses, approved costs, attorneys’ fees, and any Service Award, each Settlement Class Member is estimated to receive a check for \$400. It is worth noting that the Settlement does not contain any clear sailing agreement as to either fees or service award and the notice approved by the Court advises the Settlement Class of both of these requests. Along that line, this Motion will be posted to the Settlement Website so that any Settlement Class Member may review it.

As compensation for the substantial benefit conferred upon the Settlement Class, Class Counsel respectfully move for an award of attorneys’ fees of \$954,930.00, which represents 40% of the settlement that will be paid out, plus \$5,427.15 in out-of-pocket expenses, and a class representative Service Award of \$10,000. This case also provides significant non-monetary benefits to the class as it prompted Forman to implement the biometric disclosures, consent forms, and retention/destruction policy mandated by Sections 15(a)-(b) of BIPA. As explained below, this Motion should be granted.

II. RELEVANT BACKGROUND

A. Procedural History.

On May 5, 2020, Plaintiff filed this class action in the Circuit Court of Cook County,

asserting claims for violation of Sections 15(a)-(b) of BIPA stemming from the biometric timekeeping system used at Forman's Illinois locations. In particular, the Complaint alleges Forman captured, stored, and used its employees' biometric data without first: (1) complying with Section 15(b)'s informed consent regime; and (2) implementing and adhering to the biometric retention and destruction policies mandated by Section 15(a).

On June 6, 2020, Forman filed a motion to stay the case pending the First District Appellate Court's resolution of *Tims v Black Horse Carriers, Inc.*, 2021 IL App (1st) 200563, *rev'd, in part*, 2023 IL 127801 (the "First Stay Motion"). On August 21, 2020, after reviewing the parties' briefs and arguments, the Court entered an order granting the First Stay Motion.

On September 17, 2021, following the First District's resolution of *Tims*, Plaintiff filed a motion to lift the stay. While this motion remained pending, on October 12, 2021, Forman filed a motion to continue the stay pending the Illinois Supreme Court's decision in *McDonald v. Symphony Bronzeville Park, LLC*, 2020 IL App (1st) 192398 (the "Second Stay Motion"). Following full briefing on the issue, on December 10, 2021, the Court entered an order granting the Second Stay Motion.

On April 27, 2022, following the resolution of *McDonald*, the Court granted the parties' request to lift the stay. On May 17, 2022, Forman filed its Answer and Affirmative Defenses. Plaintiff filed her response to Forman's Affirmative Defenses on June 1, 2022.

The parties then proceeded to serve interrogatories and requests to produce, exchange written discovery responses, and produce responsive documents. *Appendix 1* (Keogh Decl.) at ¶ 4. In addition, Plaintiff engaged in third-party discovery with the manufacturer of Forman's timekeeping system, and shortly thereafter deposed Forman's corporate representative. *Id.*

The parties subsequently agreed to mediate this dispute on January 25, 2023 before the Honorable Thomas Allen (Ret.) of ADR Systems. *Id.* at ¶ 5. Over the weeks leading up to the

mediation, the parties submitted detailed briefs setting forth their respective views on the strengths of their cases. *Id.* At mediation, the parties discussed their relative views of the law and the facts and potential relief for the proposed Class. *Id.* at ¶ 6. With the assistance of Judge Allen—and eight hours of arm’s-length negotiations—the parties reached an agreement in principle on the material terms of a class-wide settlement. *Id.* at ¶ 6. Following the mediation, the parties continued extensive negotiations over the next two months on their remaining points of dispute, *id.*, which ultimately culminated in the fully executed Settlement Agreement the Court preliminarily approved on March 22, 2022.

B. Class Counsel Negotiated an Extremely Favorable Settlement.

The Settlement Class is defined as follows:

The approximately 3,435 individuals employed by Defendant Forman Mills Inc. in the State of Illinois who logged onto, interfaced with, or used any software, systems, or devices that used the individual’s finger, hand, or any biometric identifier of any type (“Biometric Systems”) at a Forman Mills location in Illinois between May 5, 2015 and September 1, 2020.¹

The following are excluded from the Settlement Class: (1) the judge presiding over this case; (2) the judges of the Illinois Appellate Court; (3) the immediate families of the preceding person(s); (4) any Released Party; and (5) any Settlement Class Member who timely opts out of this Action.

The Settlement requires Forman to create a Settlement Fund of \$2,387,325.00, *Appendix 2* (Settlement Agreement) § V.46, which will be funded by Forman’s insurer. Each Settlement Class Member will receive a *pro rata* portion of the Settlement Fund after payment of Settlement Administration Expenses, attorney’s fees and costs, and any Service Award approved by the Court. *Id.* Settlement Class Members aren’t required to submit a claim or take any action to receive compensation. Instead, the Settlement Administrator will automatically issue checks to the last

¹ Forman began complying with BIPA as of September 1, 2020.

known address of each Settlement Class Member who declines to opt out, which shall remain valid for 120 days from the date of their issuance. *Id.* at §§ II.5, IX.59.

As noted above, this case also provides significant non-monetary benefits to the class as it prompted Forman to implement the biometric disclosures, consent forms, and retention/destruction policy mandated by Sections 15(a)-(b) of BIPA.

This is an outstanding result for the Class. Unlike reversionary settlements that cap individual recoveries and limit payment to those who submit claims, the Settlement here is structured to ensure one hundred percent of the net Settlement Fund will be paid out to the Settlement Class. Nothing is held back, and there is no possibility Forman will retain a penny of the Settlement Fund, which eliminates any concerns about a “sweetheart” deal that could incentivize Forman to resume its alleged statutory violations. Should any Settlement checks remain uncashed after everything is paid out, any remaining funds will be returned to Forman’s insurer, rather than Forman. *Id.* at § IX.59. In other words, the Settlement places both Forman and the Settlement Class in the same position they would be in if the unclaimed funds were allocated to a *cy pres* recipient. In addition, it is worth noting Plaintiff could have accepted a smaller settlement where the uncashed checks would have gone to *cy pres*, but instead pushed for a larger settlement where 100% of the funds will be paid out resulting in each Settlement Class Member receiving a greater portion of the Settlement.

III. The Proposed Attorneys’ Fee and Expense Award Should Be Approved.

A. The Court Should Award Fees Based on a Percentage of the Common Fund.

“It is now well established 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.’” *Scholtens v. Schneider*, 173 Ill. 2d 375, 385 (1996) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)) The Illinois Supreme Court has approved “[a]warding attorney

fees to plaintiffs’ counsel based on a percentage of the fund held by the court [as], 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 Fed. Bank*, 168 Ill. 2d 235, 244 (1995) (brackets added); *see Ryan v. City of Chi.*, 274 Ill. App. 3d 913, 923 (1st Dist. 1995) (noting that “a percentage fee was the best determinant of the reasonable value of services rendered by counsel in common fund cases”) (citations omitted)

The Court should use the percentage of the fund approach to determine a reasonable fee award in this case just like every BIPA class action to date.²

B. Forty Percent Fee Awards Are Common in Class Action Cases in Illinois and BIPA Cases.

Illinois courts commonly award forty percent of the common fund in BIPA class actions. *See Sekura v. L.A. Tan Enters.*, No. 2015-CH-16694 (Cir. Ct. Cook Cnty. Ill. 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. Kimpton Hotel & Rest. Group, LLC, et al.*, No. 2018-CH-2140 (Cir. Ct. Cook Cnty. Dec. 5, 2018) (same); *Smith v. Pineapple*

² *See, e.g., Sekura v. L.A. Tan Enters.*, No. 2015-CH-1664 (Cir. Ct. Cook Cnty. Ill. Dec. 1, 2016); *Zepeda v. Kimpton Hotel & Rest. Group, LLC, et al.* No. 2018-CH-02140 (Cir. Ct. Cook Cnty. Dec. 5, 2018); *Taylor v. Sunrise Senior Living Mgmt., Inc.*, No. 2017-CH-15152 (Cir. Ct. Cook Cnty. Feb. 14, 2018); *Svagdis v. Alro Steel Corp.*, No. 2017-CH-12566 (Cir. Ct. Cook Cnty. Jan. 14, 2019); *Williams v. Swissport USA, Inc.*, No. 2019-CH-00973 (Cir. Ct. Cook Cnty. Nov. 12, 2020); *Fluker v. Glanbia Perf. Nutrition Inc.*, No. 2017-CH-12993 (Cir. Ct. Cook Cnty. Aug. 25, 2020); *Collier, et al. v. Pete’s Fresh Market 2526 Corporation, et al.*, No. 2019-CH05125 (Cir. Ct. Cook Cnty. Ill. Dec. 8, 2020); *Glynn v. eDriving, LLC, et al.*, No. 2019-CH-08517 (Cir. Ct. Cook Cnty. Dec. 14, 2020); *Kusinski, et al. v. ADP, LLC*, No. 2017-CH-12364 (Cir. Ct. Cook Cnty. Feb. 10, 2021); *Rogers v. CSX Intermodal Terminal, Inc.*, No. 2019-CH-04168 (Cir. Ct. Cook Cnty. May 13, 2021); *Freeman-McKee v. Alliance Ground Int’l, LLC*, No. 2017-CH-13636 (Cir. Ct. Cook Cnty. June 15, 2021); *Salkauskaite v. Sephora USA, Inc.*, No. 2018-CH-14379 (Cir. Ct. Cook Cnty. June 23, 2021); *Gonzalez v. Silva Int’l, Inc.*, No. 2020-CH-03514 (Cir. Ct. Cook Cnty. June 24, 2021); *Williams v. Inpax Shipping Solutions, Inc.*, No. 2018-CH-02307 (Cir. Ct. Cook Cnty. Sept. 1, 2021).

Hospitality Grp., No. 2018-CH-06589 (Cir. Ct. Cook Cty. Jan. 22, 2020) (same); *Prelipceanu v. Jumio Corp.*, No. 2018-CH-15883 (Cir. Ct. Cook Cty. July 21, 2020) (same); *Williams v. Swissport USA, Inc.*, No. 2019-CH-00973 (Cir. Ct. Cook Cty. Nov. 12, 2020) (same); *Glynn v. eDriving, LLC et al.*, No.-2019-CH-08517 (Cir. Ct. Cook Cty. Dec. 14, 2020) (same); *Fick v. Timeclock Plus, LLC*, No. 2019-CH-12769 (Cir. Ct. Cook Cty. 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).

This is true in other consumer class actions as well. *See Martin v. Safeway, Inc.*, No. 2020-CH-7156 (Cir. Ct. Cook Cnty. May 4, 2022) (FACTA case awarding 40% of common fund to class counsel); *Donahue v. Everi Holdings, Inc.*, No. 2018-CH-15419 (Cir. Ct. Cook Cnty. Dec. 3, 2020) (same); *Willis v. iHeartMedia Inc.*, No. 2016-CH-0245 (Cir. Ct. Cook Cnty. Aug. 11, 2016) (TCPA class case granting fee award of 40% of settlement fund).

Accordingly, the forty-percent attorneys' fee award proposed here is fully consistent with class action awards generally, and BIPA cases specifically.

C. This Is Not a Reversionary, Claims-Made Settlement.

At preliminary approval, the Court expressed concern about the fact that uncashed checks were to be paid back to the insurance company. Yet it is important to realize that this settlement is not a reversionary settlement that may artificially inflate the value of a class settlement in order to increase attorney fees.

Those reversionary settlements often cap individual recoveries and limit payment to those who submit claims, in order to make it likely that the total settlement amount is never paid out. In some, but not all, of those settlements, notice is not robust which acts as a further deterrent to

claims. Yet even in those reversionary settlements, attorney fees are paid on the total value of the settlement made available. *See, e.g., Snider v. Heartland Beef, Inc.*, No. 4:20-cv-04026-SLD-JEH, ECF No. 65 (C.D. Ill.) (fees calculated on total value of revisionary settlement where claim was required and settlement contained clear sailing provision as to fees and value); *Lark v. McDonald's USA, LLC, et al.*, No. 2017-L-559 (Cir. Ct. St. Clair Cnty. Feb. 28, 2022) (awarding fees based on gross settlement fund despite capped individual recovery with unclaimed funds reverting to defendant); *Pelka, et al. v. Saren Restaurants, Inc.*, No. 2019-CH-14664 (Cir. Ct. Cook Cnty. April 9, 2021) (same); *Rosenbach v. Six Flags Ent. Corp.*, No. 2016-CH-00013 (Cir. Ct. Lake Cnty. Oct. 29, 2021) (same); *Zhirovetskiy*, No. 2017-CH-09323 (Cir. Ct. Cook Cty. Apr. 8, 2019) (same); *Soper v. Sydell Hostel Manager, LLC d/b/a Freehand Chicago*, No. 2019-CH-11519 (Cook Cnty. Cir. Ct. Oct. 7, 2021) (reversionary settlement requiring claims that capped each recovery where fees paid on amount made available).

In this case, one hundred percent of the Settlement Fund will be paid out to the Settlement Class. Nothing is held back, and there is no possibility Forman will retain a penny of the Settlement Fund, which eliminates any concerns about a “sweetheart” deal that could incentivize Forman to resume its alleged statutory violations. Should any Settlement checks remain uncashed after everything is paid out, any remaining funds will be returned to Forman’s insurer, rather than Forman. *Appendix 2* (Settlement Agreement) at § IX.59. In other words, the Settlement places both Forman and the Settlement Class in the same position they would be in if the unclaimed funds were allocated to a *cy pres* recipient.

Further, there is no clear sailing agreement as to fees or the Service Award. *See, generally, id.* Plus, the notice in this case is excellent as it provides for the Settlement Administrator to update Settlement Class Members’ addresses and provide direct notice to the Settlement Class via mail. It also provides a robust website for additional information and pleadings including this Motion.

In addition, as explained above, it is worth noting Plaintiff could have accepted a smaller class settlement where the uncashed checks would have gone to *cy pres*, but instead pushed for a larger settlement where 100% of the funds will be paid out resulting in each Settlement Class Member receiving a greater amount.

D. Numerous Additional Factors Support the Proposed Award.

In addition to being in line with percentage awards in Illinois and BIPA cases in particular, the proposed fee award's reasonableness is buttressed by other factors.

First and foremost are the significant benefits provided by the Settlement. *See Daniel v. Aon Corp.*, 2011 IL App (1st) 101508, ¶ 20 (holding the "results obtained" is a factor for evaluating proposed fee award). The gross recovery here is \$695 for each class member. This is an outstanding result when viewed against the potential \$1,000 recovery³ Plaintiff could have obtained had she proven a negligent violation of BIPA at summary judgment or trial *after* prevailing at class certification, which could have entailed years of additional litigation. Class Counsel estimates each Settlement Class Member will receive a check for approximately \$400 after Court-approved deductions for attorneys' fees and expenses, a Service Award for Plaintiff, and Administration Expenses.

What's more, the gross recovery of \$695/net recovery of approximately \$400 compares favorably to other BIPA settlements. *See Sekura*, 2015-CH-16694 (Cir. Ct. Cook Cnty. Dec. 1, 2016) (net recovery of \$125 to \$150 per claimant); *Zhirovetskiy*, No. 2017-CH-09323 (Cir. Ct. Cook Cty. Apr. 8, 2019) (net recovery capped at \$400 per claimant); *Marshal v. Life Time Fitness, Inc.*, No. 2017-CH-14262 (Cir. Ct. Cook Cty. July 30, 2019) (net recovery of approximately \$270

³ It should be noted the Settlement was reached prior to the Supreme Court's opinion in *Cothron*, which held each scan is a separate violation while acknowledging a due process scenario where statutory damages could be reduced at the court's discretion. The defense bar is now arguing courts should use that discretion to award nothing.

per claimant, as well as dark web monitoring valued at approximately \$130.00 per claimant); *Prelipceanu*, 2018-CH-15883 (Cir. Ct. Cook Cnty. July 21, 2020) (net recovery of \$262.28 per claimant); *Trotter v. Summit Staffing*, No. 2019-CH-02731 (Cir. Ct. Cook Cnty. Aug. 4, 2020) (net recovery of \$102); *Kusinski, et al. v. ADP, LLC*, 2017-CH-12364 (Cook Cnty. Feb. 10, 2021) (net recovery of \$250 per claimant); *O’Sullivan, et al. v. WAM Holdings, Inc., d/b/a All Star Management, Inc.*, No. 2019-CH-11575 (Cir. Ct. Cook Cnty. Sept. 2, 2021) (net recovery of \$384.09); *Pelka*, No. 2019-CH-14664 (Cir. Ct. Cook Cnty. Apr. 9, 2021) (net recovery of \$289 per claimant); *Sanchez v. Elite Labor Services d/b/a Elite Staffing, Inc. and Visual Pak Company*, 2018-CH-02651 (Cir. Ct. Cook Cnty. Aug. 10, 2021) (net recovery of \$256-\$510); *Sykes v. Clearstaff, Inc.*, No. 2019-CH-03390 (Cir. Ct. Cook Cnty. Jan 5, 2021) (net recovery of \$298.04).

Putting aside the direct cash payments, this case resulted in a significant non-monetary benefit that provides further support for the requested fee award, as it prompted Forman to implement the biometric disclosures, consent forms, and retention/destruction policy mandated by Sections 15(a)-(b) of BIPA. *See De Fontaine v. Passalino*, 222 Ill. App. 3d 1018, 1039 (2d Dist. 1991) (holding “the benefit to the class, whether monetary, *nonmonetary*, or both, was of major importance in determining an amount of attorney fees to be awarded.”) (emphasis added).

In addition to the outstanding results achieved, the reasonableness of the requested fee is underscored by the significant risks of nonpayment Class Counsel faced at the outset of this litigation. *See, e.g., Brundidge*, 168 Ill. 2d at 244 (percentage-of-the-fund method aims to compensate for the “risks associated with representing the plaintiff class.”); *Fauley v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 59 (upholding percentage fee award in light of the “substantial risk in prosecuting this case under a contingency fee agreement given the vigorous defense of the case and defenses asserted by [the defendant]”); *Ryan*, 274 Ill. App. 3d at 924

(noting the trial court’s fee award was reasonable given funds recovered for the class and the contingency risk).

First, at the time this suit commenced in May 2020, there were open questions as to whether a one-, two-, or five-year statute of limitations applied to BIPA claims, and whether the Illinois Workers’ Compensation Act preempted BIPA claims arising in the employment context. These are precisely the issues that prompted the stays in this case, as an unfavorable ruling on either would have precluded any recovery for the Settlement Class—thereby resulting in Class Counsel expending significant resources and receiving no fee whatsoever.

Second, Forman intended to evade liability by demonstrating: (1) the timekeeping system at issue doesn’t capture the type of “biometric identifiers” or “biometric information” covered by BIPA (an issue that would require costly expert and third-party discovery); (2) Plaintiff and the Settlement Class failed to mitigate their damages; (2) Plaintiff and the Settlement Class consented to the collection of their biometric data; (3) Plaintiff’s and the Settlement Class’s claims are barred because Forman acted in good faith and substantially complied with BIPA; (4) Plaintiff and the Settlement Class’s claims are barred on the doctrines of waiver, estoppel, ratification, or acquiescence; (5) Plaintiff and the Settlement Class lack standing to sue; and (6) certain Settlement Class Members may be subject to a binding arbitration agreement and class-action waiver. *See* Answer at 19-23 (Affirm Defs.). A victory on these defenses could have doomed the case in its entirety and precluded any recovery for scores of class members who stand to benefit from the \$2,387,325.00 Settlement secured through Class Counsel’s efforts.

Third, any judgment Class Counsel obtained for the Class could have been reduced following a victory on the merits. *See* Answer at 22 (contending aggregate statutory damage award would violate due process). Some courts view aggregate statutory damage awards with skepticism and consider reducing such awards—even after a plaintiff has prevailed on the merits—on due

process grounds. *See, e.g., Aliano v. Joe Caputo & Sons - Algonquin, Inc.*, 2011 U.S. Dist. LEXIS 48323 at *13 (N.D. Ill. May 5, 2011) (“Such an award, although authorized by statute, would be shocking, grossly excessive, and punitive in nature.”). As noted above, the defense bar is arguing the Supreme Court’s opinion in *Cothron* acknowledged a due process situation where statutory damages could be reduced, such that the courts should use that discretion to award nothing or next to nothing. *See* Section III.D n.3. The possibility of such an outcome here, even if the Settlement Class prevailed at trial years from now, further illustrates the significant risk of nonpayment (or of a substantially reduced payment) that Class Counsel faced throughout the litigation.

Finally, the fee request is explicitly spelled out in the Class Notices both as a percentage and dollar amount. *See Appendix 3* (Mail Notice) at p.2 (“Plaintiff will petition for Class Counsel’s fees up to forty percent of the Settlement Fund, which is \$954,930 plus reasonable expenses.”); *Appendix 4* (Web Notice) at p.4, § 7 (same). Although this Motion is being filed with the issuance of the notice to the Settlement Class, Class Counsel do not anticipate objections from Settlement Class Members, but will address any objections raised when moving for Final Approval.

In short, numerous factors also demonstrate the proposed fee award should be approved.

IV. The Expenses Incurred Are Reasonable and Should Be Approved.

As permitted by the Settlement, Class Counsel also seek \$5,427.15 in out-of-pocket litigation expenses, consisting of court filing and other fees, Class Counsel’s share of the mediator’s fees, and deposition costs, all of which are recoverable under BIPA. *See Appendix 1* (Keogh Decl.) at ¶21 (itemizing expenses); *see also* 740 ILCS 14/20 (authorizing recovery of “litigation expenses”). Overhead costs such as legal research, internal copying, phone, and meals, have been excluded. Thus, the requested expenses are common and reasonable. *See Alvarado v. Nederend*, 2011 U.S. Dist. LEXIS 52793 at *27-28 (E.D. Cal. May 17, 2011) (“[F]iling fees,

mediator fees [], ground transportation ... are routinely reimbursed in these types of cases.”). Accordingly, they should be approved.

V. The Proposed Class Representative Service Payment Should Be Approved.

Like the proposed fee and expense award, there is no clear sailing or agreement on the Service Award. Instead, the Settlement provides Plaintiff will petition the Court for a Service Award. As such, Settlement Class Members were given notice Plaintiff would request \$10,000 for her service to the class. *Appendix 3* (Mail Notice) at p.2; *Appendix 4* (Web Notice) at p. 4, §§ 7-8. Such awards are common to incentivize plaintiffs to bring their claims on a class basis, as they reflect the benefit conferred on the class (who likely would recover nothing but for the plaintiff’s enforcement of the law on their behalf). *See Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (recognizing that “because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit”); *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 722-23 (7th Cir. 2001) (“Incentive awards are justified when necessary to induce individuals to become named representatives.”).

Plaintiff’s role in this litigation was crucial. Though no award of any sort was promised to Plaintiff prior to the filing of this case or any time thereafter, she nevertheless sacrificed her time to prosecute this case on behalf of the thousands of individuals who used Forman’s timekeeping system, exhibiting a willingness to participate and undertake the responsibilities and risks attendant with bringing a class action. *See Appendix 1* (Keogh Decl.) at ¶ 23. Plaintiff participated in the initial investigation of her claims, provided information to Class Counsel to aid in preparing the initial pleadings, and reviewed the initial pleadings prior to filing. *Id.* at ¶ 24. During discovery, Plaintiff spent considerable time assisting Class Counsel in responding to Forman’s discovery requests, which entailed searching for responsive documents, consulting in the preparation of the interrogatory responses, and reviewing and approving the draft responses. *Id.* In addition, Plaintiff

regularly consulted with Class Counsel, and analyzed and approved the Settlement that led to the resolution of this case. *Id.* Because the substantial benefits Settlement Class Members stand to receive under the Settlement would not exist without Plaintiff's contributions and efforts throughout the litigation, Class Counsel submits the requested Service Award is reasonable and appropriate.

Moreover, the \$10,000 Service Award sought here is comparable to or less than others approved in similar BIPA disputes, as well as those approved by federal courts throughout the country in analogous class actions. *See, e.g., Rapai v. Hyatt Corp.*, No. 2017-CH-14483 (Cir. Ct. Cook Cty. Jan. 26, 2022) (awarding \$12,500 incentive award to BIPA class representative); *Dixon*, No. 1:17-cv-08033, ECF No. 103 (approving \$10,000 service award in BIPA settlement); *Prelipceanu*, No. 2018-CH-15883 (Cir. Ct. Cook Cty. July 21, 2020) (same); *Zhirovetskiy*, No. 2017-CH-09323 (Cir. Ct. Cook Cty. Apr. 8, 2019) (same); *Roach v. Walmart Inc.* No. 2019-CH-01107 (Cir. Ct. Cook Cty. June 16, 2021) (same); *Allen v. JPMorgan Chase Bank, NA*, No. 13-8285, ECF No. 93 (N.D. Ill. Oct. 21, 2015) (approving \$25,000 service award in TCPA class settlement); *Desai v. ADT Security Servs., Inc.*, No. 11-1925, ECF No. 243 ¶ 20 (N.D. Ill. Feb. 27, 2013) (awarding \$30,000 service awards in TCPA class settlement); *Ikuseghan v. Multicare Health Sys.*, 2016 WL 4363198, at *3 (W.D. Wash. Aug. 16, 2016) (finding service award of \$15,000 to be reasonable); *Hageman v. AT & T Mobility LLC*, 2015 WL 9855925, at *4 (D. Mont. Feb. 11, 2015) (approving \$20,000 service award in TCPA class settlement); *Cook*, 142 F.3d at 1016 (affirming \$25,000 service award to plaintiff); *Heekin v. Anthem, Inc.*, 2012 WL 5878032, *1 (S.D. Ind. Nov. 20, 2012) (approving \$25,000 service award to lead class plaintiff over objection); *Will v. Gen. Dynamics Corp.*, 2010 WL 4818174, *4 (S.D. Ill. Nov. 22, 2010) (awarding \$25,000 each to three named plaintiffs); *Benzion v. Vivint, Inc.*, No. 12-61826, DE 201 (S.D. Fla. Feb. 23, 2015) (awarding \$20,000 service award in TCPA class settlement).

Finally, the Service Award is not material to the \$695 gross or estimated \$400 net recovery. For example, if the court awarded half the amount requested, each Settlement Class Member would gain \$1.45 and even at nothing, they would gain less than \$3. These amounts are not material such that any reduction of the Service Award would only harm Plaintiff and not materially benefit the Settlement Class. Thus, the requested Service Award of \$10,000 for Plaintiff is reasonable and should be approved.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court enter an Order approving the proposed attorneys' fee award in the amount of \$954,930.00, proposed award of out-of-pocket expenses in the amount of \$5,427.15, and a Service Award to the class representative in the amount of \$10,000.

Dated: May 5, 2023

Respectfully submitted,

/s/ Gregg M. Barbakoff
One of Plaintiff's Attorneys

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Attorneys for the Plaintiff and the Proposed Settlement Class

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on **May 5, 2023**, the foregoing document, along with all attached exhibits, was served on the attorneys at the addresses below via email and by filing the same with the Court's electronic filing system.

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s/Gregg M. Barbakoff
Gregg M. Barbakoff

APPENDIX 1

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

PORCHIA HEIDELBERG, *individually and
on behalf of all others similarly situated,*

Plaintiff,

v.

FORMAN MILLS INC.,

Defendant.

Case No. 2020CH04079

Hon. Joel Chupack
Presiding Judge

DECLARATION OF KEITH J. KEOGH

I, Keith J. Keogh, declare under penalty of perjury:

1. I am a member in good standing of the Illinois State Bar, and the founder and managing partner of Keogh Law, Ltd. (“Class Counsel”). I am one of the lawyers primarily responsible for prosecuting Plaintiff Porchia Heidelberg’s (“Plaintiff”) claims under the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.* on behalf of the proposed Settlement Class.

2. I submit this declaration in support of Plaintiff’s Motion for Award of Attorneys’ Fees and Expenses, and Class Representative Service Award. I am over the age of eighteen and am fully competent to make this declaration. This declaration is based upon my personal knowledge and if called upon to testify to the matters stated herein, I could and would do so competently.

3. As shown below, my firm has regularly engaged in major complex litigation and consumer class actions involving statutory privacy claims. My firm has the resources necessary to conduct litigation of this nature, and has experience prosecuting class actions of similar size, scope, and complexity to the instant case. Additionally, I have often served as class counsel in similar actions.

4. This case has been pending for nearly three years, which involved conducting significant pre- and post-suit research into the rapidly evolving case law on BIPA, briefing contested motions, and conducting written, oral, and third-party discovery on class and merits issues including, but not limited to, the makeup of the proposed class, the data captured by Forman's timekeeping system, the manner in which Forman handled and stored the data collected by its timekeeping system, and Forman's policies and procedures regarding the collection, use, and storage of biometric data.

5. In addition, Class Counsel prepared a detailed mediation brief setting forth Plaintiff's legal and factual theories before participating in an arms-length, all-day mediation session before the Honorable Thomas Allen (Ret.). Had the case not settled, the parties would have completed litigation and presumably appeals.

6. During the mediation, the parties discussed their relative views of the law and the facts, as well as the potential relief for the proposed Settlement Class. After reaching an agreement in principle on the material terms, the parties spent the next six weeks negotiating their remaining points of dispute, which ultimately culminated in the Settlement Agreement.

7. Under the Settlement Agreement, Forman will pay Two Million, Three Hundred Eighty-Seven Thousand, Three Hundred Twenty-Five Dollars (\$2,387,325.00) into a Settlement Fund. There is no need to submit a claim form and the Settlement Fund will be divided *pro rata* among all Settlement Class Members who decline to opt out, after payment of the costs of notice

and administration and the court-approved attorneys' fee and class representative incentive award. One hundred percent of the Settlement Fund will be paid out.

8. The class is limited to 3,435 persons. Thus, each Settlement Class Member will receive a net recovery of approximately \$400, which is in line with, if not superior to, other BIPA settlements that have received approval.

9. The Settlement reached in this case was the product of well-informed judgments about the adequacy of the relief provided to the proposed Settlement Class. Class Counsel are intimately familiar with the relative strengths and weaknesses of the claims and defenses in this case, as well as the corresponding legal and factual issues. This knowledge, which was obtained through the discovery exchanged by the parties, as well as Class Counsel's extensive experience, legal research and pre-suit investigation, was sufficient to make an informed recommendation about the value of the claims at issue, the costs, risks, and delays of protracted litigation, discovery, and appeals, and the adequacy of the class relief secured through the Settlement.

10. At all times, the settlement negotiations were highly-adversarial and non-collusive, as evidenced by the all-day mediation session before Judge Allen, and the parties have not entered into any side-deals or separate agreements in connection with the Settlement Agreement.

11. While am confident in the strength of the claims alleged in this case and that Plaintiff would ultimately prevail at trial, Forman denied all of Plaintiff's material allegations and raised numerous legal and factual issues that, if successful, could preclude any recovery for the Settlement Class.

12. Forman's primary defense is that it faces no liability under BIPA because the information captured by its timekeeping system does not fall within the statutory definition of "biometric identifiers" or "biometric information," but instead falls within a third category outside of BIPA's purview. *See* Answer at 19; *see also id.* at ¶¶ 9-10, 26-29. Defeating this highly-

technical defense at would presumably entail costly expert and third-party discovery, while the lack of any guiding precedent offers no guarantee of success at summary judgment or trial.

13. Further, Forman intended to evade liability by proving, among other issues, that: (1) Plaintiff and the Settlement Class failed to mitigate their damages; (2) Plaintiff and the Settlement Class consented to the collection of their biometric data; (3) Plaintiff's and the Settlement Class's claims are barred because Forman acted in good-faith and substantially complied with BIPA; (4) Plaintiff and the Settlement Class's claims are barred on the doctrines of waiver, estoppel, ratification, or acquiescence; (5) Plaintiff and the Settlement Class lack standing to sue; and (6) certain Settlement Class members may be subject to a binding arbitration agreement and class-action waiver. *See Answer at 19-25.* A victory on these defenses could doom the case in its entirety or, at the very least, greatly reduce the size of the proposed class and preclude any recovery for scores of class members who stand to benefit from the Settlement.

14. And, before resolving Forman's substantive defenses, Plaintiff would first need to prevail at class certification, which would entail extensive motion practice on several hotly contested issues with no guarantee of success. *See Fed. R. Civ. P. 23(e)(2), Advisory Committee's Note to 2018 Amendment (directing courts to consider the likelihood of certification when evaluating this sub-factor).*¹ Though Plaintiff maintains this case is an ideal candidate for certification, her success is certainly not guaranteed.

15. Finally, even if Plaintiff prevailed at class certification and obtained a complete victory on the merits, Forman intended to seek reduction of damages based on the argument an

¹ Because Illinois's class action statute is patterned after Rule 23 of the Federal Rules of Civil Procedure, Illinois courts look to federal law for guidance on issues affecting certification. *Mashal v. City of Chi.*, 2012 IL 112341, ¶ 24.

award of \$1,000 or \$5,000 per violation would violate its right to due process under the Illinois and United States Constitution. *See Answer at 22.*

16. Given the risks and delays posed by further litigation, as well as my considerable experience doing Plaintiff's consumer protection work, I believe the settlement is more than fair, adequate, and reasonable, and in the best interest of the Settlement Class. Instead of facing the uncertainty of a potential award in their favor years from now, the Settlement allows Plaintiff and Settlement Class Members to receive immediate and certain relief.

17. Given the strength of this Settlement, I do not expect significant opposition to the Settlement by any Settlement Class Members.

18. My firm represented Plaintiff and the Settlement Class on a contingency-fee basis. In taking on this case, my firm risked extensive expert costs, a potentially expensive trial and appeal, and lost opportunity costs due to the time needed to brief dispositive motions.

19. I am familiar with the practices of class action attorneys in the Northern District of Illinois, who regularly contact to receive one-third to forty percent of any potential class settlement as compensation for shouldering the risk of funding a potential-multi-year litigation without any guarantee of recovery.

20. The expenses incurred in this case are reflected in Keogh Law, Ltd.'s books and records. These books and records are prepared from check records, credit card statements, receipts, and other source materials and represent an accurate record of the expenses incurred. They do not include overhead costs such as legal research or internal copies. The expenses incurred were reasonable and necessary to prosecute the case, and not part of Keogh Law, Ltd.'s overhead.

21. Below is a detailed report of itemized expenses showing the \$5,427.15 incurred to date in out-of-pocket expenses in prosecuting this case.

Date	Description	Amount	
11/4/2020	Cook County Filing Fee	\$337.00	
11/6/2020	Service of Process	\$95.00	
6/21/2021	Mediation Judge Allen	\$4,333.00	
6/31/2021	JAMS admin fee	\$662.15	
		\$5,427.15	Total Expenses

22. It is my professional opinion that the expenses set forth above were reasonable and necessary in the successful prosecution of this action.

23. Plaintiff Porchia Heidelberg played a key role in prosecuting this case and securing the proposed Settlement on behalf of the proposed Settlement Class. While no award of any kind was promised to Plaintiff prior to the filing of this case or anytime thereafter, she nevertheless sacrificed her time to prosecute this case on behalf of the thousands of individuals who used Forman's timekeeping system, exhibiting a willingness to participate and undertake the responsibilities and risks attendant with bringing a class action.

24. Plaintiff retained experience class action litigators to bring this action, participated in the initial investigation of her claims, provided information to Class Counsel to aid in preparing the initial pleadings, and reviewed and approved the initial pleadings prior to filing. During discovery, Plaintiff spent considerable time assisting Class Counsel in responding to Forman's discovery requests, which entailed searching for responsive documents, consulting in the

preparation of the interrogatory responses, and reviewing and approving the draft responses. In addition, Plaintiff regularly consulted with Class Counsel throughout the litigation, and analyzed and approved the Settlement that led to the resolution of this case.

Class Counsel's Experience

25. Keogh Law, Ltd. consists of six attorneys and focuses on consumer protection class actions. I am a shareholder of the firm and member of the bars of the United States Supreme Court, Court of Appeals for the First, Second, Third, Fifth, Seventh, Ninth and Eleventh Circuits, Eastern District of Wisconsin, Northern District of Illinois, Central District of Illinois, Southern District of Indiana, District of Colorado, Middle District of Florida, Southern District of Florida, the Illinois State Bar, and the Florida State Bar, as well as several bar associations and the National Association of Consumer Advocates.

26. In 2015, the National Association of Consumer Advocates honored me as the Consumer Attorney of the Year for my work in courts and with the FCC insuring the safeguards of the TCPA were maintained.

27. As shown below, my firm has regularly engaged in major complex litigation and consumer class actions involving statutory privacy claims. My firm has the resources necessary to conduct litigation of this nature, and has experience prosecuting class actions of similar size, scope, and complexity to the instant case. Additionally, I have often served as class counsel in similar actions.

28. Recently, my firm was appointed as class counsel in two similar class actions involving claims arising under BIPA, *Quarles v. Pret A Manger (USA) Ltd.*, 20-cv-7179, ECF No. 46 (N.D. Ill. Jan 18, 2022) and *Sherman v. Brandt Industries USA Ltd.*, 20-cv-1185, ECF No. 78 (C.D. Ill. March 22, 2022). My firm has also litigated dozens of other putative class actions arising under BIPA, including *Hanlon ex rel. G.T. v. Samsung Elecs. Am., Inc.*, 1:21-cv-04976 (N.D. Ill.);

Svoboda v. Frames for America, Inc., 1:21-cv-05509 (N.D. Ill.); *Steinberg v. Charles Indus., L.L.C.*, 2021 CH 01793 (Cir. Ct. Cook Cnty.); *Ortega v. The Expediting Co., Inc.*, 2021 CH 00969 (Cir. Ct. Cook Cnty.); *Fells v. Carl Buddig & Co.*, 2021 CH 00508 (Cir. Ct. Cook Cnty.); *Mathews v. Brightstar US, LLC*, 2021 CH 00167 (Cir. Ct. Lake Cnty.); *Roberts v. Graphic Packaging Int'l, LLC*, 3:21-cv-00750 (S.D. Ill.); *Willem v. Karpinske Enters., L.L.C.*, 2021 CH 00031 (Cir. Ct. Jo Daviess Cnty., Ill.); *Shafer v. Rodebrad Mgmt. Co., Inc.*, 2021 CH 00008 (Cir. Ct. Montgomery Cnty., Ill.); *Roberts v. TDS Servs., Inc.*, 2021 CH 00005 (Cir. Ct. Washington Cnty., Ill.); *Jenkins v. Regal Cinemas, Inc.*, 1:20-cv-03782 (N.D. Ill.); *Turner v. Crothall Healthcare, Inc.*, 1:20-cv-03026 (N.D. Ill.); *McFerren, et al. v. World Class Distribution, Inc.*, 1:20-cv-02912 (N.D. Ill.); *Stein v. Clarifai, Inc.*, 1:20-cv-01937 (N.D. Ill.); *Barton v. Swan Surfaces, LLC*, 3:20-cv-00499-SPM (S.D. Ill.); *Wells v. Medieval Times U.S.A., Inc.*, 2020 CH 06658 (Cir. Ct. Cook Cnty.); *Young v. Van Ru Credit Corp.*, 2020 CH 04303 (Cir. Ct. Cook Cnty.); *Marquez v. Bobak Sausage Co.*, 2020 CH 04259 (Cir. Ct. Cook Cnty.); *Isychko v. Jidd Motors, Inc.*, 2020 CH 04244 (Cir. Ct. Cook Cnty.); *Heidelberg v. Forman Mills Inc.*, 2020 CH 04079 (Cir. Ct. Cook Cnty.); *Hirmer v. Elite Med. Transp., LLC*, 2020 CH 04069 (Cir. Ct. Cook Cnty.); *Magner v. SMS-NA, LLC*, 2020 CH 00520 (Cir. Ct. Cook Cnty.); *Gumm v. Vonachen Servs., Inc.*, 2020 CH 00139 (Cir. Ct. Peoria Cnty., Ill.); *Bayeg v. The Admiral at the Lake*, 2019 CH 08828 (Cir. Ct. Cook Cnty.); *Bayeg v. Eden Mgmt., LLC*, 2019 CH 08821 (Cir. Ct. Cook Cnty.); *Tran v. Simple Labs., LLC*, 2019 CH 07937 (Cir. Ct. Cook Cnty.).

29. My firm served as class counsel in some of the largest all-cash FACTA class settlements in history, including the \$30.9 million settlement in *Flaum v Doctors Associates*, 16-CV-61198-CMA (S.D. Fla. Mar. 11, 2019), which I understand to be the largest all-cash FACTA settlement in history. The others include *Martin v. Safeway, Inc.*, 2020 CH 5480 (Cir. Ct. Cook Cnty., Ill.) (\$20 million); *Legg v. Laboratory Corp. of America Holdings*, No. 14-cv-61543-RLR

(S.D. Fla. Feb. 18, 2016) (\$11 million); *Legg v. Spirit Airlines, Inc.*, No. 14-cv-61978-JIC (S.D. Fla. Aug. 2, 2016) (\$7.5 million); and *Muransky v. Godiva Chocolatier, Inc.*, No. 2020 CH 7156 (Cir. Ct. Cook Cnty. May 13, 2021) (\$6.3 million).

30. Other successful FACTA cases in which my firm has served as class counsel include *Altman v. White House Black Market, Inc.*, No. 21-A-735 (Cobb Cnty., Ga., Dec. 9, 2021); *Guarisma v. Alpargatas USA, Inc. d/b/a Havaianas*, Case No. 2020 CH 7426 (Cir. Ct. Cook Cnty., May 24, 2021); *Guarisma v. Microsoft Corp.*, No. 15-cv-24326-CMA (S.D. Fla., Oct. 27, 2017); *Cicilline v. Jewel Food Stores, Inc.*, 542 F.Supp.2d 831 (N.D. Ill. 2008); *Harris v. Best Buy Co.*, 254 F.R.D. 82 (N.D. Ill. 2008); *Matthews v. United Retail, Inc.*, 248 F.R.D. 210 (N.D. Ill. 2008); *Redmon v. Uncle Julio's, Inc.*, 249 F.R.D. 290 (N.D. Ill. 2008); *Harris v. Circuit City Stores, Inc.*, No. 07 C 2512, 2008 U.S. Dist. LEXIS 12596 (N.D. Ill. Feb. 7, 2008); and *Pacer v. Rockenbach Chevrolet Sales, Inc.*, 07 C 5173 (N.D. Ill. 2008).

31. My firm also was class counsel in two of the largest Telephone Consumer Protection Act (“TCPA”) settlements in the country. *See Hageman v. AT&T Mobility LLC, et al.*, Case 1:13-cv-00050-DLC-RWA (D. MT.) (Co-Lead) (\$45 million settlement) and *Capital One Telephone Consumer Protection Act Litigation, et al.*, 12-cv-10064 (N.D. Ill. Judge Holderman) (Liaison Counsel and additional Class Counsel) (\$75 million settlement).

32. The firm was lead or class counsel in the following consumer class settlements: *Breda v. Cellco Partnership, et al.*, 16-cv-11512-DJC (D. Mass. Nov. 18, 2021); *Iverson v. Advanced Disposal Servs., Inc.*, No. 18-CV-00867-BJD-JBT (M.D. Fla. Mar. 1, 2022); *Braver v. Northstar Alarm Services, LLC*, No. 5:17-cv-00383-F (W.D. Okla. Nov. 3, 2020); *Goel v. Stonebridge of Arlington Heights, et al.*, 2018 CH 11015 (Cir. Ct. Cook Cty. Jun. 8, 2020); *Cook v. Wal-Mart Stores, Inc., et al.*, No. 3:16-cv-673-BRD-JRK (M.D. Fla. Jun. 4, 2020); *Cranor v. The Zack Group, Inc.*, No. 4:18-cv-00628-FJG (W.D. Mo. May 18, 2020); *Keim v. ADF*

MidAtlantic, LLC, 2018 U.S. Dist. LEXIS 204548 (S.D. Fla. Mar. 20, 2020); *Hennessy, et al. v. Mid-America Apartment Communities, Inc., et al.*, 4:17-cv-00872-BCW (W.D. Mo. Aug. 8, 2019); *Detter v. KeyBank, N.A.*, No. 16-cv-10036 (Jackson Ctny., Mo. July 12, 2019) (FCRA); *Leung v XPO Logistics, Inc.*, 15 CV 03877 (N.D. Ill. 2018); *Martinez v. Medicredit*, 4:16CV01138 ERW (E.D. Mo. 2018); *Martin v. Wells Fargo Bank, N.A.*, 16-cv-09483 (N.D. Ill. 2018) (FCRA); *Town & Country Jewelers, LLC v. Meadowbrook Insurance Group, Inc., et al.*, 15-CV-02419-PGS-LHG (D. N.J. 2018); *Legg v. Am. Eagle Outfitters*, 2017 U.S. Dist. LEXIS 147645 (S.D.N.Y. Sept. 8, 2017), *aff'd* 923 F.3d 85 (2d Cir. 2019); *Stahl v. RMK Mgmt. Corp.*, 2015 CH 13459 (Cir. Ct. Cook Cty. Sept. 14, 2017); *Tripp v. Berman & Rabin, P.A.*, 2017 U.S. Dist. LEXIS 3971 (D. Kan. Jan. 9, 2017); *Markos v Wells Fargo*, 15-cv-01156-LMM (N.D. Ga.); *Ossola v Amex* 1:13-cv-04836 (N.D. Ill. 2016); *Luster v. Wells Fargo*, 15-1058-TWT (N.D. Ga.); *Prather v Wells Fargo*, 15-CV-04231-SCJ (ND. Ga.); *Joseph et al. v. TrueBlue, Inc. et al.*, Case No. 3:14-cv-05963 (D. Wa.); *Willett, et al. v. Redflex Traffic Systems, Inc., et al.*, Case No. 13-cv-01241-JCH-RHS; *In re Convergent Outsourcing, Inc. Telephone Consumer Protection Act Litigation*, Master Docket No. 3:13-cv-1866-AWT (D. Conn) (Interim Co-Lead); *De Los Santos v Millword Brown, Inc.*, 9:13-cv-80670-DPG (S.D. Fla.); *Allen v. JPMorgan Chase Bank, N.A.* 13-cv-08285 (N.D. Ill. Judge Pallmeyer); *Cooper v NelNet*, 6:14-cv-314-Orl-37DAB (M.D. Fl.); *Thomas v Backgroundchecks.com*, 3:13-CV-029-REP (E.D. Va.) (additional class counsel); *Lopera v RMS*, 12-c-9649 (N.D. Ill. Judge Wood); *Kubacki v Peapod*, 13-cv-729 (N.D. Ill. Judge Mason); *Wojcik v. Buffalo Bills, Inc.*, 8:12 CV 2414-SDM-TBM (M.D. Fla. Judge Merryday); *Curnal v. LVNV Funding, LLC.*, 10 CV 1667 (Wyandotte County, KS 2014); *Cummings v Sallie Mae*, 12 C-9984 (N.D. Ill. Judge Gottschall) (co-lead); *Brian J. Wanca, J.D., P.C. v. L.A. Fitness International, LLC*, Case No. 11-CV-4131 (Lake County, Ill. Judge Berrones); *Osada v. Experian Info. Solutions, Inc.*, 2012 U.S. Dist. LEXIS 42330 (N.D. Ill. Mar. 28, 2012) (FCRA); *Saf-T-Gard*

International, Inc. v. Vanguard Energy Services, L.L.C., et al, 12-cv-3671 (N.D. Ill. 2013 Judge Gottschall); *Saf-T-Gard v TSI*, 10-c-7671, (N.D. Ill. Judge Rowland); *Cain v Consumer Portfolio Services, Inc.* 10-cv-02697 (N.D. Ill. Judge Keys); *Iverson v Rick Levin & Associates*, 08 CH 42955 Circuit Court Cook County (Judge Cohen); *Saf-T-Gard v Seiko*, 09 C 776 (N.D. Ill. Judge Bucklo); *Jones v. Furniture Bargains, LLC*, 09 C 1070 (N.D. Ill); *Saf-T-Gard v Metrolift*, 07 CH 1266 Circuit Court Cook County (Judge Rochford) (Co-Lead); *Bilek v Countrywide*, 08 C 498 (N.D. Ill. Judge Gottschell); *Pacer v. Roehenback*, 07 C 5173 (N.D. Ill. Judge Cole); *Overlord Enterprises v. Wheaton Winfield Dental Associates*, 04 CH 01613, Circuit Court Cook County (Judge McGann); *Whiting v. SunGard*, 03 CH 21135, Circuit Court Cook County (Judge McGann); *Whiting v. GoIndustry*, 03 CH 21136, Circuit Court Cook County (Judge McGann).

33. In addition, I was the attorney primarily responsible for the following class settlements: *Wollert v. Client Services*, 2000 U.S. Dist. LEXIS 6485 (N.D. Ill. 2000); *Rentas v. Vacation Break USA*, 98 CH 2782, Circuit Court of Cook County (Judge Billik); *McDonald v. Washington Mutual Bank*, supra; *Wright v. Bank One Credit Corp.*, 99 C 7124 (N.D. Ill. Judge Guzman); *Arriaga v. Columbia Mortgage*, 01 C 2509 (N.D. Ill. Judge Lindberg); *Frazier v. Provident Mortgage*, 00 C 5464 (N.D. Ill. Judge Coar); *Largosa v. Universal Lenders*, 99 C 5049 (N.D. Ill. Judge Leinenweber); *Arriaga v. GNMortgage*, (N.D. Ill. Judge Holderman); *Williams v. Mercantile Mortgage*, 00 C 6441 (N.D. Ill. Judge Pallmeyer); *Reid v. First American Title*, 00 C 4000 (N.D. Ill. Magistrate Judge Ashman); *Fabricant v. Old Kent*, 99 C 6846 (N.D. Ill. Magistrate Judge Bobrick); *Mendelovits v. Sears*, 99 C 4730 (N.D. Ill. Magistrate Judge Brown); *Leon v. Washington Mutual*, 01 C 1645 (N.D. Ill. Judge Alesia).

34. Keogh Law was appointed class counsel in *Keim v. ADF MidAtlantic, LLC*, 328 F.R.D. 668 (S.D. Fla. 2018) (TCPA); *Lanteri v. Credit Protection Ass'n, L.P.*, 2018 U.S. Dist. LEXIS 166345 (S.D. Ind. Sept. 26, 2018) (FACTA); *Braver v. Northstar Alarm Services, LLC*,

329 F.R.D. 320 (W.D. Okla. 2018) (TCPA); *Altman v. White House Black Mkt., Inc.*, 2017 U.S. Dist. LEXIS 221939 (N.D. Ga. Oct. 25, 2017), *aff'd*, 2018 U.S. Dist. LEXIS 169828 (N.D. Ga. Feb. 12, 2018) (FACTA); *Tripp v. Berman & Rabin, P.A.*, 310 F.R.D. 499 (D. Kan. 2015); *In Re Convergent Outsourcing, Inc. Tel. Cons. Prot. Act Litig.*, Master Docket No. 3:13-cv-1866-AWT (D. Conn) (Interim Co-Lead) (TCPA); *Stahl v. RMK Mgmt. Corp.*, 2015-CH-13459 (Cir. Ct. Cook Cty.) (landlord/tenant under Chicago RLTO); *Galvan v. NCO Fin. Sys.*, 2012 U.S. Dist. LEXIS 128592 (N.D. Ill. 2012); *Osada v. Experian Info. Solutions, Inc.*, 2012 U.S. Dist. LEXIS 42330 (N.D. Ill. Mar. 28, 2012) (FCRA); *Pesce v First Credit Services*, 11-cv-01379 (N.D. Ill. December 19 2011) (TCPA); *Smith v Greystone Alliance*, 09 CV 5585 (N.D. Ill. 2010); *Cicilline v. Jewel Food Stores, Inc.*, 542 F.Supp.2d 831 (N.D. Ill. 2008)(Co-Lead Counsel for FACTA class); *Harris v. Best Buy Co.*, 07 C 2559,2008 U.S. Dist. LEXIS 22166 (N.D. Ill. Mar. 20, 2008); *Matthews v. United Retail, Inc.*, 248 F.R.D. 210 (N.D. Ill. 2008)(FACTA class); *Redmon v. Uncle Julio's, Inc.*, 249 F.R.D. 290 (N.D. Ill. 2008) (FACTA); *Harris v. Circuit City Stores, Inc.*, 2008 U.S. Dist. LEXIS 12596 (N.D. Ill. 2008) (FACTA); *Pacer v. Rockenbach Chevrolet Sales, Inc.*, 07 C 5173 (N.D. Ill. 2008) (FACTA).

35. Some reported cases of the firm involving consumer protection include: *Breda v. Cellco P'ship*, 934 F.3d 1 (1st Cir. 2019); *Evans v. Portfolio Recovery Assocs.*, 889 F.3d 337 (7th Cir. 2018); *Susinno v. Work Out World Inc.*, 862 F.3d 346, 351 (3rd Cir. 2017) (finding a “nuisance and invasion of privacy resulting from a single prerecorded telephone call”); *Franklin v. Parking Revenue Recovery Servs.*, 832 F.3d 741 (7th Cir. 2016); *Leeb v. Nationwide Credit Co.*, 806 F.3d 895 (7th Cir. 2015); *Galvan v. NCO Portfolio Mgmt. Inc.*, 794 F.3d 716, 721 (7th Cir. 2015); *Smith v. Greystone*, 772 F.3d 448 (7th Cir. 2014); *Clark v Absolute Collection Agency*, 741 F.3d 487 (4th 2014); *Lox v. CDA, Ltd.*, 689 F.3d 818 (7th Cir. 2012); *Townsel v. DISH Network L.L.C.*, 668 F.3d 967 (7th Cir. Ill. 2012); *Catalan v. GMAC Mortgage Corp.*, No. 09-2182 (7th Cir. 2011); *Gburek*

v. Litton Loan, 614 F.3d 380 (7th Cir. 2010); *Sawyer v. Ensurance Insurance Services* consolidated with *Killingsworth v. HSBC Bank Nev., NA.*, 507 F3d 614, 617 (7th Cir. 2007), *Echevarria et al. v. Chicago Title and Trust Co.*, 256 F3d 623 (7th Cir. 2001); *Demitro v. GMAC*, 388 Ill. App. 3d 15, 16 (1st Dist. 2009); *Hill v. St. Paul Bank*, 329 Ill. App. 3d 7051, 1768 N.E.2d 322 (1st Dist. 2002); *In re Mercedes-Benz Tele Aid Contract Litig.*, 2009 U.S. Dist. LEXIS 35595 (D.N.J. 2009); *Catalan v. RBC Mortg. Co.*, 2009 U.S. Dist. LEXIS 26963 (N.D. Ill. 2009); *Elkins v. Equifax, Inc.*, 2009 U.S. Dist. LEXIS 18522 (N.D. Ill. 2009); *Harris v. DirectTV Group, Inc.*, 2008 U.S. Dist. LEXIS 8240 (N.D. Ill. 2008); *In re TJX Cos., Inc., Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 2008 U.S. Dist. LEXIS 38258 (D. Kan. 2008); *Martin v. Wal-Mart Stores, Inc.*, 2007 U.S. Dist. LEXIS 89715 (N.D. Ill. 2007); *Elkins v. Ocwen Fed. Sav. Bank Experian Info. Solutions, Inc.*, 2007 U.S. Dist. LEXIS 84556 (N.D. Ill. 2007); *Harris v. Wal-Mart Stores, Inc.*, 2007 U.S. Dist. LEXIS 76012 (N.D. Ill. 2007); *Stegvilas v. Evergreen Motors, Inc.*, 2007 U.S. Dist. LEXIS 35303 (N.D. Ill. 2007); *Cook v. River Oaks Hyundai, Inc.*, 2006 U.S. Dist. LEXIS 21646 (N.D. Ill. 2006); *Gonzalez v. W. Suburban Imps., Inc.*, 411 F. Supp. 2d 970 (N.D. Ill. 2006); *Eromon v. GrandAuto Sales, Inc.*, 333 F. Supp. 2d 702 (N.D. Ill. 2004); *Williams v. Precision Recovery, Inc.*, 2004 U.S. Dist. LEXIS 6190 (N.D. Ill. 2004); *Doe v. Templeton*, 2003 U.S. Dist. LEXIS 24471 (N.D. Ill. 2003); *Ayala v. Sonnenschein Fin. Servs.*, 2003 U.S. Dist. LEXIS 20148 (N.D. Ill. 2003); *Gallegos v. Rizza Chevrolet, Inc.*, 2003 U.S. Dist. LEXIS 18060 (N.D. Ill. 2003); *Szwebel v. Pap's Auto Sales, Inc.*, 2003 U.S. Dist. LEXIS 13044 (N.D. Ill. 2003); *Johnstone v. Bank of America*, 173 F. Supp.2d 809 (N.D. Ill. 2001); *Leon v. Washington Mutual Bank*, 164 F. Supp.2d 1034 (N.D. Ill. 2001); *Ploog v. HomeSide Lending*, 2001 WL 987889 (N.D. Ill. 2001); *Christakos v. Intercounty Title*, 196 F.R.D. 496 (N.D. Ill. 2000); *Batten v. Bank One*, 2000 WL 1364408 (N.D. Ill. 2000); *McDonald v. Washington Mutual Bank*, 2000 WL 875416 (N.D. Ill. 2000); and *Williamson v. Advanta Mtge Corp.*, 1999 U.S. Dist. LEXIS 16374 (N.D. Ill. 1999). The

Christakos case significantly broadened title and mortgage companies' liability under Real Estate Settlement Procedures Act ("RESPA") and *McDonald* is the first reported decision to certify a class regarding mortgage servicing issues under the Cranston-Gonzales Amendment of RESPA.

36. I have argued before the federal First, Fifth, Seventh, Eleventh Circuit Courts, the First District Court of Illinois, the Fourth District Court of Appeal of Florida, and the Multidistrict Litigation Panel in various cases including *Townsel v. DISH Network L.L.C.*, 668 F.3d 967 (7th Cir. Ill. 2012); *Catalan v GMACM* (7th Cir. 2010); *Gburek v. Litton Loan Servicing* (7th Cir. 2009); *Sawyer v Esurance* (7th Cir. 2007), *Echevarria, et al. v. Chicago Title and Trust Co.* (7th Cir. 2001); *Morris v Bob Watson*, (1st. Dist. 2009); *Iverson v. Gold Coast Motors Inc.*, (1st Dist. 2009); *Demitro v. GMAC* (1st Dist. 2008), *Hill v. St. Paul Bank* (1st Dist. 2002), and *In Re: Sears, Roebuck & Company Debt Redemption Agreements Litigation* (MDL Docket No. 1389). *Echevarria* was part of a group of several cases that resulted in a nine million dollar settlement with Chicago Title.

37. My published works include co-authoring and co-editing the 1997 supplement to *Lane's Goldstein Trial Practice Guide* and *Lane's Medical Litigation Guide*.

38. I have lectured extensively on consumer litigation, including extensively on class actions and the TCPA. For example, I:

- a. Presented at the 2018 Fair Debt Collection Training Conference for two sessions on the TCPA.
- b. Presented at the National Consumer Law Center 2017 annual conference on the TCPA.
- c. Presented at the National Consumer Law Center 2016 annual conference on the TCPA.
- d. Presented at the 2016 Fair Debt Collection Training Conference for a session on TCPA Developments.

- e. Presented for the National Association of Consumer Advocates November 2015 webinar titled Developments and Anticipated Impact of Recent FCC TCPA Rules.
- f. Presented at the National Consumer Law Center 2015 annual conference in San Antonio, Tx. on the TCPA.
- g. Presented at the 2015 Fair Debt Collection Training Conference for three sessions on the TCPA.
- h. Presented at the National Consumer Law Center 2014 annual conference in Tampa FL. for two sessions on the TCPA.
- i. Panelist for the December 2013 Strafford CLE Webinar titled TCPA Class Actions: Pursuing or Defending Claims Over Phone, Text and Fax Solicitations.
- j. Panelist for the December 2014 Chicago Bar Association Class Action Seminar titled “Class Action Settlements in the Seventh Circuit: Navigating Turbulent Waters.”
- k. Presented at the 2014 Fair Debt Collection Training Conference for three sessions on the TCPA.
- l. Panelist for the December 2013 Strafford CLE Webinar titled Class Actions for Telephone and Fax Solicitation and Advertising Post-Mims. Leveraging TCPI lectured at the 2014 Fair Debt Collection Training Conference for three sessions on the TCPA.
- m. Panelist for the December 2013 Strafford CLE Webinar titled Class Actions for Telephone and Fax Solicitation and Advertising Post-Mims. Leveraging TCPA Developments in Federal Jurisdiction, Class Suitability, and New Technology.
- n. Presented for the National Association of Consumer Advocates November 2013 webinar titled Current Telephone Consumer Protection Act Issues Regarding Cell Phones.
- o. Presenter for the November 2013 Chicago Bar Association Class Action Committee presentation titled Future of TCPA Class Actions.

- p. Speaker at the Social Security Administration's Chicago office in August 2013 on a presentation on identity theft, which included consumers' rights under the Fair Credit Reporting Act.
- q. Panelist for the May 14, 2013 Chicago Bar Association Class Action Seminar titled "The Shifting Landscape of Class Litigation" as well as for the March 20, 2013 Strafford CLE webinar titled "Class Actions for Telephone and Fax Solicitation and Advertising Post-Mims. Leveraging TCPA Developments in Federal Jurisdiction, Class Suitability, and New Technology."
- r. Lectured at the June 6, 2013 Consumer Law Committee of the Chicago Bar Association on the topic "Employment Background Reports under the Fair Credit Reporting Act: Improper consent forms to failure to provide background report prior to adverse action."
- s. Lectured at the 2013 Fair Debt Collection Training Conference for three sessions on the TCPA.
- t. Presented at the 2012 National Consumer Law Center annual conference for a session on the TCPA.
- u. Presented at the 2012 Fair Debt Collection Training Conference for a session on the TCPA.
- v. Panelist for Solutions for Employee Classification & Wage/Hour Issues at the 2011 Annual Employment Law Conference hosted by Law Bulletin Seminars.
- w. Lectured at the 2011 National Consumer Law Center conference for a session titled Telephone Consumer Protection Act: Claims, Scope, Remedies as well as lectured at the same 2011 National Consumer Law Center conference for a double session titled ABC's of Class Actions.
- x. Taught *Defenses to Foreclosures* for Lorman Education Services, which was approved for CLE credit, in 2008 and 2010.

- y. Guest lecturer on privacy issues at University of Illinois at Urbana-Champaign School of Law. In March 2010.
- z. Guest speaker for the Legal Services Office of The Graduate School and Kellogg MBA Program at Northwestern University for its seminar titled: “Financial Survival Guide: Legal Strategies for Graduate Students During A Period of Economic Uncertainty.”

39. I was selected as an Illinois Super Lawyer each year since 2014 and an Illinois Super Lawyer Rising Star each year from 2008 through 2013 and my cases have been featured in local newspapers such as the Chicago Tribune, Chicago Sun-Times, The Naperville Sun, Daily Herald and RedEye.

Michael S. Hilicki

40. In 2014, Michael Hilicki joined the firm. He has spent nearly all of his more-than twenty-five year legal career helping consumers and workers subjected to unfair and deceptive business practices, and unpaid wage practices. He is experienced in a variety of consumer and wage-related areas including, but not limited to, the Fair Debt Collection Practices Act, Truth-in-Lending Act, Fair Credit Reporting Act (particularly FACTA), Real Estate Settlement Procedures Act, Illinois Consumer Fraud & Deceptive Business Practices Act, Telephone Consumer Protection Act, Fair Labor Standards Act and the Illinois Wage & Hour Law. He is experienced in all aspects of consumer and wage litigation, including arbitrations, trials and appeals.

41. Examples of the numerous certified class actions in which Michael has represented consumers or workers include: *Martin v. Safeway, Inc.*, 2020 CH 5480 (Cir. Ct. Cook Cnty., Ill.); *Iverson v. Advanced Disposal Servs., Inc.*, No. 18-CV-00867-BJD-JBT (M.D. Fla. Mar. 1, 2022); *Altman v. White House Black Market, Inc.*, No. 21-A-735 (Cobb Cnty., Ga., Dec. 9, 2021); *Guarisma v. Alpargatas USA, Inc. d/b/a Havaianas*, Case No. 2020 CH 7426 (Cir. Ct. Cook Cnty., May 24, 2021); *Muransky v. Godiva Chocolatier, Inc.*, No. 2020 CH 7156 (Cir. Ct. Cook Cnty.

May 13, 2021); *Goel v. Stonebridge of Arlington Heights, et al.*, 2018 CH 11015 (Cir. Ct. Cook Cty.); *Stahl v. RMK Mgmt. Corp.*, 2015 CH 13459 (Cir. Ct. Cook Cty.); *Guarisma v. Microsoft Corp.*, No. 15-cv-24326-CMA (S.D. Fla.); *Legg v. Spirit Airlines, Inc.*, No. 14-cv-61978-CIV-JIC (S.D. Fla.); *Legg v. Laboratory Corporation of America, Holdings, Inc.*, No. 14-cv-61543-RLR (S.D. Fla.); *Joseph v. TrueBlue, Inc.*, 14-cv-5963-BHS (W.D. Wash.); *In Re Convergent Outsourcing, Inc. Telephone Consumer Protection Act Litigation*, Master Docket No. 3:13-cv-1866-AWT (D. Conn); *Tripp v. Berman & Rabin, P.A.*, 310 F.R.D. 499 (D. Kan. 2015); *Lanteri v. Credit Protection Ass'n, L.P.*, 2018 U.S. Dist. LEXIS 166345 (S.D. Ind. Sept. 26, 2018); *Eibert v. Jaburg & Wilk, P.C.*, 13-cv-301 (D. Minn.); *Kraskey v. Shapiro & Zielke, LLP*, 11-cv-3307 (D. Minn.); *Short v. Anastasi & Associates, P.A.*, 11-cv-1612 SRN/JSM (D. Minn.); *Kimball v. Frederick J. Hanna & Associates, P.C.*, 10-cv-130 MJD/JJG (D. Minn.); *Murphy v. Capital One Bank*, 08 C 801 (N.D. Ill.); *Nettles v. Allstate Ins. Co.*, 02 CH 14426 (Cir. Ct. Cook Cty.); *Sanders v. OSI Educ. Servs., Inc.*, 01 C 2081 (N.D. Ill.); *Kort v. Diversified Collection Servs., Inc.*, 01 C 0689 (N.D. Ill.); *Hamid v. Blatt Hasenmiller, et al.*, 00 C 4511 (N.D. Ill.); *Durkin v. Equifax Check Servs., Inc.*, 00 C 4832 (N.D. Ill.); *Torres v. Diversified Collection Services, et al.*, 99-cv-00535 (RL-APR) (N.D. Ind.); *Morris v. Trauner Cohen & Thomas*, 98 C 3428 (N.D. Ill.), *Mitchell v. Schumann*, 97 C 240 (N.D. Ill.); *Pandolfi, et al. v. Viking Office Prods., Inc.*, 97 CH 8875 (Cir. Ct. Cook Cty.); *Trull v. Microsoft Corp.*, 97 CH 3140 (Cir. Ct. Cook Cty.); *Deatherage v. Steven T. Rosso, P.A.*, 97 C 0024 (N.D. Ill.); *Young v. Meyer & Njus, P.A.*, 96 C 4809 (N.D. Ill.); *Newman v. Boehm, Pearlstein & Bright, Ltd.*, 96 C 3233 (N.D. Ill.); *Holman v. Red River Collections, Inc.*, 96 C 2302 (N.D. Ill.); *Farrell v. Frederick J. Hanna*, 96 C 2268 (N.D. Ill.); *Blum v. Fisher and Fisher*, 96 C 2194 (N.D. Ill.); *Riter v. Moss & Bloomberg, Ltd.*, 96 C 2001 (N.D. Ill.); *Clayton v. Cr Sciences Inc.*, 96 C 1401 (N.D. Ill.); *Thomas v. MAC/TCS Inc., Ltd.*, 96 C 1519 (N.D. Ill.);

Young v. Bowman, et al., 96 C 1767 (N.D. Ill.); *Depcik v. Mid-Continent Agencies, Inc.*, 96 C 8627 (N.D. Ill.); and *Dumetz v. Alkade, Inc.*, 96 C 4002 (N.D. Ill.).

42. Michael also has successfully argued a number of appeals, including *Evans v. Portfolio Recovery Assocs., LLC*, 889 F.3d 337 (7th Cir. 2018); *Muransky v. Godiva Chocolatier, Inc.*, 922 F.3d 1175 (11th Cir. 2019) (*vacated for rehearing en banc*); *Franklin v. Parking Rev. Recovery Servs.*, 832 F.3d 741 (7th Cir. 2016); *Smith v. Greystone Alliance, LLC*, 772 F.3d 448 (7th Cir. 2014); *Shula v. Lawent*, 359 F.3d 489 (7th Cir. 2004); and *Weizeorick v. ABN AMRO Mortg. Group, Inc.*, 337 F.3d 827 (7th Cir. 2003).

43. Michael has lectured on consumer law issues at Upper Iowa University, the Chicago Bar Association, and the National Consumer Law Center. He is a member of the Trial Bar of the United States District Court for the Northern District of Illinois, and he has represented consumers in state and federal courts around the country on a *pro hac vice* basis.

44. Michael's published work includes "*AND THE SURVEY SAYS...*" *When Is Evidence of Actual Consumer Confusion Required to Win a Case Under Section 1692g of the Fair Debt Collection Practices Act in the Seventh Circuit?*, 13 Loy. Consumer L. Rev. 224 (2001).

Timothy J. Sostrin

45. Timothy J. Sostrin is a partner with the firm joining in 2011. He is a member in good standing of the Illinois bar, the U.S. District Court District of Colorado, U.S. District Court Northern District of Illinois, U.S. District Court Northern and Southern Districts of Indiana, U.S. District Court Eastern and Western Districts of Michigan, U.S. District Court Eastern District of Missouri, U.S. District Court Southern District of Texas and U.S. District Court Eastern and Western Districts of Wisconsin.

46. Timothy J. Sostrin has represented consumers in Illinois and in federal litigation nationwide against creditors, debt collectors, retailers, and other businesses engaging in unlawful

practices. Tim has extensive experience with consumer claims brought under the Fair Debt Collection Practices Act, The Telephone Consumer Protection Act, the Fair Credit Reporting Act, the Electronic Fund Transfer Act, and Illinois law. Some of Tim's representative cases include: *Susinno v. Work Out World Inc.*, 862 F.3d 346, 351 (3rd Cir. 2017) (argued); *Leeb v. Nationwide Credit Co.*, 806 F.3d 895 (7th Cir. 2015) (argued); *Osada v. Experian Info. Solutions, Inc.*, 2012 U.S. Dist. LEXIS 42330 (N.D. Ill. Mar. 28, 2012) (granting class certification); *Galvan v. NCO Financial Systems, Inc.*, 2012 U.S. Dist. LEXIS 128592 (N.D. Ill. 2012)(granting class certification); *Saf-T-Gard International, Inc. v. Vanguard Energy Services, LLC*, (2012 U.S. Dist. LEXIS 174222 (N.D. Ill. December 6, 2012) (granting class certification); *Jelinek v. The Kroger Co.*, 2013 U.S. Dist. LEXIS 53389 (N.D. Ill. 2013) (denying defendant's motion to dismiss); *Hanson v. Experian Information Solutions, Inc.*, 2012 U.S. Dist. LEXIS 11450 (N.D. Ill. January 27, 2012) (denying defendant's motion for summary judgment); *Warnick v. DISH Network, LLC*, 2013 U.S. Dist. LEXIS 38549 (D. Colo. 2013) (denying defendant's motion to dismiss); *Torres v. Nat'l Enter. Sys.*, 2013 U.S. Dist. LEXIS 31238 (N.D. Ill. 2013) (denying defendant's motion to dismiss); *Griffith v. Consumer Portfolio Serv.*, 838 F. Supp. 2d 723 (N.D. Ill. 2011)(denying defendant's motion for summary judgment); *Frydman et al v. Portfolio Recovery Associate*, 2011 U.S. Dist. LEXIS 69502 (N.D. Ill 2011) (denying defendant's motion to dismiss); *Rosen Family Chiropractic S.C. v. Chi-Town Pizza*, 2013 U.S. Dist. LEXIS 6385 (N.D. Ill. 2013) (denying defendant's motion to dismiss); *Sengenberger v. Credit Control Services, Inc.*, 2010 U.S. Dist. LEXIS 43874 (N.D. Ill. May 5, 2010) (granting summary judgment on TCPA claim).

47. Tim is a member of the National Association of Consumer Advocates and ISBA. He received his Juris Doctorate, *cum laude*, from Tulane University Law School in 2006.

Theodore H. Kuyper

48. In March 2018, Theodore H. Kuyper joined the firm. Ted is currently a member in

good standing of the Illinois State Bar, the United States District Court for the Northern District of Illinois, and the Seventh Circuit Court of Appeals, and has been admitted to practice *pro hac vice* in several additional United States District Courts.

49. Ted has diverse experience prosecuting and defending class action and other large-scale litigation in trial and appellate courts under a variety of substantive laws, including without limitation the Telephone Consumer Protection Act, the Racketeer Influenced & Corrupt Organizations Act (RICO), the Fair Credit Reporting Act, the Illinois Consumer Fraud & Deceptive Business Practices Act, and the Real Estate Settlement Procedures Act, as well as Illinois and other state statutory and common law.

50. Since joining the firm, Ted has represented consumers as counsel of record or otherwise in the following putative class actions: *Cranor v. Skyline Metrics, LLC*, No. 4:18-cv-00621-DGK (W.D. Mo.); *Cranor v. The Zack Group, Inc.*, No. 4:18-cv-00628-FJG (W.D. Mo.); *Cranor v. Classified Advertising Ventures, LLC, et al.*, No. 4:18-cv-00651-HFS (W.D. Mo.); *Morgan v. Orlando Health, Inc., et al.*, No. 6:17-cv-01972-CEM-GJK (M.D. Fla.); *Morgan v. Adventist Health System/Sunbelt, Inc.*, No. 6:18-cv-01342-PGB-DCI (M.D. Fla.); *Burke v. Credit One Bank, N.A., et al.*, No. 8:18-cv-00728-EAK-TGW (M.D. Fla.); *Motiwala v. Mark D. Guidubaldi & Associates, LLC*, No. 1:17-cv-02445 (N.D. Ill.); *Buja v. Novation Capital, LLC*, No. 9:15-cv-81002-KAM (S.D. Fla.); and *Detter v. Keybank, N.A.*, No. 1616-CV10036 (Circuit Ct. of Jackson County, Missouri).

51. Immediately prior to joining Keogh Law, Ted worked at a boutique Chicago law firm where he represented clients in a range of complex commercial and other litigation, including contract, tort, professional liability, premises and products liability, bad faith and class action. Previously, he was an associate at a nationally-renowned class action law firm, where he focused on complex commercial, consumer, class action and other large-scale, high-stakes litigation.

52. Ted earned his Juris Doctorate from Washington University School of Law in St. Louis in 2007. During law school, he worked as a Summer Extern for Magistrate Judge Morton Denlow (Ret.) of the United States District Court for the Northern District of Illinois, served as primary editor and executive board member of the Global Studies Law Review, and authored a student note that was published in 2007. Ted also earned a number of scholarships and other academic accolades, including the Honors Scholar Award (top 10% for academic year) and repeated appearances on the Dean's List.

Gregg M. Barbakoff

53. Gregg Barbakoff joined the firm in 2019. He is a civil litigator who focuses his practice on consumer law. Gregg has extensive experience litigating individual and class claims arising under the Telephone Consumer Protection Act, Fair Debt Collection Practices Act, Truth-in-Lending Act, Fair Credit Reporting Act, Real Estate Settlement Procedures Act, Illinois Consumer Fraud and Deceptive Practices Act, Magnuson-Moss Warranty Act, and various consumer protection statutes.

54. Gregg graduated *magna cum laude* from the Chicago-Kent College of law, where he was elected to the Order of the Coif. While in law school, Gregg received the Class of 1976 Honors Scholarship, competed as a senior member of the Chicago-Kent Moot Court Team, and served as an editor for The Seventh Circuit Review, in which he was also published. Gregg earned his undergraduate degree from the University of Colorado at Boulder.

55. Gregg has been named an Illinois Rising Star and/or Super Lawyer by *Superlawyers* Magazine each year since 2015, and was named an Associate Fellow by the Litigation Counsel of America. He is licensed to practice in the State of Illinois, the United States District Court for the Northern District of Illinois, and the United States Court of Appeals for the Seventh Circuit.

56. Prior to joining Keogh Law, Gregg worked at a mid-size litigation firm that specialized in consumer litigation, and leading plaintiff's firm that focused on commercial disputes and consumer class actions.

57. The following are representative class actions in which Gregg has served as counsel of record or otherwise: *Quarles v. Pret A Manger (USA) Ltd.*, 20-cv-7179 (N.D. Ill.); *Sherman v. Brandt Industries USA Ltd.*, 20-cv-1185 (C.D. Ill.); *Hanlon ex rel. G.T. v. Samsung Elecs. Am., Inc.*, 1:21-cv-04976 (N.D. Ill.); *Steinberg v. Charles Indus., L.L.C.*, 2021 CH 01793 (Cir. Ct. Cook Cnty.); *Mathews v. Brightstar US, LLC*, 2021 CH 00167 (Cir. Ct. Lake Cnty.); *Roberts v. Graphic Packaging Int'l, LLC*, 3:21-cv-00750 (S.D. Ill.); *Willem v. Karpinske Enters., L.L.C.*, 2021 CH 00031 (Cir. Ct. Jo Daviess Cnty., Ill.); *Shafer v. Rodebrad Mgmt. Co., Inc.*, 2021 CH 00008 (Cir. Ct. Montgomery Cnty., Ill.); *Roberts v. TDS Servs., Inc.*, 2021 CH 00005 (Cir. Ct. Washington Cnty., Ill.); *Stein v. Clarifai, Inc.*, 1:20-cv-01937 (N.D. Ill.); *Young v. Van Ru Credit Corp.*, 2020 CH 04303 (Cir. Ct. Cook Cnty.); *Marquez v. Bobak Sausage Co.*, 2020 CH 04259 (Cir. Ct. Cook Cnty.); *Isychko v. Jidd Motors, Inc.*, 2020 CH 04244 (Cir. Ct. Cook Cnty.); *Heidelberg v. Forman Mills Inc.*, 2020 CH 04079 (Cir. Ct. Cook Cnty.); *Hirmer v. Elite Med. Transp., LLC*, 2020 CH 04069 (Cir. Ct. Cook Cnty.); *Magner v. SMS-NA, LLC*, 2020 CH 00520 (Cir. Ct. Cook Cnty.); *Bayeg v. Eden Mgmt., LLC*, 2019 CH 08821 (Cir. Ct. Cook Cnty.); *Roberts v. TIAA, FSB* (Case No. 2019 CH 04089 (Cir. Ct. Cook County); *Gentleman v. Mass. Higher Ed. Corp., et al* (Case No. 16-cv-3096, N.D. Ill.); *Cibula v. Seterus*, 2015CA010910 (Cr. Ct. Palm Beach County); *Ciolini v. Seterus*, 15-cv-09427 (N.D. Ill.); *Mednick v. Precor Inc.*, 14-cv-03624 (N.D. Ill.); *Illinois Nut & Candy Home of Fantasia Confections, LLC v. Grubhub, Inc., et al.*, 14-cv-00949 (N.D. Ill.); *Dr. William P. Gress et al. v. Premier Healthcare Exchange West, Inc.*, 14-cv-501 (N.D. Ill.); *Stephan Zouras LLP v. American Registry LLC*, 14-cv-943 (N.D. Ill.); *Mullins v. Direct Digital*, 13-cv-01829 (N.D. Ill.); *In Re Prescription Pads TCPA Litig.*, 13-cv-06897

(N.D. Ill.); *Townsend v. Sterling*, 13-cv-3903 (N.D. Ill.); *Windows Plus, Incorporated v. Door Control Services, Inc.*, 13-cv-07072 (N.D. Ill.); *In re Energizer Sunscreen Litig.*, 13-cv-00131 (N.D. Ill.); *Padilla v. DISH Network LLC*, 12-cv-07350 (N.D. Ill.).

William Sweetnam

58. William Sweetnam joined the firm in 2020 as of counsel. Mr. Sweetnam concentrates his practice class action and complex litigation and appeals, having prosecuted hundreds of consumer, shareholder and antitrust class action in federal and state courts across the country. In addition to representing both plaintiffs and defendants in a wide variety of cases involving both economic and non-economic injuries, Mr. Sweetnam has acted as lead counsel, co-lead counsel and has been a member of the executive and steering committees in consumer, antitrust and other class action, complex and multidistrict litigation matters.

59. Notably, Mr. Sweetnam was appointed sole lead counsel in *Kelly v. Old National Bank*, 82C01-1012-CT-627 (Cir. Ct Vanderburgh Cty., Ind.), in which he obtained a settlement valued at more than 90% of the class' damages incurred as a result of the unlawful overdraft fee scheme alleged therein, far exceeding the results obtained by much larger firms against some the countries' largest banks, resulting in individual consumers receiving several thousand dollars in refunded overdraft fees.

60. Additionally, Mr. Sweetnam has numerous published, class action decisions including *Jett v. Warrantech Corp.*, ---F.Supp.3d---, 2020 WL 525045 (S.D. Ill. 2020); *Old Nat. Bank v. Kelly*, 31 N.E.3d 522 (Ind. App. 2014); *Nava v. Sears, Roebuck & Co.*, 995 N.E.2d 303 (1st Dist. 2013); *Cappuccitti v. DirecTV, Inc.*, 623 F.3d 1118 (11th Cir. 2010); *Pella Corp. v. Saltzman*, 606 F.3d 391 (7th Cir. 2010); *In re Digitek Prod. Liab. Litig.*, 264 F.R.D. 249 (S.D. W. Va. 2010); *Aleman v. Park West Galleries, Inc.*, 655 F. Supp. 2d 1378 (J.P.M.L. 2009); *In re Park West Galleries, Inc. Mktg. & Sales Practices Litig.*, 645 F. Supp. 2d 1358 (J.P.M.L. 2009); *In re*

Digitek Prod. Liab. Litig., 648 F. Supp. 2d 795 (S.D. W. Va. 2009); *Vernon v. Qwest Communs. Int'l, Inc.*, 643 F. Supp. 2d 1256 (W.D. Wash. 2009); *Stachurski v. DirecTV, Inc.*, 642 F. Supp. 2d 758 (N.D. Ohio 2009); *In re Comcast Corp. Set-Top Cable TV Box Antitrust Litig.*, 626 F. Supp. 2d 1353 (J.P.M.L. 2009); *In re Refrigerant Compressors Antitrust Litig.*, 626 F. Supp. 2d 1320 (J.P.M.L. 2009); *Saltzman v. Pella Corp.*, 257 F.R.D. 471 (N.D. Ill. 2009); *Coneff v. AT&T Corp.*, 620 F. Supp. 2d 1248 (W.D. Wash. 2009); *Hoving v. Lawyers Title Ins. Co.*, 256 F.R.D. 555 (E.D. Mich. 2009); *In re Nissan N. Am., Inc. Odometer Litig.*, 664 F. Supp. 2d 873 (M.D. Tenn. 2009); *Hoving v. Lawyers Title Ins. Co.*, 256 F.R.D. 555 (E.D. Mich. 2009); *In re Digitek Prods. Liab. Litig.*, 571 F. Supp. 2d 1376 (J.P.M.L. 2008); *In re BP Prods. N. Am., Inc.*, 560 F. Supp. 2d 1377 (J.P.M.L. 2008); *Hoving v. Transnation Title Ins. Co.*, 545 F. Supp. 2d 662 (E.D. Mich. 2008); *In re Nissan N. Am., Inc. Odometer Litig.*, 542 F. Supp. 2d 1367 (J.P.M.L. 2008); *Berry v. Budget Rent a Car Sys.*, 497 F. Supp. 2d 1361 (S.D. Fla. 2007); *Cook v. Home Depot U.S.A., Inc.*, 62 U.C.C. Rep. Serv. 2d (Callaghan) 197 (S.D. Ohio 2007); *Womack v. Nissan N. Am., Inc.*, 550 F. Supp. 2d 630 (E.D. Tex. 2007); *Knudsen v. Liberty Mut. Ins. Co.*, 435 F.3d 755 (7th Cir. 2006); *Knudsen v. Liberty Mut. Ins. Co.*, 411 F.3d 805 (7th Cir. 2005); *Knudsen v. Liberty Mut. Ins. Co.*, 405 F. Supp. 2d 916 (N.D. Ill. 2005); *Enzenbacher v. Browning-Ferris Indus. of Ill.*, 774 N.E.2d 858 (Ill. App. 2002); *In re Nat'l Life Ins. Co.*, 247 F. Supp. 2d 486 (D. Vt. 2002); *Kaskel v. N. Trust Co.*, 45 U.C.C. Rep. Serv. 2d (Callaghan) 827 (N.D. Ill. 2001); *Wardrop v. Amway Asia Pac. Ltd.*, Fed. Sec. L. Rep. (CCH) P91,346 (S.D.N.Y. Mar. 20, 2001); and *Grove v. Principal Mut. Life Ins. Co.*, 14 F. Supp. 2d 1101 (S.D. Iowa 1998).

61. Before joining Keogh Law, Ltd., Mr. Sweetnam began his career as a lawyer representing plaintiffs in catastrophic injury cases in 1994. In 1995, he began defending corporate, insurance industry and insurance policyholder clients and ran a successful class action litigation boutique, Sweetnam LLC, established in 2008.

62. Prior to that, Mr. Sweetnam was a partner at a Chicago class action litigation boutique, where he perfected his skills representing victims of consumer fraud and deceptive and anti-competitive practices. Mr. Sweetnam has extensive litigation experience in a variety of nationwide class actions in state and federal courts alleging violations of consumer fraud and deceptive trade practices statutes, breach of warranty and violations of federal securities laws, shareholder derivative suits and appeals.

63. Mr. Sweetnam began his career as a class action and complex litigation practitioner with what is now known as Kessler Topaz Meltzer & Check, LLP, one of the largest class action law firms in the United States, where he was part of a team of lawyers involved in prosecuting class actions challenging abusive marketing practices in several areas involving life insurance and annuities. These cases led to class settlements valued at hundreds of millions of dollars, and sometimes even billions of dollars, with such major life insurance companies as Prudential, Met Life, John Hancock, New York Life, State Farm, American Express/IDS, Transamerica, and many others, as well as to numerous changes in industry sales practices.

64. Mr. Sweetnam continued his career at one of Chicago's oldest and most respected class action litigation firms, Krislov & Associates, Ltd., where he represented consumers and investors engaged in an array of nationwide class actions in state and federal courts involving everything from consumer fraud to breach of warranty and securities and shareholder derivative lawsuits and appeals.

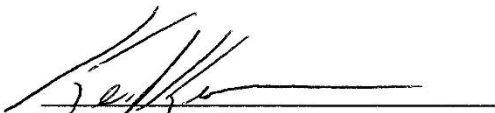
65. Additionally, Ms. Sweetnam is also a member of a number of associations, including The Federal Bar Associations, Chicago Chapter, The Chicago Bar Association, and The Catholic Lawyers Guild of Chicago.

66. Mr. Sweetnam received his bachelor's degree at The University of Michigan, Ann Arbor, Michigan in 1990. And later received his juris doctorate degree at the University of

Michigan and the De Paul University College of Law where he received the American Jurisprudence Award in Constitutional Law and was a member of the Journal of Art and Entertainment Law. He has written and lectured on class actions and class action litigation reform.

67. Mr. Sweetnam has lectured on and lectured on such topics as the following: (a) *Law of Remedies: Damages, Equity and Restitution*, at Chicago-Kent College of Law (2019); (b) *Law of Remedies: Class Actions and Complex Litigation*, at Chicago-Kent College of Law (2018); (c) *The Class Action Fairness Act of 2005: Selecting a Forum and Keeping It*, at the Illinois Institute for Continuing Legal Education in Chicago, Illinois (2008); (d) *Federalization of Consumer Class Action Litigation: The Class Action Fairness Act of 2005*, at the John Marshall Law School in Chicago, Illinois (2006).

Executed at Chicago, Illinois, on May 5, 2023.


Keith J. Keogh

APPENDIX 2

SETTLEMENT AGREEMENT AND RELEASE

I. PREAMBLE

1. This Settlement Agreement is made and entered into as of the dates of Execution set forth below, by and among (1) Plaintiff Porchia Heidelberg, individually and on behalf of the Settlement Class, (2) Settlement Class Members, and (3) Forman Mills, Inc.

II. DEFINITIONS

2. “*Action*” means the pending action styled *Heidelberg, individually and on behalf of all others similarly situated, v. Forman Mills, Inc.*, in the Circuit Court of Cook County, Chancery Division, Case No. 2020-CH-0479.

3. “*Agreement*” means this Settlement Agreement and Release.

4. “*Attorneys’ Fees and Litigation Expenses*” means the attorneys’ fees and litigation expenses to be requested by Class Counsel subject to Court approval in accordance with this Agreement to be paid out of the “Settlement Funds.”

5. “*Claimant*” means any Settlement Class Member who does not timely opt out of the Settlement.

6. “*Class Counsel*” means Keith J. Keogh and Gregg M. Barbakoff of Keogh Law, Ltd.

7. “*Class List*” means the list of approximately 3,435 Settlement Class Members, which Defendant shall produce to the Settlement Administrator within seven (7) days of the entry of the Preliminary Approval Order, along with the Settlement Class Members’ full names, last known U.S. mailing address, and social security number (if known) in order to provide 1099s to the class members.

8. “*Class Period*” means the period from May 5, 2015 through September 1, 2020.

9. “*Court*” means the Circuit Court of Cook County.

10. “*Defendant*” means Forman Mills, Inc.

11. “*Execution*” means the signing of this Agreement by all signatories hereto.

12. “*Final Approval Hearing*” means the hearing during which the Court considers the Parties’ request to enter the Final Approval Order granting final approval of the Settlement and to determine the amount of Attorneys’ Fees and Litigation Expenses awarded to Class Counsel and the amount of any Settlement Class Representative Incentive Payment.

13. “*Final Approval Order*” means the final judgment and order of dismissal approving the Settlement and dismissing the Action with prejudice, which the Parties agree to propose in the form attached hereto as Exhibit 1. “Final Approval” occurs on the date that the Court enters the Final Approval Order.

14. “**Notice**” means the notices of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for Preliminary Approval of the Settlement, substantially in the form attached hereto as Exhibit 2.

15. “**Notice and Administration Costs**” means any and all costs associated with Claims administration and administering the Settlement by the Settlement Administrator, including, but not limited to, mailing costs, printing costs, taxes, and tax-related expenses incurred by or in connection with handling the Settlement Funds, all costs of providing notice to the Settlement Class, costs for creating the Notice, Website Notice, and any different or additional notice that might be ordered by the Court and any other costs associated with administering the Settlement.

16. “**Notice Deadline**” means the date the Court sets for Notice to be provided to the Settlement Class in accordance with the Agreement. The Parties agree to propose that the Notice Deadline will be 14 days following the entry of the Preliminary Approval Order, unless extended by the Court.

17. “**Opt-Out Request**” means a request by a Settlement Class Member to exclude himself or herself from the Settlement Class using the procedures set forth in this Agreement.

18. “**Opt-Out/Objection Period**” means the period that begins the day after the earliest date on which the Notice is first sent, and ends 60 days after mailing of the Notices to putative class members, or such other date as the Court determines. The deadline for the Opt-Out Period and Objection Period will be specified in the Notice.

19. “**Parties**” means Porchia Heidelberg and Forman Mills Inc.

20. “**Plaintiff**” means Porchia Heidelberg.

21. “**Preliminary Approval Order**” means the order certifying the Settlement Class and preliminarily approving the Settlement, which the Parties agreed to propose in the form attached as Exhibit 3. “Preliminary Approval” occurs on the date the Court enters the Preliminary Approval Order.

22. “**Release**” means the release contained in this Agreement.

23. “**Released Claims**” means all claims to be released as set forth in the Release.

24. “**Released Parties**” means and refers to Forman Mills Inc. and its past, present and future, investors, owners, parents, subsidiaries, affiliates, divisions, officers, directors, shareholders, agents, employees, attorneys, insurers, reinsurers, predecessors, successors, managers, administrators, executors, and trustees.

Released Parties shall not include any entity that manufactured, sold, or otherwise provided Forman Mills Inc. with any finger-scan or hand-scan technology, or any portion thereof, even if such an entity would fall within this definition.

25. “**Releasing Settlement Class Members**” means Plaintiff and all Settlement Class Members, other than those who submit timely and proper Out-Out Requests, and each of their respective

executors, representatives, heirs, spouse, partners, predecessors, assigns, beneficiaries, successors, bankruptcy trustees, agents, attorneys, and all those who claim through them or on their behalf.

26. “**Settlement**” means the compromise and settlement of the Action as contemplated by this Agreement.

27. “**Settlement Administrator**” means Kroll, subject to approval by the Court. The Settlement Administrator shall be responsible for providing the class Notice as well as the services related to the administration of the Settlement that are addressed and defined herein.

28. “**Settlement Award**” means a cash payment that may be available to eligible Settlement Class Members who do not timely opt out of the Settlement.

29. “**Settlement Class**” means the individuals defined and identified as follows:

The approximately 3,435 individuals employed by Defendant Forman Mills Inc. in the State of Illinois who logged onto, interfaced with, or used any software, systems, or devices that used the individual’s finger, hand, or any biometric identifier of any type (“Biometric Systems”) at a Forman Mills location in Illinois between May 5, 2015 and September 1, 2020.

The following are excluded from the Settlement Class: (1) the judge presiding over this case; (2) the judges of the Illinois Appellate Court; (3) the immediate families of the preceding person(s); (4) any Released Party; and (5) any Settlement Class Member who timely opts out of this Action.

30. “**Settlement Class Members**” means the Settlement Class Representative and all members of the Settlement Class.

31. “**Settlement Class Representative**” means Porchia Heidelberg, who is the Plaintiff in the Action, and who is also the person who Class Counsel shall request to be appointed by the Court as Class Representative for purposes of the Settlement Class. Plaintiff is also a member of the Settlement Class.

32. “**Settlement Class Representative Incentive Payment**” means the additional amount Plaintiff may request he be paid as Class Representative under this Agreement.

33. “**Settlement Effective Date**” means the business day after the earlier of following occurrences:

A. Expiration of the date to appeal entry of the Final Approval Order with no appeal or other judicial review having been taken or sought unless there are no objectors in which case the Settlement Effective date will be 7 business days after the Final Approval Order is entered; or

B. If an appeal or other judicial review has been taken or sought on this Action, the latest of: (i) the date the Final Approval Order is finally affirmed by an appellate court with no possibility of subsequent appeal or other judicial review; or (ii) the date the appeal(s) or other judicial review therefrom are finally dismissed with no possibility of subsequent appeal or other judicial review; or (iii) if remanded to the Circuit Court or to a lower

appellate court following an appeal or other review, the date the Final Approval Order is entered by the Circuit Court after remand and the time to appeal or seek other judicial review of the entry of that Final Approval Order has expired with no further appeal or other judicial review having been taken or sought. If further appeal is sought after a remand, the time periods in this Sub-Section shall apply.

34. “**Settlement Costs**” means all costs incurred by Plaintiff, Class Counsel, and the Settlement Administrator in connection with the Action, including but not limited to (i) the Attorneys’ Fees and Litigation Expenses approved by the Court; (ii) any Settlement Class Representative Incentive Payment approved by the Court; (iii) Notice and Administration Costs; and (iv) the fees, expenses, and all other costs of the Settlement Administrator.

35. “**Settlement Funds**” means the \$2,387,325.00 to be provided by Defendant pursuant to this Agreement, for purposes of paying Approved Claims and Settlement Costs, as the foregoing are defined herein.

36. “**Settlement Website**” means the website created and managed by the Settlement Administrator which will provide Settlement Class Members with access to the Notice, the online Claim Form, and other information regarding the Settlement. The Parties agree that the following URL will be used Formansettlement.com.

37. “**Website Notice**” means the long form notice provided pursuant to this Agreement, substantially in the form attached hereto as Exhibit 4. The Website Notice will be posted on the “Settlement Website.”

Capitalized terms used in this Agreement but not defined above shall have the meaning ascribed to them in this Agreement, including the attached exhibits.

III. RECITALS

38. On May 5, 2020, Plaintiff filed the Action on behalf of herself and on behalf of the putative class alleging that Defendant violated the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.*

39. On January 25, 2023, following fact discovery as to the merits and the class, third-party discovery, and arms’-lengths negotiations before Judge Thomas Allen (Ret.) during an all day in person mediation, the Parties were able to reach a settlement in principle.

40. Plaintiff and Class Counsel believe this Action is meritorious. Class Counsel thoroughly investigated the case and diligently pursued Plaintiff’s and the Settlement Class Members’ claims against Defendant. Based on their full, independent investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class Members in light of all known facts and circumstances, including the risk of significant delay, the defenses raised by Defendant, class certification risk, summary judgment risk, the risk associated with potential changes in the applicable law, trial risk and appellate risk.

41. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged, asserts its actions comply with all applicable provisions of federal and state law, and

maintains it is not liable for any of the claims asserted. Defendant also continues to assert the Action fails to meet the prerequisites necessary for class action treatment under applicable law but, despite this belief, it will not oppose certification of the Settlement Class contemplated by this Agreement solely for purposes of effectuating this Settlement. Other than for purposes of this Settlement, Defendant does not waive its objections to certification of the Settlement Class.

42. The Parties contemplate that entry of the Final Approval Order shall dismiss with prejudice Plaintiff's and the Settlement Class Members' claims against Defendant and the Released Parties, with the exception of claims of Settlement Class Members who properly exclude themselves from the Settlement, if any, in accordance with the Opt-Out Process described in Section VIII of this Agreement. Defendant shall retain any existing defenses to such excluded claims. The Parties agree to cooperate in good faith and take all steps reasonable and appropriate to obtain preliminary and final approval of this Settlement, and to effectuate its terms.

43. Each of these Recitals is incorporated into this Agreement as if fully set forth herein.

IV. CERTIFICATION OF THE SETTLEMENT CLASS

44. The Settlement contemplates Plaintiff will move for an order granting certification of the Settlement Class. The Parties agree certification of the Settlement Class is conditional and for settlement purposes only. This Settlement further contemplates, and all counsel, Parties and Released Parties agree that none of the Released Parties are admitting that class certification is appropriate, or that any violation of any state, federal or local statute or common law occurred, or that any damages were suffered by Plaintiff or any putative class member. The Released Parties retain their rights to object to certification of this Action, or any other class action, should the Settlement ultimately not receive final approval.

45. If the Court does not grant final approval of the Settlement, or if final approval is granted but ultimately reversed on appeal, or if the Settlement Effective Date does not occur, the certification of the Settlement Class for settlement purposes shall be deemed null and void, and each Party, and Released Party, shall retain all of their respective rights as they existed prior to Execution of this Agreement, and neither this Settlement Agreement, nor any of its accompanying exhibits or any orders entered by the Court in connection with this Settlement Agreement, may be admissible or used for any purpose in this Action, or any other action against any of the Released Parties. Certification of the Settlement Class for settlement purposes is in no way an admission by the Released Parties that class certification is proper.

V. TERMS OF SETTLEMENT

46. **Settlement Fund.** Subject to the other terms and conditions of this Agreement, and subject to Court approval, within seven business days (7) days of the entry of a Final Approval Order and receipt of Settlement Administrator instructions and a Form W-9 for the Settlement Administrator, Defendant agrees to pay total Settlement Funds of up to TWO MILLION THREE HUNDRED EIGHTLY SEVEN THOUSAND THREE HUNDRED TWENTY FIVE DOLLARS (\$2,387,325.00 minus any funds previously advanced for Notice and Administration Costs. These Settlement Funds will be used to pay Settlement Class Members, Settlement Costs, and Attorney Fees and Litigation Expenses as described in this Agreement. Settlement Class Members who do

not opt out will be eligible for a pro rata share of the balance of the Settlement Fund after Court approved Settlement Costs, and Attorney Fees and Litigation Expenses are paid. The Settlement contemplates the Settlement Funds shall be used to pay Approved Claims and Settlement Costs, except as provided below. The Settlement Funds will be used to satisfy all claims of Plaintiff and the Settlement Class Members in exchange for the comprehensive release and the covenants set forth in this Agreement, including, without limitation, a full, fair, and complete release of all Released Parties from Released Claims, and dismissal of the Action with prejudice.

47. **Notice and Administration Costs.** Notice and Administration Costs shall be advanced by Defendants within seven (7) days after Preliminary Approval is entered and credited against the total amount required to create the Settlement Fund. The Parties shall be jointly responsible for supervising the Settlement Administrator.

48. **Attorneys' Fees and Litigation Expenses.** Attorneys' Fees and Litigation Expenses approved by the Court shall be paid from the Settlement Funds, and from no other source. Class Counsel shall apply to the Court for an award of reasonable Attorneys' Fees and Litigation Expenses. The Settlement Administrator shall pay to Class Counsel the amount of the Attorneys' Fees and Litigation Expenses awarded by the Court, as directed by Class Counsel. In the event the Court does not approve the award of Attorneys' Fees and Litigation Expenses requested by Class Counsel, or the Court awards Attorneys' Fees and Litigation Expenses in an amount less than that requested by Class Counsel, such decision shall not affect the validity and enforceability of the Settlement. Plaintiff and Class Counsel retain their right to appeal any decision by the Court regarding the award of Attorneys' Fees and Litigation Expenses.

49. **Settlement Class Representative Incentive Payment.** Any Settlement Class Representative Incentive Payment shall be paid from the Settlement Funds, and from no other source. Plaintiff may apply to the Court for a Settlement Class Representative Incentive Payment for the Settlement Class Representative (in addition to any *pro rata* distribution he may receive under this Agreement). The Settlement Administrator shall pay Plaintiff, c/o Class Counsel, the amount of incentive payment awarded by the Court. The denial by the Court of any such application shall not affect the validity and enforceability of the Settlement. Plaintiff retains his right to appeal any decision by the Court regarding the application.

50. **Settlement Award to Settlement Class Members.** The Settlement Administrator will manage the notice process in cooperation with Class Counsel and Defendant, and in accordance with this Agreement. All Settlement Class Members who do not opt-out shall be paid by check a *pro rata* share of the Settlement Funds after Settlement Costs are deducted.

VI. NOTICE TO THE CLASS

51. Within seven (7) days of the Court's entry of the Preliminary Approval Order, Defendant shall produce the Class List to the Settlement Administrator.

52. The Settlement Administrator shall implement the notice program, as set forth in this Section and directed by the Court. The Settlement Administrator shall, by the Notice Deadline, provide:

A. **Notice.** The Class Administrator shall provide direct notice via U.S. First Class Mail to each Settlement Class Member. Notice shall be by way of a postcard and shall contain a claim ID and shall direct recipients to the Settlement Website. Prior to mailing the Notice, the Settlement Administrator shall search for updated addresses via the USPS national change of address database. The Settlement Administrator shall re-mail any Notice returned as undeliverable and for which an alternative address can be located, and undertake reasonable means to locate alternative addresses for returned notices.

B. **Website Notice.** The Settlement Administrator will establish and maintain a Settlement Website dedicated to the Settlement, on which will be posted the Website Notice, a copy of this Agreement, the Preliminary Approval Motion and Order, and the operative Complaint, the Motion for an award of Attorneys' Fees and Expenses. These documents shall be available on the Settlement Website promptly following entry of the Preliminary Approval Order and remain until after the stale date of the Settlement Awards. The Settlement Website shall allow Settlement Class Members to update their contact information. The Settlement Administrator shall secure the URL Formansettlement.com for the Settlement Website, or, if unavailable, shall secure another URL mutually agreed upon by the Parties or determined by the Court.

VII. OPT-OUT PROCESS

53. A Settlement Class Member who wishes to exclude himself or herself from this Settlement, and from the Release pursuant to this Settlement, shall submit a written Opt-Out Request to the Settlement Administrator at the address designated in the Notice no later than the Claim Filing/Objection Deadline. Opt-Out Requests must: (i) be timely submitted by the Claim Filing/Objection Deadline; (ii) be signed by the person in the Settlement Class who is requesting to be excluded from the Settlement Class; (iii) include the name and address of the person in the Settlement Class requesting exclusion; and (iv) include a statement or words to the effect of the following: "I request to be excluded from the settlement in the Heidelberg v. Forman Mills, Inc. action, and understand that by doing so I will not be entitled to receive any of the benefits from the settlement." No person in the Settlement Class, or any person acting on behalf of or in concert or participation with that person in the Settlement Class, may exclude any other person in the Settlement Class from the Settlement Class.

54. The Settlement Administrator shall maintain a list of persons who have submitted Opt-Out Requests and shall provide such list to the Parties upon written request.

VIII. OBJECTION PROCESS

55. A Settlement Class Member who wishes to object to any matter concerning the Settlement must notify the Court and the Parties' counsel of his or her objection, in writing, on or before the Claim Filing/Objection Deadline, or other deadline set by the Court.

56. To state a valid objection to the Settlement, an objecting Settlement Class Member must personally sign the objection and provide the following information with it: (i) full name, current address, and current telephone number; (ii) documentation sufficient to establish membership in the Settlement Class; (iii) a statement of reasons for the objection, including the factual and legal

grounds for the objector's position; and (iv) copies of any other documents the objecting Settlement Class Member wishes to submit in support of his/her/its position.

57. Subject to approval of the Court, an objecting Settlement Class Member may, but does not need to, appear in person or by counsel at the Final Approval Hearing. To do so, the objecting Settlement Class Member must file with the Court, and serve on all counsel designated in the Notice, a notice of intention to appear by the Claim Filing/Objection Deadline, or other deadline set by the Court. The notice of intention to appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member (or his/her/its counsel) will present to the Court in connection with the Final Approval Hearing. Unless otherwise ordered by the Court, any Settlement Class Member who does not timely provide a notice of intention to appear in conformance with the requirements set out in the Notice and Website Notice, and who has not timely filed an objection in accordance with the requirements set out in the Notice and Website Notice, will be deemed to have waived any objection to the Settlement and can be barred from presenting any views at the Final Approval Hearing.

IX. DISTRIBUTION PROCESS

58. The timing of Defendant's payment of the Settlement Funds is:

A. Within 7 days after the Court enters the Preliminary Approval Order, Defendant shall transfer the Notice and Administration Costs to the Settlement Administrator. In the event that the Settlement Effective Date does not occur, any amounts actually used by the Settlement Administrator for notice and administration shall not be refundable to Defendant. If, however, Defendant has paid monies for Notice and Administration Costs which have not been used by the Settlement Administrator, those amounts not used by the Settlement Administrator shall be refunded to Defendant.

B. Within 7 days after the Settlement Effective Date, Defendant shall pay the remainder of the Settlement Funds to the Settlement Administrator. Class Counsel shall instruct the Settlement Administrator as to whom the Attorneys' Fees and Litigation Expenses and any Settlement Class Representative Incentive Payment should be distributed. Defendant shall not, under any circumstances or for any reason, be obligated to pay any amounts in addition to the Settlement Funds in connection with the Settlement.

59. ***Settlement Award Payments.*** Settlement Awards shall be paid by check. Within thirty (30) days after the Settlement Effective Date, the Settlement Administrator shall send the Settlement Award along with an applicable Form 1099 if required to each eligible Settlement Class Member. The Settlement Administrator shall undertake reasonable means to locate current addresses for all returned checks. Checks will be valid for one-hundred twenty (120) days from the date on the check. The amount remaining in the Settlement Fund, including the amounts of any checks that remain uncashed more than one-hundred twenty (120) days after the date on the check, shall be returned to Defendant's insured after any open administrator fees are paid.

X. RELEASE

60. Subject to the Court's final approval of the Settlement, and for good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, all Settlement Class Members who do not timely opt-out of the Settlement Agreement, and all their respective heirs, assigns, executors, administrators, and agents, past or present, fully and without limitation release and discharge each and every Released Party from any and all claims, rights, demands, liabilities, and/or causes of action of every nature and description, whether known or unknown, which relate in any way to information that is or could be protected under the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 et seq., or any other similar state, local, or federal law, regulation, or ordinance, or common law, regarding the use, collection, capture, receipt, maintenance, storage, transmission, or disclosure of biometric identifiers that Settlement Class Members claim, might claim, or could have claimed in any court or administrative proceeding. This Release includes, without limitation, statutory, constitutional, contractual, and/or common law claims for damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs and interest, restitution, or equitable relief to the extent permitted by applicable law for all periods up to and including the date of Final Approval (the "Released Claims").

61. Releasing Settlement Class Members understand and agree that the release of the Released Claims is a full and final release. Releasing Settlement Class Members acknowledge the facts could be different than they now know or suspect to be the case, but they are nonetheless releasing all Released Claims.

62. Subject to the Court's final approval of the Settlement, and for good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, as discussed above, Plaintiff releases and discharges each and every Released Party from any and all claims, rights, demands, liabilities, and/or causes of action of every nature and description, whether known or unknown arising for all periods through the date of the Court's Final Approval Order.

(i) Notwithstanding any other provision of this Settlement Agreement, this release does not (i) waive or release any claim for breach or enforcement of this Settlement Agreement; (ii) waive or release any right or claim that may not be waived or released by applicable law; or (iii) prevent Plaintiff from pursuing any administrative claim for unemployment compensation or workers' compensation benefits. Nothing in this Settlement Agreement precludes Plaintiff from (i) reporting to, responding to an inquiry from, filing a charge or complaint with, communicating with or providing information to, contacting, or cooperating with an investigation conducted by, the Equal Employment Opportunity Commission, the Department of Labor, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission, or any other federal, state, or local governmental agency, commission, or regulatory body, but Plaintiff hereby waives any right to monetary compensation from the Defendants for such actions of filings; (ii) providing information about this Settlement Agreement to her spouse, attorney, accountant, tax advisor (if any) and applicable state and federal taxing authorities; (iii) making disclosures or giving truthful testimony as required by law or valid legal process (such as by a subpoena or administrative order); or (iv) engaging in any concerted or other legally-protected activities.

63. The Parties acknowledge that this Settlement, including the releases provided in this Section, reflects a compromise of disputed claims.

64. The Final Approval Order shall dismiss the Action with prejudice and shall incorporate the terms of this release.

XI. DUTIES OF THE PARTIES WITH RESPECT TO OBTAINING PRELIMINARY APPROVAL

65. Class Counsel shall apply to the Court for the entry of an order requesting the following relief:

- A. Preliminarily approving the Settlement;
- B. Conditionally certifying the Settlement Class for settlement purposes in accordance with applicable legal standards and this Agreement;
- C. Approving the form and content the proposed Notice, and plan for its distribution;
- D. Scheduling a fairness hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate;
- E. Formally appointing Class Counsel as class counsel;
- F. Approving Plaintiff as Settlement Class Representative;
- G. Approving the Settlement Administrator; and
- I. Setting the Notice Deadline, Objection Deadline, and Opt Out Period.

XII. DUTIES OF PARTIES FOLLOWING PRELIMINARY COURT APPROVAL

66. Following Preliminary Approval of the Settlement, and no later than the filing of the motion for final approval, Class Counsel will submit a proposed Final Approval Order in substantially the form attached hereto as Exhibit 2, except as otherwise required by the Court.

XIII. MUTUAL FULL COOPERATION

67. The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement, including but not limited to execution of all necessary documents, and to take such other action as may be needed to implement the terms of this Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court or otherwise, to effectuate the terms of this Settlement. As soon as practicable after Execution of this Settlement, Class Counsel shall, with the reasonable assistance and cooperation of Defendant and its counsel, take all reasonable and necessary steps to secure the Court's Final Approval Order.

XIV. CONDITIONS FOR TERMINATING THE AGREEMENT

68. In the event that this Settlement is not approved, or if for any reason the Settlement Effective Date does not occur, the Settlement Agreement shall be deemed null, void, and unenforceable and shall not be used nor shall it be admissible in any subsequent proceedings either in this Court or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, and the Parties shall return to their respective positions prior to the Court's consideration of this Settlement. However, the Parties may agree to seek approval of an amended version of the Settlement.

69. In the event that the Court does not approve the Attorneys' Fees and Litigation Expenses in the amount requested by Class Counsel, or in the event that the Attorneys' Fees and Litigation Expenses requested by Class Counsel is reduced, that finding shall not be a basis for rendering the entire Settlement Agreement null, void, or unenforceable. Class Counsel retains their right to appeal any decision by the Court regarding the Attorneys' Fees and Litigation Expenses.

XV. SIGNATORIES' AUTHORITY

70. The respective signatories to this Agreement each represent that they are fully authorized to enter into this Settlement on behalf of the respective Parties for submission to the Court for preliminary and final approval.

XVI. NO PRIOR ASSIGNMENTS

71. The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

XVII. NOTICES

72. Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given: (i) on the date given, if given by hand delivery; (ii) within one (1) business day, if sent by overnight delivery services such as Federal Express or similar courier; (iii) on the third business day after mailing by United States registered or certified mail, return receipt requested, or (iv) on the day received for delivery by e-mail. All notices given under this Agreement shall be addressed as follows:

A. To the Class:

Keith J. Keogh
Gregg M. Barbakoff
Keogh Law, LTD.
55 W. Monroe St., Ste. 3390
Chicago, IL 60603
keith@keoghlaw.com
gbarbakoff@keoghlaw.com

B. To Defendant:

J. Hayes Ryan
Gordon Rees Scully Mansukhani, LLP
1 N. Franklin St., Ste. 800
Chicago, IL 60606
hayesryan@grsm.com

XVIII. MISCELLANEOUS PROVISIONS

73. **Construction.** The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties and that this agreement shall not be construed in favor of or against any party by reason of the extent to which any party or his or its counsel participated in the drafting it.

74. **Captions and Interpretations.** Paragraph titles or captions contained in this Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision of this Agreement. Each term of this Agreement is contractual and not merely a recital.

75. **Modification.** This Agreement may not be changed, altered, or modified, except in a writing signed by the Parties. Any such modification is subject to Court approval.

76. **Integration Clause.** This Agreement, the exhibits hereto, and any other documents delivered pursuant hereto contain the entire agreement between the Parties relating to the resolution of the Action, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged in this Agreement. No rights under this Settlement may be waived except in writing and signed by the Party against whom such waiver is to be enforced.

77. **Binding on Assigns.** This Settlement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.


78. **Counterparts.** This Agreement may be executed by facsimile signature and in any number of counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one and the same Agreement, which shall be binding upon and effective as to all Parties.

79. **Disagreements.** The Parties agree the Court shall resolve any disagreements over the meaning or implementation of this Agreement or the Settlement.

80. **Applicable Law.** This Agreement shall be governed by Illinois law without regard to its choice of law or conflicts of law principles or provisions.

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

ACCEPTED AND AGREED:


Porchia Heidelberg (Mar 7, 2023 17:11 CST)

Porchia Heidelberg

Mar 7, 2023

Date

APPROVED AS TO FORM:



Counsel for Plaintiff and the Class
Keith J. Keogh
KEOGH LAW, LTD.

Mar 7, 2023

Date

ACCEPTED AND AGREED:



Forman Mills Inc.

By: Mike Kvitko

Title: President & CEO

March 8, 2023

Date

APPROVED AS TO FORM:



Counsel for Defendant

J. Hayes Ryan

Gordon Rees Scully Mansukhani, LLP

March 9, 2023

Date

EXHIBIT 1

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION

PORCHIA HEIDELBERG, *individually and
on behalf of all others similarly situated,*

Plaintiff,

v.

FORMAN MILLS INC.,
Defendant.

Case No. 2020CH04079

Hon. _____
Presiding Judge

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

The Court having held a final approval hearing on _____, 2023, notice of the hearing and the Settlement having been duly given in accordance with this Court's order (1) preliminarily approving Settlement, (2) certifying the Settlement Class, (3) approving notice plan and (4) setting the final approval hearing, and having considered all matters submitted at the final approval hearing and otherwise, and finding no just reason for delay in entry of this final order

It is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. The Settlement Agreement dated ____ ____, 2023, including its Exhibits (the "Agreement"), and the definition of words and terms contained therein, are incorporated by reference and are used hereafter. The terms and definitions of this Court's Preliminary Approval Order (ECF No. ____) are also incorporated by reference into this Final Approval Order.

2. This Court has jurisdiction over Forman Mills Inc. ("Forman Mills") and the Settlement Class Members, certified in the Court's preliminary approval order, who did not timely request exclusion.

3. The Court hereby finds that the Agreement is the product of arm's length settlement negotiations between Plaintiff and Forman Mills.

4. The Court hereby finds Notice of the Settlement was disseminated to persons in the Settlement Class in accordance with the Court's preliminary approval order, was the best notice practicable under the circumstances, and that the Notice satisfied the requirements of Due Process and Section 2-803 of the Illinois Code of Civil Procedure.

5. [There were no objections to the Agreement] [*or*] [For the reasons stated on the record, as well as the reasons set forth in Plaintiff's and Forman Mills' submissions, the Court overrules all objections to the Agreement.]

6. The Court hereby finally approves the Agreement, finding it fair, reasonable and adequate as to all members of the Settlement Class in accordance with Section 2-806 of the Illinois Code of Civil Procedure.

7. The Court hereby finally certifies the Settlement Class for settlement purposes. The Court finds for settlement purposes that the Settlement Class satisfies all the requirements of Section 2-801 of the Illinois Code of Civil Procedure.

8. The Court hereby approves the plan of distribution for the Settlement Fund as set forth in the Agreement. The Claims Administrator is hereby ordered to comply with the terms of the Agreement with respect to satisfaction of claims, and any remaining funds.

9. As of the Effective Date, the Plaintiff and every Settlement Class Member hereby releases all Released Parties from the Released Claims, as stated in the Agreement.

10. This Final Approval Order will settle and resolve with finality on behalf of the Plaintiffs and the Settlement Class, the Action and the Released Claims against the Released Parties by the Plaintiff and the other Settlement Class Members in the Action. As of the Effective Date, the Agreement and the above-described release of the Released Claims will be binding on, and have res judicata preclusive effect in, all pending and future lawsuits or other proceedings

maintained by or on behalf of Plaintiffs and all other Settlement Class Members who do not validly and timely exclude themselves from the Settlement, and their respective predecessors, successors, affiliates, spouses, heirs, executors, administrators, agents and assigns of each of the foregoing, as set forth in the Agreement, and the Released Parties may file the Agreement and/or the Final Approval Order in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

11. Class Counsel has moved for an award of attorneys' fees and reimbursement of expenses. In approving this request, this Court makes the following findings of fact and conclusions of law:

(a) The Settlement confers substantial benefits on the members of the Settlement Class;

(b) The value conferred on the Settlement Class is immediate and readily quantifiable, in that members of the Settlement Class will receive cash payments that represent a significant portion of the damages available to them were they to prevail in an individual action under the Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA");

(c) Class Counsel vigorously and effectively pursued the Settlement Class Members' claims before this Court in this complex case;

(d) The Settlement was obtained as a direct result of Class Counsel's advocacy;

(e) The Settlement was reached following extensive negotiations between Class Counsel and Counsel for Forman Mills, and was negotiated in good-faith and without collusion;

(f) Members of the Settlement Class were advised in the Notice approved by the Court that Class Counsel intended to apply for an award of attorneys' fees equal to a third of the Settlement Funds in the amount of \$ _____, plus expenses, to be paid from the Settlement Funds;

(g) A copy of Plaintiff's motion for an award of attorneys' fees and expenses and any incentive award was made available for inspection in the Court's file and on the settlement website during the period class members had to submit any objections;

(h) _____ member(s) of the Settlement Class submitted written objection(s) to the award of attorneys' fees and expenses;

(i) "It is now well established 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.'" *Scholtens v. Schneider*, 173 Ill.2d 375, 385 (1996) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)); see also *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 923-924 (1st Dist. 1995); and

(j) The requested fee award is consistent with other fee award.

12. Accordingly, Class Counsel are hereby awarded \$ _____ for attorney fees and \$ _____ for reimbursed expenses from the balance of the Settlement Fund, which

the Court finds to be fair and reasonable, and which amount shall be paid to Class Counsel from the Settlement Fund in accordance with the terms of the Agreement.

13. The Class Representative, Portia Heidelberg, is hereby compensated in the amount of \$ _____ for her efforts in this case.

14. This Court hereby dismisses this case with prejudice, except the Court retains jurisdiction to supervise the administration of the Settlement, enforce the Agreement, and resolve any disputes relating to the same.

**IT IS SO ORDERED,
ADJUDGED AND DECREED.**

Dated: _____

Honorable _____

EXHIBIT 2

NOTICE OF CLASS ACTION LAWSUIT AND PROPOSED SETTLEMENT

THE CIRCUIT COURT OF COOK COUNTY AUTHORIZED THIS NOTICE.
THIS IS NOT A SOLICITATION FROM A LAWYER.

Heidelberg v. Forman Mills Inc.,
Circuit Court of Cook County, Illinois
Case No. 2020 CH 04079

YOU MAY BE ENTITLED TO RECEIVE MONETARY COMPENSATION.

What is this?	This is notice of a Proposed Settlement in a class action lawsuit.
What is this lawsuit about?	The Settlement would resolve a lawsuit brought on behalf of a putative class of individuals, alleging Forman Mills Inc.. (“Forman”) violated the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, <i>et seq.</i> , by failing to: (1) obtain its employees’ informed written consent before collecting, capturing, or otherwise obtaining their biometric data in connection with Forman Mills’ timekeeping system; and (2) implement and adhere to a written policy for permanently destroying Forman Mills’ employees’ biometric data. Forman Mills denies these allegations and any wrongdoing. The Court has not ruled on the merits of Plaintiff’s claims or Forman Mills’s defenses.
Why am I getting this notice?	You were identified as someone who may have had their biometric data collected, captured, or otherwise obtained by Forman Mills.
What does the Settlement provide?	Forman Mills agreed to pay \$2,837,325.00 in Settlement Funds, which will pay for the cost of notice and administration of the settlement,

	<p>Settlement Class members' claims, attorneys' fees and expenses incurred by counsel for Plaintiff and the Settlement Class ("Class Counsel"), and any service award for Plaintiff Portia Heidelberg permitted by law. Class Counsel estimates that Settlement Class members will receive a cash award of between \$_____ to \$_____. Plaintiff will petition for a service award not to exceed \$_____ for Plaintiff Heidelberg's work in representing the Class and Class Counsel's fees up to forty percent of the settlement fund, not to exceed \$_____, plus reasonable expenses.</p>
<p>How can I receive a payment from the Settlement?</p>	<p>There is nothing you need to do to obtain a payment from the Settlement. Your portion of the settlement funds will be sent to your last known address, along with a Form 1099 form.</p>
<p>Do I have to be included in the Settlement?</p>	<p>If you do not want monetary compensation from this Settlement and you want to keep the right to sue, or continue to sue Forman Mills on your own, then you must exclude yourself from the Settlement by sending a letter to the address below requesting exclusion to the Settlement Administrator by _____, 2023. The letter must contain the specific information set forth on the Settlement Website "Opt-Out Process."</p>
<p>If I don't like something about the Settlement, how do I tell the Court?</p>	<p>If you do not exclude yourself from the Settlement, you can object to any part of the Settlement. You must file your written objection with the Court by _____, 2023, and mail a copy to both Class Counsel and defense counsel. Your written objection must contain the specific information set forth on the Settlement Website.</p>

What if I do nothing?	If you do nothing, your settlement payment will be issued to your last known address. You will be bound by the Settlement, and you will release Forman Mills from liability.
How do I get more information about the Settlement?	This notice contains limited information about the Settlement. For more information, to view additional Settlement documents, and to review information regarding your opt-out and objection rights and the final approval hearing, visit www.Formansettlement.com .

Forman Mills BIPA SETTLEMENT
 [INSERT CLAIMS ADMIN]
 [INSERT CLAIMS ADMIN ADDRESS]

[CLAIM ID IN DIGITS]
 [CLAIM ID IN 2D BARCODE]
 Postal Service: Please Do Not Mark or Cover Barcode

[FIRST1] [LAST1]
 [BUSINESSNAME]
 [ADDR1] [ADDR2]
 [CITY] [ST] [ZIP]

EXHIBIT 3

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION

PORCHIA HEIDELBERG, *individually and
on behalf of all others similarly situated,*

Plaintiff,

v.

FORMAN MILLS INC.,

Defendant.

Case No. 2020CH04079

Hon. Raymond W. Mitchell
Presiding Judge

**[PROPOSED] ORDER CERTIFYING SETTLEMENT CLASS, PRELIMINARILY
APPROVING CLASS ACTION SETTLEMENT, and APPROVING NOTICE PLAN**

This matter having come before the Court on Plaintiff's Unopposed Motion for and Memorandum in Support of Preliminary Approval of Class Action Settlement of the above-captioned matter (the "Action") between Plaintiff Porchia Heidelberg ("Plaintiff") and Forman Mills Inc. ("Defendant"), as set forth in the Stipulation of Class Action Settlement, between Plaintiff and Defendant (the "Settlement Agreement"), and the Court having duly considered the papers and arguments of counsel, the Court hereby finds and orders as follows:

1. Settlement Terms. Unless defined herein, all defined terms in this Order shall have the respective meanings ascribed to the same terms in the Settlement Agreement. The Court adopts and incorporates the Settlement Agreement as though it is fully set forth herein.

2. Preliminary Approval of Proposed Agreement. The Court has conducted a preliminary evaluation of the Settlement as set forth in the Agreement. Based on this preliminary evaluation, the Court finds that: (a) the Agreement is fair, reasonable and adequate, and within the range of possible approval; (b) the Agreement has been negotiated in good faith at arm's length between experienced attorneys familiar with the legal and factual issues of this case; and (c) the proposed forms and method of distributing notice of the Settlement to the Settlement Class are appropriate and warranted. Therefore, the Court grants preliminary approval of the Settlement.

3. Class Certification for Settlement Purposes Only. The Court, pursuant to Section 2-801 of the Illinois Code of Civil Procedure, and for settlement purposes only, certifies the following Settlement Class:

The approximately 3,435 individuals employed by Defendant Forman Mills Inc. in the State of Illinois who logged onto, interfaced with, or used any software, systems, or devices that used the individual's finger, hand, or any biometric identifier of any type ("Biometric Systems") at a Forman Mills location in Illinois between May 5, 2015 and September 1, 2020 without first giving written consent.

The following are excluded from the Settlement Class: (1) the judge presiding over this case; (2) the judges of the Illinois Appellate Court; (3) the immediate families of the preceding person(s); (4) any Released Party; and (5) any Settlement Class Member who timely opts out of this Action

4. In connection with granting class certification, the Court makes the following preliminary findings:

(a) The Settlement Class include 3,435 members, and thus the class is so numerous joinder of all members is impracticable;

(b) There appear to be questions of law or fact common to the Settlement Class for purposes of determining whether the Settlement should be approved, including, but not limited to, whether Defendant captured, collected, and/or obtained the Settlement Class Members' biometric information via Defendant's timekeeping system, and these questions appear to predominate over any alleged individual questions;

(c) Plaintiff and her counsel are adequate to represent the class. Plaintiff appears to have the same interests as the Settlement Class, she does not have any apparent conflicts of interest with the Settlement Class, and her attorneys have extensive experience litigating class action cases, including class actions arising under BIPA; and

(d) Certification of the Settlement Class is an appropriate method for the fair and efficient adjudication of the controversy.

5. Class Representative. The Court appoints Porchia Heidelberg as representative of the Settlement Class pursuant to Section 2-801 of the Illinois Code of Civil Procedure.

6. Class Counsel. The Court appoints Keith J. Keogh and Gregg M. Barbakoff as Class Counsel pursuant to Section 2-801 of the Illinois Code of Civil Procedure.

7. Settlement Claims Administrator. Kroll is hereby appointed as the Settlement Administrator. The Settlement Administrator shall be responsible for providing notice of the Settlement (“Notice”) to the Settlement Class as provided in the Agreement and this Order, as well as services related to administration of the Settlement.

8. Class Notice. The Class Administrator shall provide Notice via First Class Mail in accordance with the Agreement.

9. Opt-Outs and Objections. Persons in the Settlement Class who wish to object to the Settlement or request exclusion from the Settlement Class, must do so in accordance with the Notice. A class member who opts out may not also submit an objection, unless the class member confirms their intent to withdraw their opt-out in writing by no later than the opt-out deadline.

10. Claims Administrator to Maintain Records. The Claims Administrator shall maintain copies of all objections, and opt-outs received. The Claims Administrator shall provide copies of all objections and opt-outs to the parties.

11. Objections to the Settlement. Any Settlement Class Member who wishes to be heard orally at the Final Approval Hearing, or who wishes for any objection to be considered, must file a written notice of objection in accordance with the Notice, Agreement, and this Order. To be considered, the objection: (A) must be personally signed by the objecting class member, (B) it must include (i) the class member’s full name, current address, and current telephone number; (ii) documentation sufficient to establish membership in the Settlement Class; (iii) a statement of

APPENDIX 3

Forman Mills BIPA Settlement
c/o Kroll Settlement Administration
PO Box 5324
New York, NY 10150-5324

FIRST-CLASS MAIL
U.S. POSTAGE PAID
CITY, ST
PERMIT NO. XXXX

ELECTRONIC SERVICE REQUESTED

**NOTICE OF CLASS ACTION LAWSUIT
AND PROPOSED SETTLEMENT**

THE CIRCUIT COURT OF COOK COUNTY
AUTHORIZED THIS NOTICE. THIS IS NOT
A SOLICITATION FROM A LAWYER.

***Heidelberg v. Forman Mills Inc.,
Circuit Court of Cook County, Illinois
Case No. 2020 CH 04079***

YOU MAY BE ENTITLED TO RECEIVE
MONETARY COMPENSATION.

Postal Service: Please do not mark barcode

<<Refnum Barcode>>

CLASS MEMBER ID: <<Refnum>>

<<FirstName>> <<LastName>>

<<BusinessName>>

<<Address>>

<<Address2>>

<<City>>, <<ST>> <<Zip>>.-<<zip4>>

FILED DATE: 5/5/2023 4:58 PM 2020CH04079

What is this? This is Notice of a Proposed Settlement in a class action lawsuit.

What is this lawsuit about? The Settlement would resolve a lawsuit brought on behalf of a putative class of individuals, alleging Forman Mills Inc. ("Forman") violated the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1, et seq., by failing to: (1) obtain its employees' informed written consent before collecting, capturing, or otherwise obtaining their biometric data in connection with Forman Mills' timekeeping system; and (2) implement and adhere to a written policy for permanently destroying Forman Mills' employees' biometric data. Forman Mills denies these allegations and any wrongdoing. The Court has not ruled on the merits of Plaintiff's claims or Forman Mills' defenses.

Why am I getting this Notice? You were identified as someone who may have had their biometric data collected, captured, or otherwise obtained by Forman Mills.

What does the Settlement provide? Forman Mills agreed to pay \$2,387,325.00 in Settlement Funds, which will pay for the cost of notice and administration of the Settlement, Settlement Class Members' claims, attorneys' fees and expenses incurred by counsel for Plaintiff and the Settlement Class ("Class Counsel"), and any service award for Plaintiff Porchia Heidelberg permitted by law. Class Counsel estimates that Settlement Class Members will receive a cash award of approximately \$400. Plaintiff will petition for a service award not to exceed \$10,000 for Plaintiff Heidelberg's work in representing the Class and Class Counsel's fees up to forty percent of the Settlement Fund, which is \$954,930 plus reasonable expenses.

How can I receive a payment from the Settlement? There is nothing you need to do to obtain a payment from the Settlement. Your portion of the Settlement Funds will be sent to your last known address.

Do I have to be included in the Settlement? If you do not want monetary compensation from this Settlement and you want to keep the right to sue, or continue to sue Forman Mills on your own, then you must exclude yourself from the Settlement by sending a letter to the address below requesting exclusion to the Settlement Administrator by July 10, 2023. The letter must contain the specific information set forth on the Settlement Website "Opt-Out Process."

If I don't like something about the Settlement, how do I tell the Court? If you do not exclude yourself from the Settlement, you can object to any part of the Settlement. You must file your written objection with the Court by July 10, 2023, and mail a copy to both Class Counsel and defense counsel. Your written objection must contain the specific information set forth on the Settlement Website.

What if I do nothing? If you do nothing, your Settlement payment will be issued to your last known address. You will be bound by the Settlement, and you will release Forman Mills from liability.

How do I get more information about the Settlement? This Notice contains limited information about the Settlement. For more information, to view additional Settlement documents, and to review information regarding your opt-out and objection rights and the final approval hearing, visit www.Formansettlement.com. You can also call Class Counsel with any questions at 866.726.1092.

FILED DATE: 5/5/2023 4:58 PM 2020CH04079

APPENDIX 4

Heidelberg v. Forman Mills Inc.,
Circuit Court of Cook County, Illinois
Case No. 2020 CH 04079

If you were employed by Defendant Forman Mills, Inc. (“Forman Mills”) at any of its Illinois location between May 5, 2015 and September 1, 2020 and were required by Forman Mills to scan your finger or hand for timekeeping purposes, you may be entitled to benefits under a class action lawsuit.

The Circuit Court of Cook County authorized this Notice. This is not a solicitation from a lawyer.

- **A proposed Settlement will provide \$2,387,325.00 (the “Settlement Funds”) to fully settle and release claims of the following individuals:**

The approximately 3,435 individuals employed by Defendant Forman Mills Inc. in the State of Illinois who logged onto, interfaced with, or used any software, systems, or devices that used the individual’s finger, hand, or any biometric identifier of any type (“Biometric Systems”) at a Forman Mills location in Illinois between May 5, 2015 and September 1, 2020.

- The following are excluded from the Settlement Class: (1) the judge presiding over this case; (2) the judges of the Illinois Appellate Court; (3) the immediate families of the preceding person(s); (4) any Released Party; and (5) any Settlement Class Member who timely opts out of this Action.
- **Forman Mills denies Plaintiff’s allegations and deny any wrongdoing whatsoever. The Court has not ruled on the merits of Plaintiff’s claims or Forman Mills’ defenses. By entering into the Settlement, Forman Mills has not conceded the truth or validity of any of the claims against it.**
- **The Settlement Funds shall be used to pay amounts related to the Settlement, including awards to Settlement Class (“Settlement Award Checks”), attorneys’ fees and costs to attorneys representing Plaintiff and the Settlement Class (“Class Counsel”), any service award for Plaintiff and the costs of notice and administration of the Settlement. Class Counsel estimates that Settlement Class members will receive approximately \$400. (“Settlement Award Checks”).**
- **Your rights and options, and the deadlines to exercise them, are explained in this Notice. Your legal rights are affected whether you act or do not act. Read this Notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
EXCLUDE YOURSELF OR “OPT-OUT” OF THE SETTLEMENT	If you ask to be excluded, you will not receive a payment. This is the only option that allows you to pursue your own claims against Forman Mills or other released parties related to a released claim. The deadline for excluding yourself is July 10, 2023.
OBJECT TO THE SETTLEMENT	If you wish to object to the Settlement, you must write to the Court about why you believe the Settlement is unfair in any respect. The deadline for objecting is July 10, 2023.
DO NOTHING	If you do nothing, you will still receive a payment from the Settlement and give up your rights to sue Forman Mills or any other released parties related to a released claim.
GO TO THE FINAL APPROVAL HEARING	You may attend the Final Approval Hearing. At the Final Approval Hearing you may ask to speak in Court about the fairness of the Settlement. To speak at the Final Approval Hearing, you must file a document which includes your name, address, telephone number and your signature with the Court, which must also state your intention to appear at the Final Approval Hearing. This must be filed no later than July 10, 2023.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments (*i.e.*, Settlement Award Checks) will be disbursed if the Court approves the Settlement and after any appeals are resolved. Please be patient.

BASIC INFORMATION

1. What is the purpose of this Notice?

The purpose of this Notice is to inform you that a proposed Settlement has been reached in the putative class action lawsuit entitled *Heidelberg v. Forman Mills Inc.*, filed in the Circuit Court of Cook County, Chancery Division, Case No. 2020-CH-04079. Because your rights will be affected by this Settlement, it is extremely important that you read this Notice carefully. This Notice summarizes the Settlement and your rights under it.

2. What does it mean if I received a postcard about this Settlement?

If you received a postcard describing this Settlement, it is because Forman Mills' records indicate that you may be a member of the Settlement Class. The members of the Settlement Class include:

The approximately 3,435 individuals employed by Defendant Forman Mills Inc. in the State of Illinois who logged onto, interfaced with, or used any software, systems, or devices that used the individual's finger, hand, or any biometric identifier of any type ("Biometric Systems") at a Forman Mills location in Illinois between May 5, 2015 and September 1, 2020 without first giving written consent.

The following are excluded from the Settlement Class: (1) the judge presiding over this case; (2) the judges of the Illinois Appellate Court; (3) the immediate families of the preceding person(s); (4) any Released Party; and (5) any Settlement Class Member who timely opts out of this Action.

3. What is this class action lawsuit about?

In a class action, one or more people called Class Representatives (here, Plaintiff Porchia Heidelberg) sue on behalf of people who allegedly have similar claims. This group is called a class and the persons included are called class members. One court resolves the issues for all of the class members, except for those who exclude themselves from the class.

Here, Plaintiff claims Forman Mills violated the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1, *et seq.*, by failing to: (1) obtain its employees' informed written consent before collecting, capturing, or otherwise obtaining their biometric data in connection with Forman Mills' timekeeping system; and (2) implement and adhere to a written policy for permanently destroying Forman Mills' employees' biometric data. Forman Mills denies these allegations and any wrongdoing. The Court has conditionally certified a class action for Settlement purposes only. The Honorable Joel Chupack is presiding over this action.

4. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Forman Mills. Instead, the parties agreed to this Settlement. This way, the parties avoid the risk and cost of a trial, and the Settlement Class Members will receive compensation. Plaintiff and Class Counsel think the Settlement is best for all persons in the Settlement Class.

WHO IS IN THE SETTLEMENT CLASS?

5. How do I know if I am a part of the Settlement class?

The Court has certified a class action for Settlement purposes only. The Settlement Class is defined as:

The approximately 3,435 individuals employed by Defendant Forman Mills Inc. in the State of Illinois who logged onto, interfaced with, or used any software, systems, or devices that used the individual's finger, hand, or any biometric identifier of any type ("Biometric Systems") at a Forman Mills location in Illinois between May 5, 2015 and September 1, 2020 without first giving written consent.

A "Settlement Class Member" is any person in the Settlement Class who is not validly excluded from the Settlement Class. If you are still not sure whether you are included, you can visit other sections of the Settlement Website, www.Formansettlement.com, you may write to the Settlement Administrator at Forman Mills BIPA Settlement, c/o Kroll Settlement Administration, PO Box 5324, New York, NY 10150-5324.

THE LAWYERS REPRESENTING YOU

6. Do I have lawyers in this case?

The Court has appointed the law firms of Keogh Law, Ltd., as Class Counsel to represent you and the other persons in the Settlement Class. You will not be personally charged by these lawyers.

7. How will Class Counsel be paid?

Class Counsel will ask the Court to approve payment of up to forty percent (40%) of the Settlement Fund, or \$954,930 for attorneys' fees, plus reasonable expenses. Class Counsel also will ask the Court to approve payment of \$10,000 to Plaintiff for her services as Class Representative if permitted by law. The Court may award less than these amounts.

THE SETTLEMENT BENEFITS – WHAT YOU GET

8. What does the Settlement provide?

Settlement Fund. Forman Mills will pay \$2,387,325.00 into a fund (the "Settlement Funds"), which will cover: (1) cash payments to Settlement Class Members; (2) an award of attorneys' fees and expenses to Class Counsel in an amount up to forty percent (40%) of the Settlement Fund, plus expenses, as approved by the Court; (3) service award to the Plaintiff, Porchia Heidelberg, in an amount not to exceed \$10,000, if permitted by law and approved by the Court; and (4) the costs of notice and administration of the Settlement.

Cash Payments. All Settlement Class Members will receive a cash payment, so long as their last known address can be determined.

9. How much will my payment be?

Class Counsel estimates your share of the Settlement Fund will be approximately \$400. **This is an estimate only. The final cash payment amount will depend on the costs of notice and administration, as well as the reasonable costs, attorney's fees, and incentive award approved by the Court.**

10. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the Settlement, you will be part of the Settlement Class and will be bound by the release of claims in the Settlement. This means that if the Settlement is approved, you cannot rely on any Released Claim to sue, or continue to sue, Forman Mills or other Released Parties, on your own or as part of any other lawsuit, as explained in the Settlement Agreement. It also means that all of the Court’s orders will apply to you and legally bind you. Unless you exclude yourself from the Settlement, you will agree to release Forman Mills and all other Released Parties, as defined in the Settlement Agreement, from any and all claims that arise from your use of any software, systems, or devices that scan your finger, hand, or any biometric identifier of any type.

In summary, the Release includes all claims of any kind, whether known or unknown, that were asserted in the Action, or that could have been asserted in the Action based on the facts alleged in Plaintiff’s Amended Class Action Complaint, including, but not limited to, claims arising under BIPA or any other similar state, local, or federal law, regulation, or ordinance, or common law, regarding the use, collection, capture, receipt, maintenance, storage, transmission, or disclosure of biometric identifiers and/or biometric information.

If you have any questions about the Release or what it means, you can speak to Class Counsel, listed under Question 6, for free; or, at your own expense, you may talk to your own lawyer. The Release does not apply to persons in the Settlement Class who timely exclude themselves.

HOW TO OBTAIN A PAYMENT

11. How can I get a payment?

There is nothing you need to do to obtain a payment from the Settlement. Your portion of the Settlement Funds will be sent to your last known address.

WHEN WILL I RECEIVE MY SETTLEMENT PAYMENT?

12. When would I receive a Settlement payment?

The Court will hold a hearing on August 22, 2023 to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Everyone who declines to exclude themselves will be informed of the progress of the Settlement through information posted on the Settlement Website at www.Formansettlement.com. Please be patient.

EXCLUDING YOURSELF FROM THE SETTLEMENT

13. How do I get out of the Settlement?

If you want to keep the right to sue, or continue to sue Forman Mills or a Released Party, as defined in the Settlement Agreement, then you must take steps to get out of the Settlement Class. This is called excluding yourself from, or opting-out of, the Settlement Class.

A Settlement Class Member who wishes to exclude himself or herself from this Settlement, and from the Release pursuant to this Settlement, shall submit a written Opt-Out Request to the Settlement Administrator at the address designated in the Notice no later than the Claim

Filing/Objection Deadline. Opt-Out Requests must: (i) be timely submitted by the Claim Filing/Objection Deadline; (ii) be signed by the person in the Settlement Class who is requesting to be excluded from the Settlement Class; (iii) include the name and address of the person in the Settlement Class requesting exclusion; and (iv) include a statement or words to the effect of the following: "I request to be excluded from the Forman Mills BIPA Settlement, and understand that by doing so I will not be entitled to receive any of the benefits from the Settlement." No person in the Settlement Class, or any person acting on behalf of or in concert or participation with that person in the Settlement Class, may exclude any other person in the Settlement Class from the Settlement Class.

To be valid, you must mail your exclusion request postmarked no later than July 10, 2023 to the Settlement Administrator at Forman Mills BIPA Settlement, c/o Kroll Settlement Administration, PO Box 5324, New York, NY 10150-5324.

14. If I do not exclude myself, can I sue Forman Mills for the same thing later?

No. If you do not exclude yourself, you give up any right to sue (or continue to sue) Forman Mills or any Released Parties for the claims that this Settlement resolves.

15. If I exclude myself, can I get a benefit from this Settlement?

No. If you exclude yourself, you will not receive a Settlement payment and you cannot object to the Settlement.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I do not think the Settlement is fair?

If you are in the Settlement Class, you can object to the Settlement or any part of the Settlement that you think the Court should reject, and the Court will consider your views. If you do not provide a written objection in the manner described below, you shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement, or the award of any attorneys' fees and expenses, and/or any proposed service award.

To object, you must make your objection in writing, stating that you object to the Settlement. To be considered by the Court, the written objection must personally sign the objection and provide the following information with it: (i) full name, current address, and current telephone number; (ii) documentation sufficient to establish membership in the Settlement Class; (iii) a statement of reasons for the objection, including the factual and legal grounds for the objector's position; and (iv) copies of any other documents the objecting Settlement Class Member wishes to submit in support of his/her/its position.

To be considered, you must file your objections with the Court and mail your objections to the addresses below no later than July 10, 2023.

For Plaintiff:
Keith J. Keogh
Gregg M. Barbakoff
KEOGH LAW, LTD.
55 Monroe St., 3390
Chicago, IL 60603

For Defendant:
J. Hayes Ryan
Gordon Rees Scully Mansukhani, LLP
1 N. Franklin St., Ste. 800
Chicago, IL 60606

17. What is the difference between objecting and excluding yourself?

Objecting is telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself means that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

IF YOU DO NOTHING

18. What happens if I do nothing at all?

If you do nothing, you will still receive a payment from the Settlement and give up your rights to sue Forman Mills or any other released parties related to a released claim. For information relating to what rights you are giving up, see Question 9.

THE FINAL APPROVAL HEARING

19. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at 9:30 a.m. CT on August 22, 2023, in Courtroom 2809, in the Circuit Court of Cook County, 50 W. Washington, Chicago, Illinois 60602. The Court may also order the hearing to take place remotely via Zoom or such other remote communication system as the Court may direct. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. If there are valid objections that comply with the requirements in Question 16 above, the Court also will consider them and will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel and Plaintiff.

The Final Approval Hearing may be moved to a different date or time without additional notice, so it is a good idea to check the Settlement Website for updates.

20. Do I have to come to the hearing?

No. Class Counsel will appear on behalf of the Settlement Class. But, you are welcome to come, or have your own lawyer appear, at your own expense.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing, but only in connection with an objection that you have timely submitted to the Court according to the procedure set forth in Question 15 above. To speak at the Final Approval Hearing, you must also file a document with the Court stating your intention to appear. For this document to be considered, it must include your name, address, telephone number and your signature. The document must be filed with the Court no later than July 10, 2023. You cannot speak at the hearing if you exclude yourself from the Settlement.

GETTING MORE INFORMATION

22. How do I get more information?

This Notice is only a summary of the proposed Settlement. You can get a copy of the Settlement Agreement by visiting the Settlement Website, www.Formansettlement.com. You can also call Class Counsel with any questions at 866.726.1092.

DO NOT CALL OR WRITE TO THE COURT, THE CLERK OF THE COURT, FORMAN MILLS, OR FORMAN MILLS'S COUNSEL ABOUT THE SETTLEMENT.