

IN THE CIRCUIT COURT OF CLINTON COUNTY, ILLINOIS
CHANCERY DIVISION

Flor Gomez and Jesus A. Gomez Garcia, individually and
on behalf of themselves and all other similarly situated
persons, known and unknown,

Plaintiffs.

v.

Bass Company LLC d/b/a
Breese Journal & Publishing Company,

Defendant

Case No. 2023 CH 4

Plaintiffs' Attorney Affidavit

I, James M. Dore, based upon my personal knowledge, if sworn as a witness, can testify
competently as follows:

1. I am over 21 years of age and do not suffer from any disabilities that would prevent me
from making this affidavit; I am an attorney authorized to prosecute this matter on behalf of
Plaintiff.
2. I submit this Affidavit in support of Plaintiffs' Motion for Attorney's Fees and Expenses,
Settlement Administration Costs and Settlement Class Representative's Service Award.
3. I have practiced law for more than 15 years in numerous areas of commercial and
consumer litigation, representing both plaintiffs and defendants. In 2021, Daniel I. Schlade and
I started working for a firm, Justicia Laboral LLC, which focuses on representing employees and
consumers in class and individual actions.
4. My co-counsel, Daniel I. Schlade ("Schlade") has practiced law for more than 20 years in
numerous areas of commercial and consumer litigation, representing both plaintiffs and
defendants.
5. Justicia Laboral LLC has been actively developing and litigating dozens of potential class

actions alleging similar violations of the Biometric Information Privacy Act (“BIPA”) as are alleged in this case.

6. Since becoming an attorney, I have practiced in the areas and subjects of the enforcement of consumer protection statutes, such as the BIPA.

7. Since becoming an attorney, Schlade has practiced in the areas and subjects of the enforcement of consumer protection statutes, such as BIPA.

8. Schlade and I are both duly licensed attorneys in the State of Illinois and are in good standing. In addition, Schlade and I have substantial experience in prosecuting and settling claims under consumer protection statutes such as BIPA.

9. Together with co-counsel Schlade, we are the attorneys for Plaintiffs and have been appointed class counsel in this matter.

10. We have researched the BIPA in order to stay up-to-date on BIPA law, as it is a relatively new statute that it currently being interpreted.

11. Schlade and/or I have been appointed as class counsel in the following matters:

Cruz v. Jame Roll, 2021CH04132, Circuit Court of Cook County, Illinois.

Rodríguez v. Target Plastics - 2022CH000112, Circuit Court of DuPage County, Illinois;

Matias v. Classic Molding - 1:23-CV-02177, Northern District of Illinois.

Duarte v. Blue Plate - 2022CH07280, Circuit Court of Cook County, Illinois *Bahena*

V. KSM Electronics – 2023CH000025 - Circuit Court of DuPage County, Illinois.

Martinez v. C Studio Manufacturing, LLC., 2023CH000053 - Circuit Court of DuPage County, Illinois.

Navarro v. S&B Finishing - 2022CH00581- Circuit Court of Cook County, Illinois.

Tamayo V. Billybob Holdings, Inc - 1:23-cv-02388 - Northern District of Illinois *Reyes*

v. FROMM - 2023CH07701 - Circuit Court of Cook County, Illinois.

Zamudio V. Charter Precision, LLC - 2023CH02159 - Circuit Court of Cook County, Illinois.

Cortes v. Furniture & Mattress Depot, Inc. d/b/a Midwest Furniture, 2021CH03135

12. Schlade and/or I currently serve as proposed class counsel in the following matters:

Tinajero v Brasa Roja Montrose - 2022CH09636 - Circuit Court of Cook County, Illinois

Vargas v. Factor 75 - 2022CH00550 - Circuit Court of Cook County, Illinois

Castro v. el Milagro - 2022-cv-03943 - Northern District of Illinois

Peña v. North Fork Pork LLC - 2023CH3, Circuit Court of Shelby County, Illinois.

Romero v. Garden Fresh Market - 2023 CH 44 - Circuit Court of Lake County, Illinois

Bautista v. Deslauriers - 2023CH03200 - Circuit Court of Cook County, Illinois

13. Our practice is currently 90% of wage and hour cases and consumer representation under various statutes.

14. I have also been involved in many educational and legal groups, including the Illinois Institute for Continuing Legal Education. Additionally, I have received CLE on various wage and hour and consumer protection topics, including collective/class action litigation at meetings, conferences, and CLE programs.

15. I have been involved in every stage of the above-captioned litigation, including drafting and editing pleadings, drafting discovery requests, reviewing discovery responses and documents, drafting mediation materials, drafting and negotiating the settlement documents, drafting settlement approval documents, addressing discovery disputes, analyzing class data, and facilitating the class administration.

16. The Parties reached their \$76,000.00 Settlement after informal written discovery, document production, and financial document review analysis.

17. The structure that Settlement Class Counsel negotiated here is superior to alternatives approved in other BIPA class action settlements; it is tailored to the economics of the case. The Settlement includes a notice program and a Claim Form by direct mail and email, if available, to inform Settlement Class Members of their rights, including their right to object to the Settlement or request exclusion, incorporated in the Court approved Notice.

18. Illinois state and federal courts routinely apply the percentage-of-the-fund method when awarding attorney fees in BIPA class settlements. See Exhibit 5 attached to Motion (all applying a percentage-of-the-fund method in awarding attorney fees). Ex. 5 is incorporated to this Affidavit. Indeed, I am unaware of any BIPA common fund settlements where a court awarded attorney fees based on the lodestar method instead of the percentage-of-the-fund method.

19. Based on my review of the BIPA settlements identified in Ex. 5, the attorney's fees and Service Award requests in this litigation are reasonable.

20. Prior to filing the Complaint, Settlement Class Counsel executed a fee agreement with Settlement Class Representatives Flor Gomez and Jesus A. Gomez Garcia that entitled Settlement Class Counsel to attorney fees equal to at least forty percent of any recovery.

21. Settlement Class Counsel are seeking 33.33% of the Settlement Fund for fees and as reimbursement of the costs incurred.

22. We pursued this litigation on a contingent fee basis, risking investing time and money with no guaranteed recovery. The contingent-fee risk was significant in this case because Defendant could have defeated liability based on several defenses: (1) that the Workers' Compensation Act preempts employment based BIPA claims; (2) that Defendant's time keeping system did not collect data covered by BIPA; (3) that Defendant's violations were not "negligent" or "reckless", a prerequisite to recovery; that Plaintiffs' claims were untimely that any award of liquidated damages per class member would be excessive in light of the alleged absence of injury and thus the damages would violate Defendant's due process rights under the Illinois and/or the United States Constitutions; and (6) that any judgment would be non-collectable and/or bankruptcy would impair collection. There is limited authority on any of these issues and so the litigation would have been protracted and expensive.

23. The Settlement provides for each Settlement Class Member who timely submits a valid Claim Form the gross benefit of \$800.00 . See Exhibit 3 attached to Motion; Ex. 3 is incorporated herein.

24. Of the \$76,000.00 settlement fund, Settlement Class Counsels are seeking \$25,330.80 in attorney fees and expenses of \$549.25, which also fall well within the permissible Redman ratio. See *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 200 and n. 5-6 (N.D. Ill. 2018) (Chang, J.)

25. BIPA is an emerging and challenging area of law. There is still uncertainty in the application of the law. There are critical issues that were just recently determined by the Supreme Court. *Tims v. Black Horse Carriers, Inc.*, and *In Re: White Castle System, Inc.*, No. 20-8029 (7th Cir.); *Cothron v. White Castle*.

26. Settlement Class Members were advised in the Class Notice of the attorney fees that Settlement Class Counsel would request and, to date, and I understand that no Settlement Class Members has filed an objection.

27. All of the costs for the filing fees and for service of process were incurred by my law firm. These \$549.25 expenses were necessarily incurred to litigate and settle this case.

28. Settlement also supports awarding the Settlement Class Representatives Service Award of \$2,000.00 (\$1,000.00 for each Settlement Class Representative). The Settlement Class Representatives pursued this case in their own name and on behalf of the proposed class. In so doing, the Class Representatives accepted a risk of retaliation from future potential employers who can easily identify her through an internet search as the lead plaintiff in this lawsuit against their employer.

29. Service awards of \$5,000 or more are regularly approved by Illinois state and federal courts in BIPA cases, often in smaller settlements than this one without discovery disputes

involving the named plaintiffs. See Ex 5 attached to Motion.

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

FURTHER AFFIANT SAYETH NOT.

Under penalties as provided by law, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he believes the same to be true.

s/James M. Dore

Counsel For Plaintiffs

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