

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 PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

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TABLE OF CONTENTS

I. INTRODUCTION 1

 A. The Illinois Biometric Information Privacy Act 1

 B. Factual and Procedural Background 2

II. SUMMARY OF THE PROPOSED SETTLEMENT 5

 A. Settlement Class Definition 5

 B. Structure of the Settlement Amount 6

 C. Individual Settlement Class Member Benefits 6

 D. Compensation for the Class Representative 6

 E. Payment of Attorneys’ Fees and Expenses 6

 F. Release 7

III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED 7

 A. The Settlement Approval Process 7

 B. Numerosity 7

 C. Commonality 8

 D. Adequacy 9

 E. Appropriateness 9

IV. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL 10

 A. The Settlement Provides Substantial Relief 13

 B. Forman’s Ability to Pay 15

 C. Continued Litigation Would be Complex, Costly, and Lengthy 15

 D. There is Presently No Opposition to the Settlement 16

 E. The Settlement Was Negotiated Free of Collusion 16

 F. The Experience and Views of Counsel 17

 G. The Extent of Discovery Completed and the State of the Proceedings 18

V. THE PROPOSED CLASS NOTICE SHOULD BE APPROVED 18

VI. THE MATTER SHOULD BE SET FOR A FAIRNESS HEARING 20

VII. FORMAN DOES NOT OBJECT TO PRELIMINARY APPROVAL OF THE SETTLEMENT CLASS 20

VIII. CONCLUSION 20

TABLE OF AUTHORITIES

CASES

<i>Amchem Prods. Inc. v. Windsor</i> , 521 U.S. 591 (1997)	7, 10
<i>Armstrong v. Bd. Of Sch. Directors</i> , 616 F.2d 305 (7th Cir. 1980).....	11
<i>Borcea v. Carnival Corp.</i> , 238 F.R.D. 664 (S.D. Fla. 2006)	16
<i>C.E. Design, Ltd. v. C&T Pizza, Inc.</i> , 2015 IL App (1st) 131465	7
<i>Chavez v. Don Stoltzner Mason Contr., Inc.</i> , 272 F.R.D. 450 (N.D. Ill. 2011)	8
<i>City of Chicago v. Korshak</i> , 206 Ill. App. 3d 968 (1st Dist. 1990)	passim
<i>Cotton v. Hinton</i> , 559 F.2d 1326 (5th Cir. 1977).....	15
<i>Coy v. CCN Managed Care, Inc.</i> , 2011 IL App (5th) 100068-U	17
<i>Cruz v. Unilock Chicago</i> , 383 Ill. App. 3d 752 (2d Dist. 2008)	8
<i>Donahue v. Everi Holdings, Inc.</i> , 2018 CH 15419 (Cir. Ct. Cook Cnty.)	6
<i>Ehrheart v. Verizon Wireless</i> , 609 F.3d 590 (3d Cir. 2010).....	11
<i>Gautreaux v. Pierce</i> , 690 F.2d 616 (7th Cir. 1982).....	12

<i>Gordon v. Boden</i> , 224 Ill. App. 3d 195 (1st Dist. 1991)	10
<i>Greco v. Ginn Dev. Co., LLC</i> , 635 Fed. Appx. 628 (11th Cir. 2015)	12, 19
<i>Hammon v. Barry</i> , 752 F. Supp. 1087 (D.D.C. 1990)	18
<i>In re Chicken Antitrust Litig.</i> , 560 F. Supp. 957 (N.D. Cal. 1980)	18
<i>In re Domestic Air Transport.</i> , 148 F.R.D. 297 (N.D. Ga. 1993)	11, 12
<i>In re Facebook Biometric Info. Privacy Litig.</i> , 326 F.R.D. 535 (N.D. Cal. 2018)	9
<i>In re Google Buzz Privacy Litig.</i> , No. C 10-00672 JW, 2011 WL 7460099 (N.D. Cal. June 2, 2011)	14
<i>In re Google LLC Street View Electronic Communications Litigation</i> , No. 3:10-md-02184, 2020 U.S. Dist. LEXIS 47928 (N.D. Cal. Mar. 18, 2020)	14
<i>In re Sunbeam Sec. Litig.</i> , 176 F. Supp. 2d 1323 (S.D. Fla. 2001)	12
<i>Lane v. Facebook, Inc.</i> , 696 F.3d 811 (9th Cir. 2012)	14
<i>Marshal v. Life Time Fitness, Inc.</i> , 2017-CH-14262 (Cir. Ct. Cook Cty.)	13
<i>Martin v. Safeway, Inc.</i> , 2020 CH 5480 (Cir. Ct. Cook Cnty.)	6
<i>McGee v. LSC Communications, Inc. et al.</i> , 2017-CH-12818 (Cir. Ct. Cook Cnty.)	6

<i>Miner v. Gillette Co.</i> , 87 Ill. 2d 7 (1981).....	18
<i>Mortimer v. River Oaks Toyota, Inc.</i> , 278 Ill. App. 3d 597(1st Dist. 1996)	11
<i>Nat’l Rural Telecommc’ns Coop. v. DIRECTV, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004)	15
<i>O’Sullivan, et al. v. WAM Holdings, Inc., d/b/a All Star Management, Inc.</i> , 2019-CH-11575 (Cir. Ct. Cook Cnty.).....	14
<i>Parker v. Time Warner Entm’t Co., L.P.</i> , 631 F. Supp. 2d 242 (E.D.N.Y. 2009).....	15
<i>Pelka v. Saren Restaurants Inc.</i> , 2019-CH-14664 (Cir. Ct. Cook Cnty.).....	14
<i>Phillips Petroleum Co. v. Shutts</i> , 472 US. 797 (1985).....	19
<i>Prelipceanu v. Jumio Corp.</i> , 2018-CH-15883 (Cir. Cook Cnty. July 21, 2020).....	14
<i>Quick v. Shell Oil Co.</i> , 404 Ill. App. 3d 277 (3d Dist. 2010)	11
<i>Ramirez v. Midway Moving & Storage, Inc.</i> , 378 Ill. App. 3d 51 (1st Dist. 2007)	8, 9
<i>Sanchez v. Elite Labor Services d/b/a Elite Staffing, Inc. and Visual Pak Company</i> , 2018-CH-02651 (Cir. Ct. Cook Cnty.).....	14
<i>Scott v. Util. Partners of Am., LLC</i> , 2017 U.S. Dist. LEXIS 17348 (D. Kan. Feb. 6, 2017).....	12
<i>Sec. Pac. Fin. Services v. Jefferson</i> , 259 Ill. App. 3d 914 (1st Dist. 1994)	11

Sekura v. L.A. Tan Enters.,
 2015-CH-16694 (Cir. Ct. Cook Cty.)..... 6, 13

Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.,
 2016 IL App (2d) 150236..... 12, 17, 19, 20

Smith v. Ill. Cent. R.R. Co.,
 223 Ill.2d 441 (2006)..... 8

Steinberg v. Chicago Medical School,
 69 Ill. 2d 320 (1977)..... 9

Steinberg v. Sys. Software Associates, Inc.,
 306 Ill. App. 3d 157 (1st Dist. 1999) 13

Svagdis v. Alro Steel Corp.,
 2017-CH-12566 (Cir. Ct. Cook Cnty.)..... 6

Trotter v. Summit Staffing,
 2019-CH-02731 (Cir. Ct. Cook Cnty.)..... 14

Walczak v. Onyx Acceptance Corp.,
 365 Ill. App. 3d 664 (2d Dist. 2006) 9

Willis v. iHeartMedia Inc.,
 2016-CH-02455 (Cir. Ct. Cook Cnty.)..... 6

Zepeda v. Intercontinental Hotels Group, Inc.,
 2018-CH-2140 (Cir. Ct. Cook Cnty.)..... 6

Zhirovetskiy v. Zayo Group, LLC,
 2017-CH-09323 (Cir. Ct. Cook Cty.)..... 6, 13

STATUTES

735 ILCS 5/2-801 7

735 ILCS 5/2-806 10, 18

740 ILCS 14/10..... 8

740 ILCS 14/15..... 1, 2, 9

740 ILCS 14/20..... 2

OTHER AUTHORITIES

Manual for Complex Litig. §1.46..... 11

Manual for Complex Litigation (Fourth) § 21.632 7

Plaintiff, Porchia Heidelberg, pursuant to 735 ILCS 5/2-806, hereby moves the Court for entry of an order granting preliminary approval of the class action settlement (“Settlement”) reached between Plaintiff, Porchia Heidelberg, and Defendant, Forman Mills, Inc., attached at *Appendix 1*. In support of this motion, Plaintiff states:

I. INTRODUCTION

A. The Illinois Biometric Information Privacy Act.

Recognizing the importance of the security of individuals’ biometrics, the Illinois Legislature enacted BIPA, which provides, inter alia, that private entities, such as Defendant, may not obtain and/or possess an individual’s biometrics unless they: (1) inform that person in writing that biometric identifiers or information will be captured, collected, stored, or used; (2) inform that person in writing of the specific purpose and the length of term for which such biometric identifiers or biometric information is being captured, collected, stored, and used; (3) receive a written release from the person for the collection of his or her biometric identifiers and/or information; and (4) publicly publish and make available a written retention schedule and guidelines for permanently destroying biometric identifiers and biometric information. 740 ILCS 14/15. (Compl., ¶ 3.)

BIPA is designed to protect individuals’ personal biometric information. Under BIPA, biometric identifiers include fingerprints, handprints and vocal identifiers; while biometric information can be defined as any information based on a biometric identifier, regardless of how it is converted or stored. (*Id.*, ¶ 1.)

Section 15(b) embodies BIPA’s “informed consent regime.” As relevant to this case, Section 15(b) imposes three discrete obligations on employers. Before collecting biometric information, the employer must first: (1) inform the employee, in writing that biometric

information is being collected; (2) provide a written disclosure discussing the reason for the collection, and the length of time for which the biometric information will be retained; and (3) obtain a signed written release from the employee authorizing the collection. 740 ILCS 14/15(b)(1)-(3).

Section 15(a) of BIPA, in turn, requires an employer who possesses biometric data to destroy that data once the purpose for which it was collected has been satisfied, or within three years of the last interaction with that person, whichever comes sooner. See 740 ILCS 14/15(a). Finally, Section 15(d) of BIPA prohibits an employer from “disclos[ing], redisclose[ing], or otherwise disseminat[ing]” an employee’s biometric data unless: (1) the employee consents; (2) the disclosure is needed to complete a financial transaction requested or authorized by the employee; (3) the disclosure is required by state, federal, or municipal law; or (4) the disclosure is made pursuant to a valid warrant or subpoena. 740 ILCS 14/15(d).

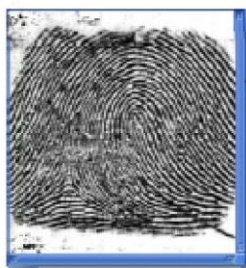
To ensure the enforcement of BIPA, the General Assembly gave the law teeth. To that end, the statute expressly provides for recovery of \$1,000 statutory damages for each negligent violation, \$5,000 for each reckless/intentional violation, injunctive relief, costs, and attorneys’ fees. *See* 740 ILCS 14/20.

B. Factual and Procedural Background.

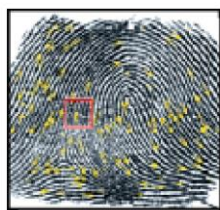
Forman Mills is a retail chain of discount department stores that operates forty-four stores with seven of them being located in Illinois.

Between September 2013 and October 2015, Plaintiff was employed as a cashier at one of Forman’s Illinois locations. Forman required all hourly employees to use a biometric time clock known as the Kronos 4500 (“Time Clock”), a device that verifies the user’s identity through a fingerprint scanner.¹ These Time Clocks are part of a suite of payroll and human resource services provided by Kronos, Inc. (“Kronos”).

The Time Clock scans the employee’s fingerprint and compares it against a previously saved scan. If there is a match, the employee can punch in or out. Forman’s document production and deposition testimony show precisely how the Time Clock operates. To use the Time Clock employee must first “enroll” in the system by placing their fingertip on the sensor, which acquires an image of the employee’s fingerprint, analyzes the particular geographical details of the fingerprint, and converts the data into a unique mathematical code known as a “biometric template” associated with that particular employee, as shown below. The employee’s biometric template is then stored for subsequent identifications.



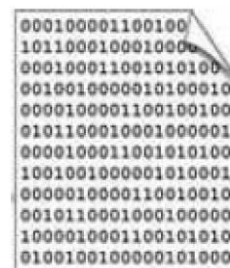
Employee places finger on sensor, finger scan is performed to acquire an image of the employee finger tip



The acquired image is analyzed and minutia points are detected and mapped



The image is discarded leaving only key minutia data



A biometric template is created as an encoded file

¹ In August 2020, two of Forman’s Illinois locations began using the Kronos In Touch 9100, an updated version of the Time Clock that utilized the same fingerprint-scanning technology.

Once the enrollment process is complete, the employee can begin using the Time Clock to record his or her hours. To punch in or out, the employee places his or her fingertip on the sensor, at which point the Time Clock generates another **biometric template** based on the fingerprint and compares it to every template stored in the database to determine whether there's a match, and if so, verify the employee's identity.

Plaintiff alleged Defendant violated the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, et seq. ("BIPA") by obtaining, storing, and using this data without the employees' informed and written consent, and by failing to provide the employees with the requisite data retention and destruction policies explaining how and when such biometric information will be used, stored, and destroyed.

On May 5, 2020, Plaintiff filed this action on behalf of a class and promptly filed her initial motion for class certification that same day.

Subsequently, the Parties briefed several motions to stay pending various appellate cases and exchanged discovery including class discovery. Plaintiff then took Mr. Cote's deposition who was Forman Mills' corporate designee pursuant to Rule 206(a)(1) as well as engaged in third party discovery with the time clock manufacturer.

On January 25, 2023, the parties attended an all-day, in-person mediation at ADR Systems before Judge Thomas Allen (Ret.). The Parties were able to reach a settlement in principle.

On March 9, 2023 after spending substantial time negotiating the terms of the Settlement, the Parties executed a Settlement Agreement. *See Appendix I.*

Under the Settlement Agreement, Forman Mills will pay \$2,387,325.00 into a Settlement Fund for the 3,435 class members. There is no need to submit a claim form and

the Settlement Fund will be divided *pro rata* among all Settlement Class Members after payment of the costs of notice and administration and the court-approved attorneys' fees, expenses, and class representative incentive awards².

All told, this settlement provides the Settlement Class with a significant portion of the statutory damages available under BIPA and, on a per-class member basis, it is in line with or exceeds many other BIPA class action settlements approved.

Plaintiff therefore moves to: (a) conditionally certify the Settlement Class; (b) appoint Ms. Heidelberg as class representative; (c) appoint as class counsel Keith Keogh and Gregg M. Barbakoff of Keogh Law, Ltd.; (d) grant preliminary approval of the Settlement and plan for giving notice of it to the Settlement Class; (e) set this matter for a final approval/fairness hearing; and (f) grant such additional relief as deemed just.

II. SUMMARY OF THE PROPOSED SETTLEMENT

The key terms of the proposed Settlement follow:

A. Settlement Class Definition.

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.

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.

² There is no agreement or clear sailing for either attorney fees or incentive award. Instead, the Settlement Agreement provides Plaintiff shall petition for both out of the Settlement Fund.

B. Structure of the Settlement Amount. The Settlement Agreement provides that Forman Mills shall pay Two Million Three Hundred Eighty Seven Thousand Three Hundred and Twenty Five Dollars (\$2,387,325.00) into the Settlement Fund.

C. Individual Settlement Class Member Benefits. A Settlement Class Member who does not opt out shall receive a *pro rata* share of the net settlement proceeds after payment of the cost of sending notice of the Settlement to the Settlement Class, settlement administration expenses, the attorneys' fee and expense award, and any class representative incentive award. Plaintiff estimates that each Class Member will receive \$400.00.

D. Compensation for the Class Representative. Subject to Court approval, Plaintiff anticipates she shall apply for an incentive award of \$10,000 to Ms. Heidelberg as she participated in discovery and participated in the litigation for three years. As noted above, the Settlement Agreement does not contain any "clear sailing" provision and the notices shall advise the class of this request.

E. Payment of Attorneys' Fees and Expenses. Plaintiff's counsel will petition the Court for an award of attorneys' fees not to exceed forty percent of the Settlement Fund plus reasonable expenses³, and the notice to the Settlement Class will inform the Settlement

³ See, e.g., *Martin v. Safeway, Inc.*, 2020-CH-5480 (Cir. Ct. Cook Cnty. May 4, 2022) at ¶ 14 (40% of \$20,000,000 common fund to class counsel); *Donahue v. Everi Holdings, Inc.*, 2018-CH-15419 (Cir. Ct. Cook Cnty. Dec. 3, 2020) at ¶19 and ¶26 (40% of common fund to class counsel); *Zepeda v. Intercontinental Hotels Group, Inc.*, 2018-CH-2140 (Cir. Ct. Cook Cnty. Dec. 5, 2018) (awarding 40% of common fund to class counsel as fee award in consumer class action settlement); *Willis v. iHeartMedia Inc.*, 2016-CH-02455 (Cir. Ct. Cook Cnty. Aug. 11, 2016) (awarding class counsel fee of 40% of non-reversionary settlement fund in a consumer class action); *Svagdis v. Alro Steel Corp.*, 2017-CH-12566 (Cir. Ct. Cook Cnty. Jan. 14, 2019) (same); *Zhirovetskiy v. Zayo Group, LLC*, 2017-CH-09323 (Cir. Ct. Cook Cnty. Apr. 8, 2019) (same); *McGee v. LSC Communications, Inc. et al.*, 2017-CH-12818 (Cir. Ct. Cook Cnty. Aug. 7, 2019) (same); *Sekura v. L.A. Tan Enters.*, 2015-CH-16694 (Cir. Ct. Cook Cnty. Dec. 1, 2016) (same).

Class of such. Once again, the Settlement Agreement does not provide any “clear sailing” provision and Plaintiff will file a separate attorney fee motion in support of this request.

F. Release. In exchange for the relief described above, the release is applicable to all Settlement Class Members and releases any and all claims related to information that is or could be protected under BIPA or similar laws. The full scope of the release, and its exact terms, are set forth in §X on page 9 of the Settlement Agreement. *See Appendix I.*

III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED

A. The Settlement Approval Process.

Prior to granting preliminary approval of a class action settlement, the Court should confirm that the proposed Settlement Class is a proper class for settlement purposes. *See Manual for Complex Litig. (Fourth) § 21.632; Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). In Illinois, class action suits are appropriate when “(1) the class is so numerous that joinder of all members as parties would be impracticable (“Numerosity”); (2) the class claims present common questions of law or fact, which predominate over any questions affecting only individual members (“Commonality”); (3) the plaintiff will fairly and adequately represent the class (“Adequacy”); and (4) a class action is an appropriate method for fairly and efficiently resolving the dispute. (“Appropriateness”). *See 735 ILCS 5/2-801; C.E. Design, Ltd. v. C&T Pizza, Inc.*, 2015 IL App (1st) 131465, ¶ 10 (1st Dist. 2015) (“These prerequisites are generally referred to as numerosity, commonality, adequacy of representation, and appropriateness.”). The Settlement Class easily meets each requirement.

B. Numerosity.

A class is sufficiently numerous when it is so large, joinder of all members as party plaintiffs would be impracticable. *See Cruz v. Unilock Chicago*, 383 Ill. App. 3d 752, 771 (2d

Dist. 2008). “A class consisting of more than forty members generally satisfies the numerosity requirement.” *Chavez v. Don Stoltzner Mason Contr., Inc.*, 272 F.R.D. 450, 454 (N.D. Ill. 2011).⁴ The Settlement Class easily clears this low bar as it contains 3,435 members.

C. Commonality.

“Determining whether issues common to the class predominate over any individual issues requires the court to identify the substantive issues that will control the outcome, assess which issues will predominate, and then determine whether these issues are common to the class.” *Ramirez v. Midway Moving & Storage, Inc.*, 378 Ill. App. 3d 51, 54 (1st Dist. 2007) (quoting *Smith v. Ill. Cent. R.R. Co.*, 223 Ill.2d 441, 449 (2006)). This requirement is met because Plaintiff’s and the Settlement Class’s BIPA claims are based on the same contention and allegedly unlawful course of conduct: That Forman Mills violated Sections 15(a) and 15(b) of BIPA by collecting, storing, and using the Settlement Class’s biometric data without obtaining informed written consent or implementing and adhering to a publicly-available biometric retention and destruction policy. This contention depends entirely on common questions that can be resolved on a class-wide basis “in one stroke,” such as: (1) whether the fingerprint data collected by Defendant’s timekeeping system qualify as biometric identifiers or biometric information under BIPA, *see* 740 ILCS 14/10; (2) whether Forman Mills provided sufficient written disclosures regarding the collection of Plaintiff’s and the Settlement Class’s biometric data, along with the purpose and length of term for the collection, *see* 740 ILCS 14/15(b); (3) whether it obtained signed releases from Plaintiff and the Settlement Class authorizing the collection, use, and storage of their biometric data. These

⁴ Because the Illinois class action statute and Federal Rule 23 are similar, federal decisions are persuasive authority on class certification issues. *Cruz*, 383 Ill. App. 3d at 761.

questions are more than sufficient to demonstrate commonality. *See, e.g., In re Facebook Biometric Info. Privacy Litig.*, 326 F.R.D. 535, 545 (N.D. Cal. 2018) (“[T]here is no doubt that a template-based [BIPA] class poses common legal and factual questions....”).

D. Adequacy.

A plaintiff will fairly and adequately represent class members if their interests are aligned, there are no conflicts of interest, and Plaintiff’s counsel are qualified, experienced, and generally able to conduct the litigation. *See Steinberg v. Chicago Medical School*, 69 Ill. 2d 320, 338-39 (1977); *Ramirez*, 378 Ill. App. 3d at 56. That is the case here. Plaintiff’s and the Settlement Class Members’ interests are squarely aligned because her claims arise from the same allegedly unlawful practices as the class members’ claims, and she seeks the same relief on the class’s behalf under BIPA. Moreover, Plaintiff’s counsel have decades of class action experience, including class actions under BIPA. *See Appendix 2* (Keogh Declaration) at ¶¶ at ¶¶ 17-31; *id.* at ¶¶ 45-49.

E. Appropriateness.

A class action is appropriate for fairly and efficiently resolving a dispute when it can “best secure economies of time, effort and expense or accomplish the other ends of equity and justice that class actions seek to obtain.” *Ramirez*, 378 Ill. App. 3d at 56 (quoting *Walczak v. Onyx Acceptance Corp.*, 365 Ill.App.3d 664, 679 (2d Dist. 2006)). That test is met here because this Settlement will resolve thousands of claims presenting the same legal and factual questions in one fell swoop, thus eliminating the need for individual litigation of the same issues over and over.

A class action also serves the ends of equity and justice because the class members are individuals, and there is no reason to think most or many have the time and wherewithal to try to vindicate their rights on their own. As noted by the First District:

Our courts have recognized that, ‘in a large and impersonal society, class actions are often the last barricade of consumer protection.’ (*Eshaghi*, 214 Ill.App.3d at 1004, 574 N.E.2d at 766.) The consumer class action is an inviting procedural device to address frauds that cause small damages to large groups. When brought by plaintiffs who have no other avenue of legal redress, the consumer class action provides restitution to the injured and deterrence to the wrongdoer.

Gordon v. Boden, 224 Ill. App. 3d 195, 204 (1st Dist. 1991) (citation omitted). Accordingly, a class action is an appropriate method for resolving the claims at issue.

Finally, although this case meets the appropriateness requirement as it is ordinarily applied, it must be noted that the analysis is relaxed here because class certification is being proposed as part of a settlement, and thus trial management considerations are not a factor. *See Amchem Prods, Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems ... for the proposal is that there be no trial”). In short, the Settlement Class meets all requirements for class certification.

IV. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL

Illinois law provides that “[a]ny action brought as a class action under Section 2-801 of this Act shall not be compromised or dismissed except with the approval of the court...” 735 ILCS 5/2-806. The procedure for review of a proposed class action settlement is a well-established two-step process. *See, e.g., Mortimer v. River Oaks Toyota, Inc.*, 278 Ill. App. 3d 597, 598-599 (1st Dist. 1996) (describing two-step approval process); *Quick v. Shell Oil Co.*, 404 Ill. App. 3d 277, 278 (3d Dist. 2010) (same).

The first step is a preliminary, pre-notification determination of whether the settlement is “within the range of possible approval.” *Armstrong v. Bd. Of Sch. Directors*, 616 F.2d 305, 314 (7th Cir. 1980) (overruled on other grounds) (citing *Manual for Complex Litig.* §1.46 at 53-55). This is not a final determination of fairness. Rather, its purpose is to ascertain whether sufficient grounds exist to give class members notice of the settlement and hold a fairness hearing. *See id.*

This preliminary approval stage is an “initial evaluation” of the fairness of the proposed settlement made on the basis of written submissions and informal presentation from the settling parties. *See, e.g., Quick*, 404 Ill. App. 3d at 278 (referencing the preliminary approval stage). If the court decides the settlement is “within the range of possible approval,” the case then proceeds to the second step in the review process—the final approval hearing. *Armstrong*, 616 F.2d at 314.

There is a strong public policy favoring the voluntary conciliation and settlement of litigation, particularly class litigation. *Sec. Pac. Fin. Services v. Jefferson*, 259 Ill. App. 3d 914, 919 (1st Dist. 1994) (“[T]here exists a strong policy in favor of settlement and the resulting avoidance of costly and time-consuming litigation...”); *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010) (“The strong judicial policy in favor of class action settlement contemplates a circumscribed role for the district courts in settlement review and approval proceedings.”). With a settlement, class members are ensured a benefit as opposed to “the mere possibility of recovery at some indefinite time in the future.” *In re Domestic Air Transport.*, 148 F.R.D. 297, 306 (N.D. Ga. 1993); *see also Scott v. Util. Partners of Am., LLC*, 2017 U.S. Dist. LEXIS 17348 at *8 (D. Kan. Feb. 6, 2017) (“the value of immediate recovery would likely outweigh the mere possibility of recovery after

protracted litigation.”).

Although approval of a class action settlement is a matter for the Court’s discretion, proper consideration should be given to the consensual decision of the parties. *See Gautreaux v. Pierce*, 690 F.2d 616, 638 (7th Cir. 1982) (“Because settlement of a class action, like settlement of any litigation, is basically a bargained exchange between the litigants, the judiciary’s role is properly limited to the minimum necessary to protect the interest of the class and the public. Judges should not substitute their own judgments as to optimal settlement terms for the judgment of the litigants and their counsel.”) (citation omitted); *Greco v. Ginn Dev. Co., LLC*, 635 Fed. Appx. 628, 632 (11th Cir. 2015) (“absent fraud, collusion, or the like, the district court ‘should be hesitant to substitute its own judgment for that of counsel.’”); *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ P45 (“Given that a settlement is a compromise, a trial court is not to judge the legal and factual questions by the criteria employed in a trial on the merits.”). Accordingly, courts “should always review the proposed settlement in light of the strong judicial policy that favors settlements.” *Diakos v. HSS Systems, LLC*, 137 F. Supp. 3d 1300, 1311 (S.D. Fla. 2015) (citation omitted).

In assessing the fairness, reasonableness, and adequacy of a proposed class settlement, Illinois courts consider the following factors: “(1) the strength of the case for the plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant’s ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed.”

City of Chicago v. Korshak, 206 Ill. App. 3d 968, 972 (1st Dist. 1990).

Here, the proposed Settlement is fair, adequate and reasonable, and well within the range of possible approval as explained below.

A. The Settlement Provides Substantial Relief.

The first and most important factor in evaluating the fairness of a proposed class action settlement is the strength of the plaintiff's case on the merits balanced against the relief obtained in the settlement. *See City of Chicago*, 206 Ill. App. 3d at 972; *Steinberg v. Sys. Software Associates, Inc.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999).

In this case, the amount offered by the Settlement — a guaranteed \$2,387,325 in cash to the Settlement Class, plus the fact that Forman Mills is now complying with BIPA — is substantial.

The estimated per-claimant⁵ relief provided by the Settlement provides a gross recovery of \$695/net recovery of approximately \$400, which compares more than favorably with per-claimant recoveries in prior settlements in similar BIPA cases. *See Sekura*, 2015-CH-16694 (Cir. Ct. Cook Cnty. Dec. 1, 2016) (net recovery of \$125 to \$150 per claimant); *Zhirovetskiy*, 2017-CH-09323 (Cir. Ct. Cook Cty. Apr. 8, 2019) (net recovery capped at \$400 per claimant); *Marshal v. Life Time Fitness, Inc.*, 2017-CH-14262 (Cir. Ct. Cook Cty. July 30, 2019) (net recovery of approximately \$270 per claimant, as well as dark web monitoring valued at approximately \$130.00 per claimant); *Prelipceanu v. Jumio Corp.*, 2018-CH-15883 (Cir. Ct. Cook Cnty. July 21, 2020) (net recovery of \$262.28 per claimant); *Trotter v. Summit*

⁵ It is worth noting that the settlement was reached prior to the Supreme Court's opinion in *Cothron* which applied a per scan violation, but also acknowledged a due process situation where statutory damages could be reduced.

Staffing, 2019-CH-02731 (Cir. Ct. Cook Cnty. Aug. 4, 2020) (net recovery of \$102); *Kusinski 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.*, 2019-CH-11575 (Cir. Ct. Cook Cnty. Sept. 2, 2021) (net recovery of \$384.09); *Pelka v. Saren Restaurants Inc.*, 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.*, 2019-CH-03390 (Cir. Ct. Cook Cnty. Jan 5, 2021) (net recovery of \$298.04).

Outside the realm of BIPA, the cash payments afforded by the Settlement Agreement dwarf the recoveries typically seen in privacy class actions, which often provide class members with little (if any) monetary relief. *See, e.g., Lane v. Facebook, Inc.*, 696 F.3d 811, 818 (9th Cir. 2012) (upholding settlement providing only \$9.5 million in cy pres relief despite that statutory claims at issue provided for significant statutory damages); *In re Google LLC Street View Electronic Communications Litigation*, No. 3:10-md-02184, 2020 U.S. Dist. LEXIS 47928 (N.D. Cal. Mar. 18, 2020) (approving cy pres distribution of \$13 million fund in case with 60 million person class (equating to \$0.22 per person before fees, expenses, or administration costs) in Electronic Communications Privacy Act (ECPA) matter with \$10,000 available statutory damages); *In re Google Buzz Privacy Litig.*, No. C 10-00672 JW, 2011 WL 7460099, at *3-5 (N.D. Cal. June 2, 2011) (approving settlement consisting solely of \$8.5 million cy pres payment where statutory claims at issue provided for statutory damages of up to \$10,000 per claim). *Parker v. Time Warner Entm’t Co., L.P.*, 631 F. Supp. 2d 242, 261-62 (E.D.N.Y. 2009) (“When the benefit is . . . placed in the context of the risks and delay of continued litigation[,]” a settlement providing \$6.75 per class member was “clearly within the

range of reasonableness” for claims brought under the Cable Communications Policy Act of 1984 which provides for minimum statutory damages of \$1,000). As such, Plaintiff’s counsel believes it is fair and adequate for the class.

B. Forman’s Ability to Pay.

This factor is neutral as ability to pay was not an issue.

C. Continued Litigation Would Be Complex, Costly, and Lengthy.

The third factor asks whether the settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation. *See City of Chicago*, 206 Ill. App. 3d at 972; *Nat’l Rural Telecommc’ns Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (“The Court shall consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation.”).

This would be lengthy and very expensive litigation if it were to continue, involving extensive motion practice, including, inter alia, a motion for class certification (and possibly a motion for decertification), motions for summary judgment, and various pretrial motions, as well as the retention of additional experts, preparation of expert reports, and conducting expert depositions. *See Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977) (“[C]lass action suits have a well-deserved reputation as being most complex.”). The case would probably not go to trial for over a year. In addition, even if Settlement Class Members recovered a judgment at trial in excess of the \$2,387,325 in cash provided by the Settlement, post-trial motions and the appellate process would deprive them of any recovery for years, and possibly forever in the event of a reversal. Rather than embarking on years of protracted and uncertain litigation, Plaintiff and his counsel negotiated a Settlement that provides immediate, certain, and

meaningful relief to all Settlement Class members. Accordingly, the third factor weighs in favor of finding the Settlement fair, reasonable and adequate. *See City of Chicago*, 206 Ill. App. 3d at 972; *Borcea v. Carnival Corp.*, 238 F.R.D. 664, 674 (S.D. Fla. 2006) (noting “[i]t has been held proper to take the bird in the hand instead of a prospective flock in the bush”).

D. There is Presently No Opposition to the Settlement.

The fourth and sixth factors consider the amount of opposition to the Settlement and the reaction of the Settlement Class to the Settlement. *See City of Chicago*, 206 Ill. App. 3d at 972. Because Plaintiffs are presently at the preliminary approval stage, Notice has not yet been distributed to the Settlement Class and the Settlement Class has accordingly not yet had an opportunity to voice any opposition to (or support for) the Settlement. Thus, Plaintiff will address factors four and six in detail in their motion for final approval of the Settlement, after Notice has been disseminated and the Objection and Opt-Out Deadlines have passed. Nonetheless, Plaintiff and Class Counsel strongly support the Settlement, which they believe is fair, reasonable, and adequate and in the best interest of the Settlement Class. *See infra*, Section F (opinions of Class Counsel on Settlement’s fairness).

Accordingly, even at this preliminary stage of the approval process, the fourth and sixth factors weigh in favor of finding the Settlement fair, reasonable, and adequate.

E. The Settlement Was Negotiated Free of Collusion.

The fifth factor considers the presence of any collusion by the Parties in reaching the proposed settlement. *City of Chicago*, 206 Ill. App. 3d at 972. Where a proposed class settlement is the result of contentious, arm’s-length negotiations before an experienced mediator, the settlement may be presumed fair and reasonable and entered into without any form collusion. *See Newberg*, § 11.42; *Coy v. CCN Managed Care, Inc.*, 2011 IL App (5th)

100068-U, ¶ 31 (no collusion where settlement agreement was reached as a result of “an arms-length negotiation entered into after years of litigation and discovery, resulting in a settlement with the aid of an experienced mediator”); *Fauley*, 2016 IL App (2d) 150236, ¶ 21 (approval warranted where there was “no evidence that the proposed settlement was not the product of ‘good faith, arm’s-length negotiations’”).

First, this settlement was reached after the case has been pending since May 2020 and after active arm’s length negotiations, including mediation with Judge Thomas Allen (Ret.) of ADR Systems that lasted the entire day. *See Appendix 2* (Keogh Decl.) at ¶¶ 4-5.

Second, the parties have been actively engaged in litigation propounding written discovery, engaging in third party discovery and Plaintiff took the deposition of Forman Mill’s corporate designee. Through this litigation, the Parties are fully aware of the risks and benefits of continued litigation.

Third, Class Counsel is highly experienced in prosecuting consumer class actions, having litigated hundreds such class action lawsuits. *See Appendix 2* (Keogh Decl.) at ¶¶ 17-27.

F. The Experience and Views of Counsel.

The seventh factor is the opinion of competent counsel as to the fairness, reasonableness, and adequacy of the proposed settlement. *See City of Chicago*, 206 Ill. App. 3d at 972. Courts rely on affidavits in assessing proposed class counsel’s qualifications under this factor. *Id.*

Indeed, courts do not substitute their judgment for that of the proponents, especially when experienced counsel familiar with the litigation have reached a settlement. *See, e.g., Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990) (citing *Newberg on Class Actions*, §11.44). Rather, courts presume the absence of fraud or collusion in the negotiation of a

settlement unless evidence to the contrary is offered. In short, there is a presumption that negotiations were conducted in good faith. *See Newberg on Class Actions* § 11.51; *In re Chicken Antitrust Litig.*, 560 F. Supp. 957 (N.D. Cal. 1980).

Here, the experience of Plaintiff’s counsel is addressed above in §III(F) of this Motion. Plaintiff’s counsel believes this to be a strong settlement given the benefit to the Settlement Class Members and Forman Mills’s arguments against class certification and the merits of this action. In the end, when the strengths of the case are weighed against the legal and factual obstacles present and the complexity of class action practice, there is no doubt that the proposed Settlement is in the best interest of Settlement Class Members. *See Appendix 2* (Keogh Decl.) at ¶¶ 10-15.

G. The Extent of Discovery Completed and the State of the Proceedings.

Extensive formal discovery has been completed by the Parties prior to mediation including analysis of documents, class discovery, third party discovery with the time clock manufacture as well as Rule 206(a)(6) depositions of defendant. Class Counsel are fully aware of the potential benefits and risks of this case, and are confident that this Settlement is in the best interests of the Class. *Id.*

V. THE PROPOSED CLASS NOTICE SHOULD BE APPROVED

Before reaching the final approval stage, due process requires that notice be given to the class members to advise them of the settlement, and give them the opportunity to comment on it or exclude themselves from the lawsuit. *See* 735 ILCS 5/2-806 (generally requiring “notice as the court may direct.”); *Miner v. Gillette Co.*, 87 Ill. 2d 7, 15 (1981) (locatable class members must be given notice and chance to opt out); *Fauley*, 2016 IL App (2d) 150236, ¶ 36 (“due process requires notice to be the ‘best practicable, ‘reasonably calculated, under all the

circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’”’) (quoting *Phillips Petroleum Co. v. Shutts*, 472 US. 797, 812 (1985)). Accordingly, the Settlement Agreement includes notice procedures designed to directly reach each member of the class to the extent practicable. *Appendix I* at p.16, §V.C.

Here, the Settlement Agreement includes notice procedures designed to directly reach each member of the Settlement Class to the extent practicable. *Appendix I* at §VI.

Specifically, after preliminary approval, Forman Mills will provide the class list, which will be used to send mail notice to each of the class members. In addition, 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. The Claims Administrator has estimated that the cost to administrate this settlement is \$45,000.

In sum, the foregoing is the best notice practicable under the circumstances. Indeed, mailed notice combined with a website for further information is a commonly approved method for giving notice in class settlements. *See Greco*, 2015 U.S. App. LEXIS 20867 at *15 (unpublished) (“all material facts were available to class members because a full copy of the settlement agreement, and the release, were available on a website referenced in the Notice”).

VI. THE MATTER SHOULD BE SET FOR A FAIRNESS HEARING

The last step in the settlement approval process is the formal Final Approval Hearing. This hearing allows the Court to hear all evidence and arguments necessary to determine whether the settlement is fair, adequate and reasonable, and should be held after adequate notice is given to the Settlement Class. *See, e.g., Fauley*, 2016 IL App (2d) 150236 at *45; *City of Chicago*, 206 Ill. App. 3d at 971-72.

VII. FORMAN DOES NOT OBJECT TO PRELIMINARY APPROVAL OF THE SETTLEMENT CLASS

Forman Mills disagrees that Plaintiff can satisfy the elements for a litigation class or that certification of any class would be appropriate here if the Parties proceeded with litigation. Nonetheless, following extensive negotiations, Forman Mills has agreed to the terms of the Settlement and does not object to the certification of the Settlement Class for settlement purposes only.

VII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court: (a) conditionally certify the Settlement Class; (b) appoint Ms. Heidelberg as class representative; (c) appoint as class counsel Keith Keogh and Gregg M. Barbakoff of Keogh Law, Ltd., (d) grant preliminary approval of the Settlement and plan for giving notice of it to the Settlement Class; (e) set this matter for a final approval/fairness hearing; and (f) grant such additional relief as deemed just.

Plaintiff propose the general scheduling outline below for evaluating and concluding this Settlement.

_____, 2023 [30 days after the date of the Preliminary Approval Order]	Deadline for notice of the Settlement to be sent to the Settlement Class Members
_____, 2023 [30 days after the date of the Preliminary Approval Order]	Deadline to file any petition for attorneys' fees
_____, 2023 [90 days after the Preliminary Approval]	Deadline for Settlement Class Members to request exclusion or file objections (Opt-Out and Objection Deadline)
_____, 2023 [110 days after the date of the Preliminary Approval Order]	Deadline for Parties to file the following: (1) List of persons who made timely and proper Requests for Exclusion (under seal); (2) Proof of Class Notice; and (3) Motion and memorandum in support of final approval, including responses to any objections.
_____, 2023 at _____.m. [124 days after the date of the Preliminary Approval Order]	Final Approval Hearing

Dated: March 24, 2023

Respectfully submitted,

/s/ Keith J. Keogh
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 March 24, 2023, the foregoing document, including all exhibits referenced therein, 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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Richard E. Daniels
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Counsel for Defendant Forman Mills Inc.

/s/ Keith J. Keogh
Keith J. Keogh

Motion for Preliminary Approval

APPENDIX 1

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.

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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,

	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.
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, along with a Form 1099 form.
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 _____, 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 _____, 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 .

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 2

**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 Unopposed Motion for Preliminary Approval of Class Action Settlement. 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 class action was filed on May 5, 2020 in the Circuit Court of Cook County against Defendant Forman Mills, Inc. (“Forman”). The Settlement in this case was not reached until after the parties engaged in motion practice, conducted written discovery on class and merits issues, engaged in third-party discovery with the manufacturer of Forman’s time clock, conducted the deposition of Forman’s corporate representative, prepared detailed mediation briefs setting forth their respective legal and factual arguments, and participated in a contentious, all-day mediation session held before the Honorable Thomas Allen (Ret.).

5. 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.

6. 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.

7. Based on information furnished by Forman, the approximate class size is approximately 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. *See Mot.* at 13-14.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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 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.*

15. 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

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.

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.

16. Plaintiff played a key role in prosecuting this case and securing the proposed Settlement on behalf of the proposed Settlement Class. Specifically, Plaintiff retained experienced counsel class action litigators to bring this action, assisted her attorneys in investigating the Settlement Class's BIPA claims, responded to written discovery, reviewed and approved the Class Action Complaint prior to filing, regularly conferred with her attorneys throughout the litigation, and reviewed and approved the Settlement Agreement prior to signing it.

Class Counsel's Experience

17. 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.

18. 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.

19. 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.

20. 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.).

21. 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).

22. 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).

23. 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).

24. 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 Cnty., 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 Bacgroundchecks.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. Rothenback*, 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. GolIndustry*, 03 CH 21136, Circuit Court Cook County (Judge McGann).

25. 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).

26. 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).

27. 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 F.3d 614, 617 (7th Cir. 2007); *Echevarria et al. v. Chicago Title and Trust Co.*, 256 F.3d 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. DirecTV 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.

28. 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.

29. 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*.

30. 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."

31. 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

32. 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.

33. 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 Ctny., 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.).

34. 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).

35. 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.

36. 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

37. 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.

38. 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).

39. 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

40. 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.

41. 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.

42. 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).

43. 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.

44. 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

45. 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.

46. 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.

47. 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.

48. 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.

49. 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

50. 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.

51. 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.

52. 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).

53. 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.

54. 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.

55. 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.

56. 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

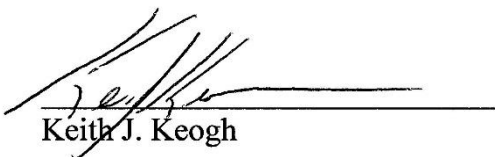
everything from consumer fraud to breach of warranty and securities and shareholder derivative lawsuits and appeals.

57. 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.

58. 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.

59. 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 March 24, 2023.


Keith J. Keogh