

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

ESLANDA BERTASIUTE, individually and  
on behalf of all others similarly situated,

*Plaintiff,*

v.

THE HARI GROUP, INC. and ORLAND  
PARK DELI, INC. d/b/a MCALISTER'S  
DELI OF ORLAND PARK,

*Defendants.*

Case No. 2020-CH-07055

Calendar 11

Courtroom 2305

Hon. Pamela McLean Meyerson

**DECLARATION OF THOMAS R. KAYES  
IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND INCENTIVE AWARD**

Pursuant to 735 ILCS 5/1-109, I, Thomas R. Kayes, hereby declare and state as follows:

1. I am an attorney admitted to practice in the State of Illinois. I am a member of the Civil Rights Group, LLC, which has been retained to represent Plaintiff and the Class in this matter.

2. I make this Declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement. I am over 18 and am fully competent to make this declaration. This declaration is based upon my personal knowledge, except where expressly noted otherwise.

***Background and Experience***

3. I graduated magna cum laude and order of the coif from the Northwestern University Pritzker School of Law in 2013.

4. Since graduating but before starting my own firm, I have worked on complex litigation as a law clerk for Judge Richard C. Tallman on the Ninth Circuit Court of Appeals, as a law clerk for Judge Edmond E. Chang on the United States District Court for the Northern District

of Illinois, as an associate at Sidley Austin LLP, and as an associate at Keller Lenkner LLC (now known as Keller Postman LLC).

5. I have been appointed class counsel in *Hosch v. DryBar Holdings LLC*, No. 2021-CH-01976 (Cook Cnty Chancery) (BIPA class action); *Walleye Trading LLC v. AbbVie Inc. et al*, No. 1:18-cv-05114 (N.D. Ill.) (federal securities class action); and *Dobbey, et al., v. Studer, et al.*, No. 13-cv-1068 (N.D. Ill.) (civil rights class action).

6. Since starting the Civil Rights Group, LLC (which was formerly known as the Law Office of Thomas R. Kayes, LLC), I have been extensively involved in litigation BIPA class actions in state and federal courts.

### ***Litigation and Settlement of this Case***

7. I filed the original complaint in this case on December 3, 2020, alleging Eslanda Bertasiute's BIPA claims on a class basis against the Hari Group, Inc.

8. My co-counsel and I named the Hari Group on the belief, mistaken as it would turn out, that the Hari Group's relationship with the deli restaurant where Ms. Bertasiute worked meant that BIPA liability for her claims would lie with it.

9. When, several months later, Brian Weinthal appeared on behalf of Hari Group, we immediately began discussing settlement and informally exchanging information.

10. As part of that process, we learned that Hari Group was not the appropriate defendant—though it took some time to confirm this to our satisfaction—and we learned quickly that the named insured on the relevant insurance policies was Orland Park Deli, Inc. d/b/a McAlisters's Deli of Orland Park.

11. For that reason, we filed the amended complaint, adding Orland Park as a defendant on March 1, 2021.

12. Based on Orland's and Mr. Weinthal's genuine cooperation, we agreed to a consent motion to stay the case for 90 days to further pursue settlement.

13. While I felt confident in that Plaintiff and the Class could succeed on their claims, the settlement negotiations initially took place during the pendency of potentially dispositive BIPA cases in the Illinois appellate courts: *McDonald v. Symphony Bronzeville Park LLC*, No. 126511 (Ill.), which determined whether the Illinois Workers' Compensation Act preempts employees' BIPA claims against their employers; *Tims v. Black Horse Carriers, Inc.*, No. 1-20- 0562 (Ill. App. 1st Dist.), now before the Supreme Court, which addressed the statutes of limitations applicable to claims under BIPA's various subsections; and *Marion v. Ring Container Techs., LLC*, No. 3-20-0184 (Ill. App. 3d Dist.), also a limitations case. During our negotiation, the *Cothron* case was also pending before the Seventh Circuit and Supreme Court.

14. In addition to the standard risks of litigation, a defense-friendly ruling in any of the above-mentioned cases would have reduced—or in the case of *McDonald*, eliminated—the likelihood and size of a class-wide recovery. Plaintiff-friendly rulings in each of the abovementioned cases, on the other hand, would have increase the value of BIPA employment cases like this one. Recognizing the degree and magnitude of uncertainty, the Parties saw an opportunity for settlement.

15. We were concerned, however, based on discussion with Mr. Weinthal, about Orland's ability to pay and whether its insurers would deny or provide coverage.

16. Mr. Weinthal represented, in detail and credibly, that Orland lacked the ability to pay a substantial settlement and that pursuing one would require the company to pursue, at least, an indefinite stay based on the various pending BIPA actions before the Illinois appellate and high court and the Seventh Circuit.

17. Eventually, over months, Orland agreed to share its insurance policies and coverage correspondence with us for our analysis.

18. We engaged coverage counsel experienced with BIPA issues to analyze those documents.

19. In the meantime, Mr. Weinthal left private practice to serve as Chief Administrative Law Judge for the Illinois Department of Human Rights and his then-partner Rosa M. Tumialán entered an appearance for Orland.

20. Based on the insurance analysis, my co-counsel and I decided to make a time-limited, settlement demand for the remaining policy limits of one of Orland's insurance policies. We believed that doing so would either (a) obtain an immediate, fair settlement for the putative class or (b) offer the class a chance at a settlement whereby Orland would assign to the class a potentially more lucrative bad-faith claim against the insurer for unreasonable refusal to settle.

21. The demand was accepted in writing on March 25, 2022.

22. The parties then settled on a term sheet laying out the material terms on April 29, 2022.

23. The material terms included a non-reversionary settlement fund of \$90,000 paid out with no claim forms. If, after a first round of payments are distributed, some checks go uncashed, then any remaining money would be used to send a second round of payments to all class members who cashed their first check or received direct deposit, so long as the remaining funds were enough to pay expenses and still provide at least \$5 per person.

24. The settlement agreement also provides for a \$2,500 incentive award to Plaintiff Eslanda Bertasiute. Ms. Bertasiute assisted counsel with the investigation of this action, reviewed

and approved of the drafting of the complaint, and maintained regular contact with counsel regarding the status of the litigation and settlement. She also approved all settlement positions.

25. Based on that experience and my review of the facts of this case and participation in settlement negotiations, I believe the settlement to offer excellent relief for the class.

26. The Court preliminarily approved the settlement on June 27, 2022.

27. Since then, direct notice has been provided to Class Members by U.S. Mail.

28. To date, no Class Member has objected or opted out.

### *Plaintiff*

29. Even though no award of any sort was promised to Plaintiff before the start of the litigation or any time after, Plaintiff still contributed her time and effort in pursuing her own BIPA claim, as well as in serving as a representative on behalf of the Class Members—exhibiting a willingness to participate and undertake the responsibilities and risks attendant with bringing a representative action.

30. Plaintiff participated in the initial investigation of her claim and provided information to Class Counsel to help prepare the initial pleadings, reviewed the pleadings before filing, consulted Class Counsel many times, and provided feedback on other filings including, most importantly, the Settlement Agreement.

31. Were it not for Plaintiff's willingness to pursue this action on a class-wide basis, her efforts and contributions to the litigation by assisting Class Counsel with their investigation and prosecution of this suit, and her continued participation and monitoring of the case up through settlement, the substantial benefit to the Class Members afforded under the Settlement Agreement would simply not exist.

***Exhibits***

32. Exhibit 1 is a true and correct copy of the Declaration of J. Dominick Larry in Support of Plaintiff's Motion for Attorneys' Fees and Incentive Award.

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

Executed on September 12, 2022, in Deerfield, Illinois.



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Thomas R. Kayes

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ESLANDA BERTASIUTE, individually and  
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Hon. Pamela McLean Meyerson

**DECLARATION OF J. DOMINICK LARRY  
IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND INCENTIVE AWARD**

Pursuant to 735 ILCS 5/1-109, I, J. Dominick Larry, hereby declare and state as follows:

1. I am an attorney admitted to practice in the State of Illinois. I am the owner and sole attorney at Nick Larry Law LLC, which has been retained to represent Plaintiff and the Class in this matter.

2. I make this Declaration in support of Plaintiff's Motion for Attorneys' Fees and Incentive Award. I am over 18 and am fully competent to make this declaration. This declaration is based upon my personal knowledge, except where expressly noted otherwise.

***Background and Experience***

3. I have spent nearly my entire career practicing consumer class actions, focusing particularly on privacy, security, and technology claims. In June 2020, I formed Nick Larry Law LLC to continue pursuing those types of cases.

4. I began my career at Edelson McGuire, LLC (now Edelson PC) in 2011 as a summer associate. I continued working at Edelson through my third year at Northwestern University School of Law, and then from graduation in 2012 until early 2017, when I left the firm.

5. During my time at Edelson, I was responsible for litigating dozens of consumer class actions, including several high-profile cases of first impression.

6. Most relevant here, I was part of the team responsible the first consumer class action asserting BIPA violations, *Licata v. Facebook*, Case No. 2015-CH-05427 (Cook Co. Apr. 1, 2015), later removed, transferred, and coordinated with other proceedings under the caption *In re Facebook Biometric Information Privacy Litig.*, No. 15-cv-3747 (N.D. Cal.). From filing until I left the firm nearly two years later, I was the senior associate on the case, and was responsible for all aspects of case management, including assisting with case development, and briefing many issues that helped shape BIPA litigation in recent years.

7. I was also part of the team that obtained the first class-wide BIPA settlement, in *Sekura v. L.A. Tan Enterps.*, No. 2015-CH-16694 (Cir. Ct. Cook Co.), and was responsible for briefing and arguing novel BIPA issues in several cases then pending.

8. I was also part of the team at Edelson that secured a \$14 million settlement in *Dunstan v. comScore*, No. 11-cv-5807 (N.D. Ill.), a case asserting that the defendant violated the Electronic Communications Privacy Act, Stored Communications Act, Computer Fraud and Abuse Act, Illinois Consumer Fraud and Deceptive Practices Act, and was unjustly enriched, by installing sophisticated analytics spyware on the computers of millions of consumers nationwide. When Judge Holderman certified the proposed class, it was believed to be the largest privacy class certified to date.



9. Along with other lawyers, I was appointed lead class counsel on *In re LinkedIn User Privacy Litig.*, No. 12-cv-3088 (N.D. Cal.), a consolidated class action arising out of LinkedIn's well-publicized 2012 data breach. I was responsible for the amended pleadings, hiring and overseeing plaintiffs' data-security and behavioral-economics testifying expert, and briefing and arguing the motion to dismiss. Those efforts resulted in the Court endorsing a novel, consumer-fraud based theory of liability for failure to employ industry-standard security measures. *See In re LinkedIn*, 2014 WL 1323713 (N.D. Cal. Mar. 28, 2014). After the parties negotiated a class settlement, I was responsible for briefing and arguing preliminary approval, final approval, and the petition for attorneys' fees, costs, and incentive award.

10. Additionally, I was responsible for developing the first cases under Michigan's Preservation of Personal Privacy Act. From outlining the theory of liability to screening clients and preparing complaints, through to handling motion to dismiss briefing and discovery, I was directly involved in advancing this new area of law. As a result of the favorable case-law created, *see Halaburda v. Bauer Pub. Co., LP*, No. 12-cv-12831, 2013 WL 4012827 (E.D. Mich. Aug. 5, 2013) (a case in which, along with my, I was appointed class counsel), millions of Michiganders have recovered well over \$100 million from various publishers.

11. In addition to novel data-privacy cases under those statutes and others, I was regularly responsible for litigating TCPA class actions against financial institutions, consumer-fraud claims against technology companies, and more.

12. After leaving Edelson, I worked at two more firms before opening my own firm in June 2020. During those intervening years, I performed plaintiff's litigation on behalf of corporate

clients, was plaintiff's counsel on consumer class actions, and represented thousands of consumers in individual arbitrations.

13. Since launching my own firm, I have acted as lead counsel in dozens of class and individual actions in state and federal courts across the country, and have been appointed settlement class counsel in several class actions, including BIPA class actions. *See Hosch v. Drybar Holdings LLC*, No. 2021-CH-01976 (Cir. Ct. Cook Cnty., Ill.) (Meyerson, J.); *Rivera v. Am. Freedom Ins. Co.*, No. 2020-CH-06596 (Cir. Ct. Cook Cnty., Ill.) (Wilson, J.); *Morrissey v. Tula Life Inc.*, No. 2021-L-000646 (18th Judicial Cir., DuPage Cnty., Ill.); *Watson v. E.T. Browne Dug Co., Inc.*, No. 2022-LA-000151 (18th Judicial Cir., DuPage Cnty., Ill.).

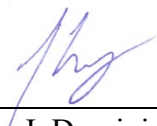
14. I am also currently part of the team of lawyers representing the State of Texas in its litigation against Facebook under Texas's statute regulating the capture and use of biometric identifiers.

***The Settlement***

15. Based on the experience detailed above and my review of the facts of this case and participation in settlement negotiations, I believe the settlement to offer excellent relief for the class.

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

Executed on September 12, 2022, in Chicago, Illinois.

  
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J. Dominick Larry