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

ERNESTO GALLARZO, individually and on behalf of all similarly situated individuals, Plaintiff, v. GOLD COAST MOTOR CARS, INC. d/b/a PERILLO BMW, INC., an Illinois corporation, Defendant.	)	Case No. 2022-CH-02381 Hon. Eve M. Reilly

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

Plaintiff Ernesto Gallarzo ("Plaintiff" or "Class Representative"), by and through his attorneys, and pursuant to 735 ILCS 5/2-801, hereby moves for an award of attorneys' fees and expenses for Class Counsel, as well as a service award for Plaintiff as the Class Representative in connection with the class action settlement with Defendant Gold Coast Motor Cars, Inc. ("Defendant"). In support of this Motion, Plaintiff submits the following memorandum of law.

Dated: September 16, 2024

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I. INTRODUCTION

The Settlement[1] that Class Counsel have achieved in this case is an excellent result for Settlement Class Members, as it will provide each of them with an approximately $1,000.00 payment with no need to submit a claim form. The Parties' Agreement has established a Settlement Fund of $636,000.00 to provide each Settlement Class Member an equal, *pro rata* distribution of the Settlement Fund for having their biometrics collected by Defendant Gold Coast Motor Cars, Inc. ("Defendant") in alleged violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA"). In addition to the substantial financial benefit to the Settlement Class Members, the Settlement also provides non-monetary relief designed to prevent the recurrence of the allegedly unlawful biometric collection and use practices at issue in this case.

On July 25, 2024, the Court entered the amended preliminary approval order of the Settlement. Direct notice of the Settlement commenced on August 26, 2024. To date, no Settlement Class Member has objected to the Settlement and no Settlement Class Member has requested exclusion.

With this Motion, Class Counsel requests a fee of 40% of the total Settlement Fund, amounting to $254,400.00, plus their litigation expenses. As explained in detail below, Class Counsel's requested fee award is justified given the excellent relief provided under the Settlement, is consistent with Illinois law and fee awards granted in other cases in Illinois courts, and is also reasonable given the time Class Counsel have committed to resolving this litigation for the benefit of the Settlement Class Members.

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

Both Class Counsel and the Class Representative have devoted significant time and effort to the prosecution of the Settlement Class Members' claims, and their efforts have yielded an excellent benefit to the Class. The requested attorneys' fees and costs and Service Award are amply justified in light of the investment, significant risks, and excellent results obtained for the Settlement Class Members, particularly given the substantial uncertainty regarding the state of BIPA when this Settlement was reached, and the continuous, ongoing shifts in the landscape of BIPA litigation. Plaintiff and Class Counsel respectfully request that the Court approve attorneys' fees and reasonable expenses of $266,892.31 and the agreed-upon Service Award of $7,500.00 for Plaintiff Ernesto Gallarzo as the Class Representative.

II. THE CASE AND PROCEDURAL HISTORY

A. Plaintiff's Allegations

From 2015 through 2017 Plaintiff worked at Defendant's Perillo BMW location in Chicago, Illinois where Defendant operated an automotive dealership and service facility. Plaintiff alleges that, each time Plaintiff clocked in and out of work, he was required to provide his biometrics, i.e. scans of his hands, in order to authenticate his identity for timekeeping purposes. Plaintiff has further alleged that, in operating its timekeeping system, Defendant has failed to comply with BIPA because Defendant: (1) failed to inform individuals prior to capturing their biometrics that it will be capturing such information; (2) failed to receive a written release for the capture of biometrics prior to such capture; (3) failed to inform the person whose biometrics are being captured of the specific purpose and length of term for which such biometrics are captured; and (4) failed to establish a publicly available retention schedule and guidelines for permanently destroying biometrics. Defendant denies any violation of or liability under BIPA.

B. Procedural History and the Parties' Settlement Negotiations

This case was originally filed on March 17, 2022. On October 19, 2023, the Parties attended an all-day mediation before the Hon. James Holderman (Ret.) where, following arm's-length negotiations, the Parties were able to achieve a settlement by which the Parties agreed to resolve all matters pertaining to, arising from, or associated with the Litigation. Importantly, following the mediation, Plaintiff's counsel engaged in significant confirmatory discovery regarding the entities involved and to identify all potential class members, which included serving third-party subpoenas on Defendant's timeclock vendors. After over 6 months of confirmatory discovery, 91 additional class members were identified, which resulted in a significant increase in the Settlement Fund.

III. THE SETTLEMENT

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

Class Counsel's prosecution of this litigation has culminated in this class-wide Settlement that provides exceptional monetary relief to the Settlement Class Members. The Settlement establishes a $636,000 Settlement Fund (Agreement, ¶ 43(a)), and each Class Member will receive – without the need to submit a claim – an equal share of the fund after deductions of administration costs and the Court-approved attorneys' fees and Service Awards. After such deductions, it is estimated that each Settlement Class Member will receive approximately $1,000.[2]

The Settlement also provides valuable non-monetary relief to the Settlement Class, as Defendant has discontinued its use of the biometric timeclocks at issue and has agreed that to the extent that it reinstates their use it will do so in compliance with BIPA. (*Id.*, ¶ 49). This additional relief benefits both the Settlement Class Members and future Illinois workers who may be

[2] The Settlement Class comprises 424 individuals (Agreement, ¶ 43(a)).

employed by Defendant.

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

Under the Settlement Agreement's Notice Plan, which has already gone into effect, direct notice via U.S. Mail has been provided to the Settlement Class Members. (*See* Declaration of Eugene Y. Turin, attached hereto as Exhibit 1, ¶ 11). In addition, the Settlement Website is operational and makes available the detailed Long Form Notice and all relevant case information. To date, no Class Members have opted out or objected to the Settlement. (*Id.* at ¶ 11).

IV. ARGUMENT

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

Pursuant to the Settlement, Class Counsel seek attorneys' fees in the amount of $254,400.00, which amounts to 40% of the Settlement Fund, plus $12,492.31 in reimbursable expenses. (Agreement, ¶ 74). Such a request is within the range of fees approved in other class actions and is fair and reasonable in light of the work performed by Class Counsel and the outstanding recovery secured on behalf of the Settlement Class Members. It is well settled that attorneys who, by their efforts, create a common fund for the benefit of a class are entitled to reasonable compensation for their services. *See Wendling v. S. Ill. Hosp. Servs.*, 242 Ill. 2d 261, 265 (2011) (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)) ("a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole.").

In cases where, as here, a class action settlement results in the creation of a settlement fund, "[t]he Illinois Supreme Court has adopted the approach taken by the majority of Federal courts on the issue of attorney fees[.]" *Baksinski v. Northwestern Univ.*, 231 Ill. App. 3d 7, 13 (1st Dist. 1992) (citing *Fiorito v. Jones*, 72 Ill.2d 73 (1978)). That is, where "an equitable fund has been

created, attorneys for the successful plaintiff may directly petition the court for the reasonable value of those of their services which benefited the class." *Baksinski*, 231 Ill. App. 3d at 14 (citing *Fiorito*, 72 Ill.2d 73). This rule "is based on the equitable notion that those who have benefited from litigation should share in its costs." *Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007) (*citing Skelton v. Gen. Motors Corp*., 860 F.2d 250, 252 (7th Cir. 1988)).

In deciding an appropriate fee in such cases, "a trial judge has discretionary authority to choose a percentage[-of-the-recovery] or a lodestar method[.]" *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 58 (citing *Brundidge v. Glendale Federal Bank, F.S.B.*, 168 Ill. 2d 235, 243–44 (1995)). Here, Plaintiff submits that the Court should apply the percentage-of-the-recovery approach—the approach used in the vast majority of common fund class actions, including BIPA class actions. It is settled law in Illinois that the Court need not employ the lodestar method in assessing a fee petition. *Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 59. This is because the lodestar method is disfavored, as it not only adds needless work for the Court and its staff,[3] it misaligns the interests of Class Counsel and the Settlement Class Members. 5 Newberg on Class Actions § 15:65 (5th ed.) ("Under the percentage method, counsel have an interest in generating as large a recovery for the class as possible, as their fee increases with the class's take. By contrast, when class counsel's fee is set by an hourly rate, the lawyers have an incentive to run up as many hours as possible in the litigation so as to ensure a hefty fee, even if the additional hours are not serving the clients' interests in any way").

The lodestar method has been long criticized by Illinois courts as "increas[ing] the workload of an already overtaxed judicial system . . . creat[ing] a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law . . . le[ading] to abuses such as

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

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

Conversely, the use of the percentage-of-the-recovery approach in common fund class settlements flows from, and is supported by, the fact that the percentage-of-the-recovery approach promotes early resolution of the matter, as it disincentivizes protracted litigation driven solely by counsel's efforts to increase their lodestar. *Brundidge*, 168 Ill.2d at 242. For this reason, a percentage-of-the-recovery method best aligns the interests of the class and its counsel, as class counsel are encouraged to seek the greatest amount of relief possible for the class rather than simply seeking the greatest possible amount of attorney time regardless of the ultimate recovery obtained for the class. Applying a percentage-of-the-recovery approach is also generally more appropriate in cases like this one because it best reflects the fair market price for the legal services provided by the class counsel. *See Ryan*, 274 Ill. App. 3d at 923 (noting that "a percentage fee was the best determinant of the reasonable value of services rendered by counsel in common fund cases") (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force*, 108 F.R.D. 237, 255–56 (3d. Cir. 1985)). This approach also accurately reflects the contingent nature of the fees negotiated between Class Counsel and Plaintiff, who agreed *ex ante* that up to 40% of any settlement fund plus reimbursement of costs and expenses would represent a fair award of attorneys' fees from a fund recovered for the Class. (Turin Decl., ¶ 14.)

Class Counsel are not aware of any BIPA class action settlements involving a monetary common settlement fund where a court relied on the lodestar method to determine attorneys' fees. In fact, to Class Counsel's knowledge, the percentage-of-the-recovery method has been used to

determine a reasonable fee award in *every* BIPA class action settlement in the Circuit Court of Cook County where the defendant – as here – created a monetary common fund. *See, e.g.*, *Marquez v. Bobak Sausage Co.*, No. 2020-CH-04259 (Cir. Ct. Cook County, Ill. Aug. 21, 2023); *Rapai v. Hyatt Corp.*, No. 2017-CH-14483 (Cir Ct. Cook County, Ill. Jan. 26, 2022); *Marzec v. Reladyne, LLC*, No. 2018-CH-14101 (Cir. Ct. Cook County, Ill. Dec. 15, 2022); *King v. PeopleNet Corp.*, No. 2021-CH-01602 (Cir. Ct. Cook County, Ill. Aug. 10, 2023); *Fregoso v. American Airlines, Inc.*, No. 2017-CH-15328 (Cir. Ct. Cook County, Ill. Nov. 8, 2023); *Martinez v. Power Stop, LLC*, No. 19-CH-08545 (Cir. Ct. Cook County, Ill. May 28, 2024); *Gray v. Verificient Technologies, Inc.*, No. 18-CH-16054 (Cir. Ct. Cook County, Ill. Jul. 5, 2024).

Accordingly, the Court should adopt and apply the percentage-of-the-recovery approach here. Under this approach, as set forth more fully below, Class Counsel's requested attorneys' fees are eminently reasonable.

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

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

i. The requested attorneys' fees amount to 40% of the Settlement Fund—a percentage within the range found reasonable in similar cases.

The requested fee award of $254,400.00 represents 40% of the Settlement Fund. This percentage is within the range of attorneys' fee awards that courts, including numerous judges

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

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

The Settlement in this case, which has now been pending for over two years, represents an excellent result for the Settlement Class, especially given that Defendant has expressed a firm denial of Plaintiff's material allegations and demonstrated the intent to raise several defenses, including most importantly that Plaintiff is not entitled to represent any individuals who did not

work at the location where Plaintiff was employed such that the vast majority of the class would not be entitled to relief from this lawsuit if Defendant prevailed. Nonetheless, Class Counsel succeeded in negotiating and securing a settlement on behalf of the entire Settlement Class, and even after negotiating the original terms of the settlement, spent an additional 6 months to confirm the class size and in the process identified an additional 93 Class Member. As a result, the settlement ultimately reached by Class Counsel created a $636,000.00 Settlement Fund and provides Class Members with the ability to automatically receive approximately $1,000 in compensation. The Settlement's provision of excellent monetary relief to each Settlement Class Member now, as opposed to years from now, or perhaps never, represents a truly excellent result.

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

Despite the significant risks inherent in any litigation, and the particular risks presented in this litigation as discussed above, Class Counsel were able to obtain an outstanding result for the Settlement Class. As stated above, the Settlement Agreement provides for the creation of a $636,000.00 Settlement Fund, which will be split equally among the Settlement Class Members after Court-approved fees and costs.

Additionally, under the terms of the Settlement Agreement, Defendant represents that it no longer uses the biometric timeclocks at issue and that, to the extent that it uses any biometric timeclocks in the future, it will do so in compliance with BIPA. (Agreement, ¶ 49). This non-monetary relief obtained by Class Counsel further justifies the reasonableness of the attorneys' fees being sought here. *See Spano v. Boeing Co.*, No. 06-cv-743, 2016 WL 3791123, at *1 (S.D. Ill. Mar. 31, 2016) ("A court must also consider the overall benefit to the Class, including non-monetary benefits, when evaluating the fee request. . . . This is important so as to encourage attorneys to obtain meaningful affirmative relief") (citing *Beesley v. Int'l Paper Co.*, No. 06-cv-

703, 2014 U.S. Dist. LEXIS 12037, at *5 (S.D. Ill. Jan 31, 2014)); Manual for Complex Litigation, Fourth, § 21.71, at 337 (2004)); *see also Hall v. Cole*, 412 U.S. 1, 5 n.7 (1973) (awarding attorneys' fees when relief is obtained for the class "must logically extend, not only to litigation that confers a monetary benefit to others, but also litigation which corrects or prevents an abuse which would be prejudicial to the rights and interests of those others.").

Given the significant monetary compensation obtained for the Settlement Class Members as well as the non-monetary benefits, an attorneys' fee award of 40% of the Settlement Fund plus expenses is reasonable and fair compensation—particularly, as discussed above, in light of the uncertainty and fluid nature of the relevant law, the "substantial risk in prosecuting this case under a contingency fee agreement" and the "defenses asserted by [Defendant]." *Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 59.[4]

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

Class Counsel have expended $12,492.31 in reimbursable expenses related to filing fees, mediation costs, and case administration. (Turin Decl., ¶ 13.) Courts regularly award reimbursement of the expenses counsel incurred in prosecuting the litigation. *See, e.g., Kaplan v. Houlihan Smith & Co.,* No. 12-cv-5134, 2014 WL 2808801, at *4 (N.D. Ill. June 20, 2014) (awarding expenses "for which a paying client would reimburse its lawyer"); *Spicer v. Chicago Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1256 (N.D. Ill. 1993) (detailing and awarding expenses incurred during litigation). Accordingly, this Court should award a total fee and expense award to Class Counsel of $266,892.31.

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

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

The requested $7,500.00 Service Award for Plaintiff Gallarzo is reasonable compared to other awards granted to class representatives in similar class actions. Because a named plaintiff is essential to any class action, "[service] awards are justified when necessary to induce individuals to become named representatives." *Spano*, 2016 WL 3791123, at *4 (approving awards of $25,000 and $10,000 for class representatives) (internal citation omitted); *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 497 (1st Dist. 1992) (noting that service awards "are not atypical in class action cases . . . and serve to encourage the filing of class actions suits.").

Here, Plaintiff's efforts and participation in prosecuting this case justify the $7,500.00 Service Award sought. Even though no award of any sort was promised to Plaintiff prior to the commencement of the litigation or any time thereafter, Plaintiff nonetheless contributed his time and effort in pursuing his own BIPA claims, as well as in serving as a representative on behalf of the Settlement Class Members—exhibiting a willingness to participate and undertake the responsibilities and risks attendant with bringing a representative action. (Turin Decl., ¶¶ 14–16).

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

Further, agreeing to serve as a Class Representative meant that Plaintiff publicly placed his name on this litigation and opened himself up to "scrutiny and attention" which, in and of itself, "is certainly worthy of some type of remuneration," particularly given that the claims were brought by Plaintiff against his former employer. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 600–01 (N.D. Ill. 2011). Were it not for Plaintiff's willingness to pursue this action on a class-

wide basis, his efforts and contributions to the litigation by assisting Class Counsel with their investigation and prosecution of this suit, and his continued participation and monitoring of the case up through settlement, the substantial benefit to the Settlement Class Members afforded under the Settlement Agreement would simply not exist. (Turin Decl., ¶ 16.)

The requested $7,500.00 Service Award for Plaintiff Gallarzo is well in line with the average service award granted in class actions. Indeed, many courts that have granted final approval in BIPA class action settlements have granted higher class representative awards than the payment sought here. *See, e.g., Verificient,* 18-CH-16054, Jul. 5, 2024 Final Order and Judgement, ¶ 20 (Reilly, J.) (awarding $10,000 service award to the class representative in BIPA class action); *Rapai*, 17-CH-14483, Jan. 26, 2022 Final Order and Judgment, ¶ 20 (Demacopoulos, J.) (awarding $12,500 incentive award in BIPA class action); *Roach v. Wal-Mart, Inc.*, No. 19-CH-1107, June 16, 2021 Final Approval Order, ¶ 14 (Cir Ct. Cook Cnty, Ill.) (Meyerson, J.) (awarding $10,000 incentive award in BIPA class settlement); *Gonzalez v. Silva Int'l, Inc.*, No. 2020-CH-03514, June 24, 2021 Final Order and Judgment, ¶ 19 (Cir. Ct. Cook Cnty., Ill.) (Conlon, J.) (awarding $10,000 incentive award in BIPA class action). Compensating Plaintiff for the risks and efforts he undertook to benefit the Settlement Class Members is reasonable under the circumstances of this case, especially in light of the exceptional results obtained. As shown above, courts have regularly approved awards in similar class action litigation of at least $10,000.00. Moreover, no objection to the Service Award has been raised to date. Accordingly, a $7,500.00 Service Award to Plaintiff Gallarzo is reasonable, justified by Plaintiff's time and effort in this case, and should be approved.

V. CONCLUSION

For the foregoing reasons, Plaintiff and Class Counsel respectfully request that the Court enter an Order: (1) approving an award of attorneys' fees and expenses of $266,892.31; and (ii)

approving a Service Award of $7,500 for Plaintiff in recognition of his significant efforts on behalf of the Settlement Class Members.

Dated: September 16, 2024

Respectfully submitted,

ERNESTO GALLARZO, individually and on behalf of similarly situated individuals

By: /s/ *Eugene Y. Turin*
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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on September 16, 2024, a copy of the foregoing *Plaintiff's Motion & Memorandum of Law in Support of Approval of Attorneys' Fees, Expenses, & Service Award* was filed electronically with the Clerk of Court, with a copy sent by Electronic Mail to all counsel of record.

/s/ *Eugene Y. Turin*

Exhibit 1

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

ERNESTO GALLARZO, individually and on behalf of all similarly situated individuals,	)	
Plaintiff,	)	Case No. 2022-CH-02381
v.	)	Hon. Eve M. Reilly
GOLD COAST MOTOR CARS, INC. d/b/a PERILLO BMW, INC., an Illinois corporation,	)	
Defendant.	)	

DECLARATION OF EUGENE Y. TURIN

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

1. I am an adult over the age of 18 and a resident of the state of Illinois. I am an attorney with the law firm McGuire Law, P.C., I am licensed to practice law in the state of Illinois, and I, along with Evan M. Meyers, Andrew Heldut, and Colin C. Buscarini of McGuire Law, P.C. (together, "Proposed Class Counsel"), am one of the attorneys representing Plaintiff Ernesto Gallarzo and the putative class in this matter. I am fully competent to make this Declaration and make this Declaration in support of Plaintiff's Motion and Memorandum of Law in Support of Approval of Attorneys' Fees, Expenses, and Service Award.

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

3. I and the other attorneys of McGuire Law have regularly engaged in complex litigation on behalf of consumers and have extensive experience in class action lawsuits similar in

size and complexity to the instant case, including numerous BIPA class actions. McGuire Law attorneys have been appointed as class counsel in scores of complex class actions, including many BIPA class actions, in state and federal courts across the country, including the Circuit Court of Cook County, the Circuit Court of Lake County, and the U.S. District Court for the Northern District of Illinois. *See, e.g, Paluzzi, et al. v. mBlox, Inc., et al*. (Cir. Ct. Cook Cnty., Ill. 2009); *Parone et al. v. m-Qube, Inc. et al.* (Cir. Ct. Cook Cnty., Ill. 2010); *Satterfield v. Simon & Schuster* (N.D. Cal. 2010); *Lozano v. Twentieth Century Fox Film Corp, et al.* (N.D. Ill. 2011); *Schulken v. Washington Mutual Bank, et al.* (N.D. Cal. 2011); *In re Citibank HELOC Reduction Litigation* (N.D. Cal. 2012); *Rojas v. Career Education Corp*. (N.D. Ill. 2012); *In re Jiffy Lube Int'l, Inc. Text Spam Litigation* (S.D. Cal. 2013); *Robles v. Lucky Brand Jeans* (N.D. Cal. 2013); *Murray et al v. Bill Me Later, Inc.* (N.D. Ill. 2014); *Valladares et al. v. Blackboard, Inc. et al.* (Cir. Ct. Cook Cnty., Ill. 2016); *Hooker et al v. Sirius XM Radio, Inc.* (E.D. Va. 2017); *Flahive et al v. Inventurus Knowledge Solutions, Inc.* (Cir. Ct. Cook Cnty., Ill. 2017); *Serrano et al. v. A&M (2015) LLC* (N.D. Ill. 2017); *Zepeda et al. v. Intercontinental Hotels Group, Inc.* (Cir. Ct. Cook Cnty., Ill. 2018); *Vergara et al. v. Uber Technologies, Inc.* (N.D. Ill. 2018); *Sheeley v. Wilson Sporting Goods Co.*, 18-CH-04770 (Ill. Cir. Ct. 2018); *Zhirovetskiy v. Zayo Group, LLC* (Cir. Ct. Cook Cnty., Ill. 2019); *McGee et al v. LSC Communications, Inc., et al.* (Cir. Ct. Cook Cnty., Ill. 2019); *Prather et al. v. Wells Fargo Bank, N.A.* (N.D. Ill. 2019); *Nelson et al v. Nissan North America, Inc.*, (M.D. Tenn. 2019); *Smith v. Pineapple Hospitality Co., et al* (Cir. Ct. Cook Cnty., Ill. 2020); *Garcia v. Target Corp.* (D. Minn. 2020); *Burdette-Miller v. William & Fudge, Inc.* (Cir. Ct. Cook Cnty., Ill 2020); *Farag v. Kiip, Inc.* (Cir. Ct. Cook Cnty., Ill. 2020); *Lopez v. Multimedia Sales & Marketing, Inc.* (Cir. Ct. Cook Cnty., Ill. 2020); *Prelipceanu v. Jumio Corp.* (Cir. Ct. Cook Cnty., Ill. 2020); *Williams v. Swissport USA, Inc.* (Cir. Ct. Cook Cnty., Ill. 2020); *Glynn v. eDriving,* LLC (Cir. Ct.

Cook Cnty., Ill. 2020); *Pearlstone v. Wal-Mart Stores, Inc.* (E.D. Mo. 2021); *Kusinski v. ADP, LLC* (Cir. Ct. Cook Cnty., Ill. 2021); *Draland v. Timeclock Plus, LLC* (Cir. Ct. Cook Cnty., Ill. 2021); *Harrison v. Fingercheck, LLC* (Cir. Ct. Lake Cnty., Ill. 2021); *Rogers v. CSX Intermodal Terminals, Inc.* (Cir. Ct. Cook Cnty., Ill. 2021); *Freeman-McKee v. Alliance Ground Int'l, LLC* (Cir. Ct. Cook Cnty., Ill. 2021); *Gonzalez v. Silva Int'l, Inc.* (Cir. Ct. Cook Cnty., Ill. 2021); *Salkauskaite v. Sephora USA, Inc.* (Cir. Ct. Cook Cnty., Ill. 2021); *Williams v. Inpax Shipping Solutions, Inc.* (Cir. Ct. Cook Cnty., Ill. 2021); *Roberts v. Paramount Staffing, Inc.* (Cir. Ct. Cook Cnty., Ill. 2021); *Roberts v. Paychex, Inc.* (Cir. Ct. Cook Cnty., Ill. 2021); *Zanca v. Epic Games, Inc.* (Superior Ct. Wake Cnty., N.C. 2021); *Rapai v. Hyatt Corp.* (Cir Ct. Cook Cnty., Ill. 2022); *Jackson v. UKG, Inc.* (Cir. Ct. McLean Cnty., Ill. 2022); *Vo v. Luxottica of America, Inc.* (Cir. Ct. Cook Cnty., Ill. 2022); *Rogers v. Illinois Central Railroad Co.* (Cir. Ct. Cook Cnty., Ill. 2022); *Stiles v. Specialty Promotions, Inc.* (Cir. Ct. Cook Cnty., Ill. 2022); *Fongers v. CareerBuilder LLC* (Cir. Ct. Cook Cnty., Ill. 2022); *Vega v. Mid-America Taping & Reeling, Inc.* (Cir. Ct. DuPage Cnty., Ill. 2022); *Wood et al. v. FCA US LLC* (E.D. Mich. 2022); *Marzec v. Reladyne, LLC* (Cir. Ct. Cook Cnty., Ill. 2022); *Komorski v. Polmax Logistics, LLC et al.* (Cir. Ct. Cook Cnty., Ill. 2022); *Wordlaw v. Enterprise Holdings, Inc. et al.* (N.D. Ill. 2023); *McGowan v. Veriff, Inc.* (Cir. Ct. DuPage Cnty., Ill. 2023); *Davis v. Cafeteria Alternatives, Inc.* (Cir. Ct. Cook Cnty., Ill. 2023); *Mahmood v. Berbix Inc.* (Cir. Ct. Lake Cnty., Ill. 2023); *King v. Peoplenet Corporation* (Cir. Ct. Cook Cnty., Ill. 2023); *McFarland v. SIU Physicians & Surgeons, Inc.* (Cir. Ct. Jackson Cnty., Ill. 2023); *Romero v. Mini Storage Maintenance, LLC* (Cir. Ct. Cook Cnty., Ill. 2023); *Grabowska v. The Millard Group, LLC* (Cir. Ct. Cook Cnty., Ill. 2023); *Fregoso v. American Airlines, Inc.* (Cir. Ct. Cook Cnty., Ill. 2023); *Martinez v. PowerStop, LLC* (Cir. Ct. Cook Cnty., Ill. 2024); *Gray v.*

Verificient Technologies, Inc. (Cir. Ct. Cook Cnty., Ill. 2024); *Lumpkins v. R&M Freight, Inc.* (Cir. Ct. Cook Cnty., Ill. 2024).

4. The McGuire Law firm has successfully prosecuted claims on behalf of our clients in both state and federal trial and appellate courts throughout the country, including claims involving allegations of consumer fraud; unfair competition; invasion of privacy; data breach; false advertising; breach of contract; and various statutory violations, including BIPA and TCPA violations.

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

Class Counsel's Contribution to the Case

6. From the outset of this litigation, the attorneys of McGuire Law anticipated spending hundreds of hours litigating the claims in this matter with no guarantee of success. Class Counsel understood that prosecution of this case would require that other work be foregone, that there was significant uncertainty surrounding the applicable legal and factual issues, and that there would be significant opposition from a defendant with substantial resources.

7. Class Counsel assumed a significant risk of non-payment in prosecuting this

litigation given the vigorous and nuanced legal defenses that Defendant and its skilled counsel have raised and were prepared to litigate had this case proceeded further, including in particular Defendant's contention that Plaintiff did not have standing to represent any class members who worked at other locations operated by Defendant's related entities.

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

9. Class Counsel were able to obtain the substantial benefit provided to the Settlement Class Members through the Settlement, despite the significant risks and defenses raised by Defendant, only as a result of their efforts in investigating Defendant's operations, including Defendant's biometric capture, collection and use practices; conducting extensive confirmatory discovery into class membership; and, most importantly, playing a central role in the careful and extended negotiations that resulted in the final Settlement Agreement preliminarily approved by this Court, including the drafting and preparation of the Settlement Agreement, all related exhibits, and the Motion for Preliminary Approval.

10. The work that Class Counsel have committed to this case has been substantial. Among other things, Class Counsel have:

a. Investigated Defendant's biometric collection and use practices;

b. Participated in multiple status hearings;

c. Participated in settlement negotiations with Defendant, including attending a mediation session with the Hon. James Holderman (Ret.) of JAMS Chicago;

d. Engaged in months of continued settlement negotiations, which involved the exchange of settlement drafts and multiple communications with Defendant's counsel, and which resulted in the drafting and execution of the finalized Settlement Agreement and related documents, including class notice documents;

e. Conducted extensive confirmatory discovery over six months, including propounding third-party subpoenas to verify the size of the settlement class, which ultimately identified an additional 93 class members;

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

g. Oversaw the implementation of the Settlement, including multiple communications with the Settlement Administrator about class notice and the settlement website.

11. Following the Court's entry of its Preliminary Approval Order, Defendant and the Settlement Administrator, Analytics Consulting, LLC, created a Class List pursuant to the Settlement Agreement, and since that time, the Settlement Administrator has informed me that Direct Notice of this Settlement has been sent out to Settlement Class Members with determinable addresses via U.S. Mail. In addition, the Settlement Website is active and features all relevant case documents in electronic format. The Settlement Administrator has advised me that there have been no objections or requests for exclusion to date. It is estimated that Settlement Class Members will each be able to receive approximately $1,000 net in cash compensation under the Settlement.

12. Based on my experience in other class action settlements, I anticipate that Class Counsel will expend substantial additional time and resources over the pendency of this action relating to briefing and filing a motion for final approval of the Settlement, attending the final approval hearing, responding to Class Members' inquiries regarding the Settlement and advising them how to proceed, responding to any objectors, and remaining involved with the Settlement through implementation, including continuous communications with the Settlement Administrator relating to benefits distribution.

13. In addition to attorney time expended in pursuit of this case, Class Counsel have

collectively incurred $12,492.31 in expenses related to this litigation, which is comprised primarily of mediation fees, filing fees, and case administration expenses. Being responsible for advancing all expenses, Class Counsel have had a strong incentive not to expend any funds unnecessarily.

14. Plaintiff executed a fee agreement with Class Counsel that was contingent in nature. Plaintiff agreed that up to 40% of any settlement fund, plus reimbursement of all costs and expenses, would represent a fair award of attorneys' fees from a fund recovered on behalf of himself and a class. Class Counsel would not have brought this action absent the prospect of obtaining a percentage of the recovery to account for the risk inherent in this type of class action.

The Class Representative's Contributions to the Case

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

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

to compensate Plaintiff for his time, effort, and contributions to this case.

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

Executed on September 16, 2024, in Cook County, Illinois.

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