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

CASSANDRA HUGHES, individually)
and on behalf of similarly situated)
individuals,)

Plaintiff,)

v.)

MAYFIELD CARE CENTER, LLC an)
Illinois limited liability company,)

Defendant.)
_____)

No. 2018-CH-13122

Hon. Thaddeus L. Wilson

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

Plaintiff Cassandra Hughes, by and through her 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 Mayfield Care Center, LLC. In support of this Motion, Plaintiff submits the following memorandum of law.

Dated: July 3, 2025

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I. INTRODUCTION

The Settlement¹ that Class Counsel have achieved in this case is an exceptional result for Settlement Class Members, as it will provide them with meaningful financial benefits in the form of cash payments with no need to submit a claim form. The Parties' Agreement has established a non-reversionary Settlement Fund of \$137,950.00 to provide each Settlement Class Member with an equal, *pro rata* distribution of the Settlement Fund for having their biometrics collected and used by Defendant Mayfield Care Center, LLC ("Defendant") in alleged violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA").

This Court preliminarily approved the Settlement on May 14, 2025. Direct notice of the Settlement commenced on June 13, 2025. As of the filing of this Motion, no Settlement Class Member has objected to, or requested to be excluded from, the Settlement.

With this Motion, Class Counsel request a fee of 33% of the total Settlement Fund, amounting to \$45,523.50, 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.²

Both Class Counsel and the Class Representative 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

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

² As explained below, the fee award sought by Class Counsel here is materially *less* than their total lodestar already incurred.

in light of the investment, significant risks, and superb results obtained for the Settlement Class Members in this six-year-old litigation, particularly given 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 \$53,784.50 and the agreed-upon Service Award of \$5,000.00 for Plaintiff as Class Representative.

II. BACKGROUND

A. Plaintiff's Allegations

Defendant owned and operated a nursing home in Illinois. Plaintiff alleges that, while she worked for Defendant, Defendant required her to use a biometric-reliant timekeeping system in order to verify her identity when she clocked in and out of work shifts. Plaintiff alleges that, even though her biometrics were captured, stored, used, and obtained by Defendant, Defendant never sought or obtained Plaintiff's written consent, Defendant never established a publicly-available biometric retention and destruction policy, and Defendant never obtained Plaintiff's informed consent. Thus, Plaintiff alleges that Defendant violated her biometric privacy rights, and those of the other Class Members, as afforded under BIPA.

B. Procedural History and the Parties' Settlement Negotiations

Plaintiff filed this case on October 22, 2018 in the Circuit Court of Cook County, Illinois, where it was assigned to Judge Pamela McLean Meyerson. Plaintiff's operative complaint asserts claims against Defendant under Sections 15(a) and (b) of BIPA. 740 ILCS 14/15(a), (b). On March 22, 2019, Defendant filed a Motion to Dismiss pursuant to Section 2-619 of the Illinois Code of Civil Procedure, arguing that (1) Plaintiff lacked standing under Illinois common law to assert her BIPA claims, and (2) Plaintiff's claims are preempted by the Illinois Workers Compensation Act. On August 30, 2023, Defendant's Motion to Dismiss was denied in its entirety and the Parties then

engaged in written discovery. Thereafter, the case was reassigned to this Court and all proceedings were stayed pending the Illinois Supreme Court's resolution of several cases directly affecting BIPA. On March 7, 2023, the stay was lifted and the Parties subsequently were ordered to proceed with discovery.

On February 14, 2024, a temporary stay of proceedings was ordered while the Parties agreed to attempt to resolve the Litigation through participation in a mediation session overseen by the Honorable James Epstein (Ret.) of JAMS, a former Justice of the Illinois Appellate Court and Cook County Circuit Court Judge. On June 18, 2024, the Parties engaged in a full-day, arm's-length mediation session with Judge Epstein. With the assistance of Judge Epstein, the Parties negotiated a settlement in principle. Counsel for Plaintiff and for Defendant expended significant efforts to reach a settlement, including but not limited to identifying potential class members and participating in good faith, arm's-length negotiations. The Parties continued to negotiate certain terms over the following months and were ultimately able to agree upon the terms of a settlement that this Court preliminarily approved on May 14, 2025. Direct notice was disseminated to the Settlement Class Members by U.S. Mail on June 13, 2025.

III. THE SETTLEMENT

A. The Settlement Class Members Receive Excellent Monetary Relief Under The Settlement.

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 \$137,950.00 Settlement Fund (Agreement, ¶ 45), and each Class Member will receive – without the need for a claims process – an equal share of the fund after deductions of administration costs and the Court-approved attorneys' fees and Service Award.

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

Under the Settlement Agreement's Notice Plan, which has already gone into effect, direct notice has been provided by U.S. Mail to the Settlement Class Members. (Declaration of Evan M. Meyers ("Meyers Decl."), attached hereto as Exhibit 1, ¶ 17). In addition, the Settlement Website is operational and makes available the detailed Long Form Notice and all relevant case information to Settlement Class Members, and permits the Settlement Class Members to submit a request for exclusion online if they so choose. To date, no Class Members have objected or elected to exclude themselves from the settlement. (*Id.*)

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 \$53,784.50, which amounts to 33% of the Settlement Fund, plus \$8,261 in reimbursable expenses. (Agreement, ¶ 83). Such a request is well 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.” *Id.* 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)). Under the percentage-of-the-recovery approach, the attorneys’ fees awarded are “based upon a percentage of the amount recovered on behalf of the plaintiff class.” *Brundidge*, 168 Ill. 2d at 238. Alternatively, when applying the lodestar approach, the attorneys’ fees to be awarded are calculated by determining the total amount of hours spent by counsel in order to secure the relief obtained for the class at a reasonable hourly rate, multiplied by a “weighted” “risk multiplier” that takes into account various factors such as “the contingency nature of the proceeding, the complexity of the litigation, and the benefits that were conferred upon the class members.” *Id.* at 240.

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

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.

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 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); *Sutton*, 504 F.3d at 693 (directing district court on remand to consult the market for legal services so as to arrive at a reasonable percentage of the common fund recovered). 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. (Meyers Decl., ¶ 20); *see also In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 795 (N.D. Ill. 2015) (applying the percentage-of-the-recovery approach and noting that class members would typically negotiate fee arrangement based on percentage method rather than lodestar).

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., Gonzalez v. Silva Int’l, Inc.*, No. 2020-CH-03514 (Cir. Ct. Cook Cnty, Ill. June 24, 2021); *Rapai v. Hyatt Corp.*, No. 2017-CH-14483 (Cir Ct. Cook Cnty, Ill. Jan. 26, 2022); *King v. PeopleNet Corp.*, No. 2021-CH-01602 (Cir. Ct. Cook Cnty, Ill. Aug. 10, 2023); *Fregoso v. American Airlines, Inc.*, No. 2017-CH-15328 (Cir. Ct. Cook Cnty, Ill. Nov. 8, 2023); *Gray v. Verificent Technologies, Inc.*, No. 18-CH-16054 (Cir. Ct. Cook Cnty, Ill. Jul. 5, 2024); *Taylor v. 815 Pallets, Inc.*, No. 2020-CH-03013 (Cir. Ct. Cook Cnty, Ill. Aug. 29, 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.

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.

1. *The requested attorneys' fees of 33% of the settlement fund is a percentage well within the range found reasonable in similar cases.*

The requested fee award represents 33% of the Settlement Fund. This percentage is well 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 38% or higher have been regularly awarded in numerous separate privacy class action settlements, including BIPA settlements, in the Circuit Court of Cook County and other Illinois courts. *See, e.g., Gray v. Verificent 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 Ins. Agency*, No. 22-CH-01917 (Cir. Ct. Cook Cnty., Ill. 2022) (Cohen, J.) (same); *Rapai v. Hyatt Corp.*, No. 17-CH-14483 (Cir. Ct. Cook Cnty., Ill. 2022) (Demacopoulos, J.) (same); *Fick v. Timeclock Plus, LLC*, No. 2019-CH-12769 (Ill. Cir. Ct. Cook Cty. 2021) (Hall, J.); *Prelipceanu v. Jumio Corp.*, No. 18-CH-15883 (Cir. Ct. Cook Cnty. Ill. 2020) (Mullen, J.) (same); *Glynn v. eDriving, LLC*, No. 2019-CH-08517 (Ill. Cir. Ct. Cook Cty. 2020) (Walker, J.); *McGee v. LSC*

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Commc's, 17-CH-12818 (Cir. Ct. Cook Cnty., Ill. 2019) (Atkins, J.) (same); *see also Rogers v. CSX Intermodal Terminals, Inc.*, No. 19-CH-04168 (Cir. Ct. Cook Cnty., 2021) (awarding 38% in attorneys' fees in BIPA class settlement) (Walker, J.); *Baldwin v. Metrostaff Inc.*, 2019-CH-04285 (Cir. Ct. Cook Cnty, Ill. May 3, 2022) (Wilson, J.) (same).

Thus, Plaintiff's request of 33% of the Settlement Fund is reasonable considering the fees recently approved by courts in BIPA class action settlements. Indeed, the fee award sought by Class Counsel here is significantly less than their total lodestar already incurred.

2. *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 more than six years, represents an excellent result for the Settlement Class given that Defendant has expressed a firm denial of Plaintiff's material allegations and demonstrated the intent to raise several defenses, including that Plaintiff lacked standing and that BIPA is preempted. These defenses, if successful, would likely result in Plaintiff and the Settlement Class Members receiving no payment whatsoever. Further, the Settlement also obviates the need for the time, expense, and motion practice required to resolve Plaintiff's individual claims as well as the significant resources that would be expended through targeted class discovery and adversarial class certification briefing.

In the face of these obstacles and unknowns, Class Counsel succeeded in negotiating and securing a settlement which creates a \$137,950.00 Settlement Fund and provides class members with meaningful cash payments without the need for a claims process. Class members' receipt of significant monetary relief now, as opposed to years from now, or perhaps never, represents a truly excellent result.

3. *The exceptional benefits obtained on behalf of the Settlement Class Members further justify the requested percentage of attorneys' fees.*

As stated above, the Settlement Agreement provides for the creation of a \$137,950.00

Settlement Fund (\$775 per Class Member gross), which will be split equally among Settlement Class Members after Court-approved fees and costs, resulting in Class Members receiving an estimated \$400-450 in net cash payments without the need for a claims process. To date, there have been no objections to or exclusion requests from the Settlement, reflecting the Settlement Class Members’ consistently positive reaction to the Settlement. Indeed, this response is unsurprising considering the relief obtained for the Settlement Class Members here is in line with or superior to other finally-approved BIPA settlements recently approved in the Circuit Court of Cook County. *See, e.g., Cruz v. Jame Roll Form Products*, No. 21-CH-04132 (Cir. Ct. Cook Cnty., Ill. 2023) (finally-approved BIPA settlement created a \$538,125 fund for 1,025 class members, or \$525 per class member *gross*). Given the significant monetary compensation obtained for the Settlement Class Members, an attorneys’ fee award of 33% 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 \$8,261 in reimbursable expenses related to filing fees, mediation costs, and case administration. (Meyers Decl., ¶ 19). 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*

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 will submit their lodestars.

Bd. Options Exch., Inc., 844 F. Supp. 1226, 1256 (N.D. Ill. 1993) (detailing and awarding expenses incurred during litigation). Therefore, Class Counsel request the Court approve as reasonable the incurred expenses, a request which Defendant does not oppose. Accordingly, this Court should award a total fee and expense award to Class Counsel of \$53,784.50.

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

The requested \$5,000.00 Service Award is reasonable compared to other service awards granted to class representatives in similar class actions. Because a named plaintiff is essential to any class action, “[i]ncentive awards are justified when necessary to induce individuals to become named representatives.” *Spano*, 2016 WL 3791123, at *4 (approving service 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 six-year-old case justify the \$5,000.00 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 her time and effort in pursuing her own BIPA claim, 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, particularly against her former employer. (Meyers Decl., ¶¶ 21–24).

Plaintiff participated in the initial investigation of her claim 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, contributed to Plaintiff’s response in opposition to Defendant’s Motion to Dismiss, and provided feedback on a number of other

filings including, most importantly, the Settlement Agreement. (*Id.*, ¶ 21). Absent Plaintiff's contributions to the litigation – which extended for six years – it is doubtful that any settlement would have been reached and the outstanding benefit to the Settlement Class Members afforded under the Settlement Agreement would not exist. (Meyers Decl., ¶ 23).

Numerous courts that have granted final approval in similar class action settlements have awarded the same or higher service awards than that sought here. *See, e.g., Rogers v. CSX Intermodal Terminal, Inc.*, No. 19-CH-04168 (Cir. Ct. Cook County, Ill.) (awarding \$15,000 service award in BIPA class action); *Rapai v. Hyatt Corp.*, 17-CH-14483 (Cir. Ct. Cook County, Ill.) (awarding \$12,500 service award to BIPA class representative); *King v. PeopleNet Corp.*, 21-CH-01602 (Cir. Ct. Cook County, Ill.) (awarding \$10,000 service award to BIPA class representative); *Grabowska v. The Millard Grp., LLC*, 17-CH-13730 (same); *Roach v. Wal-Mart, Inc.*, No. 19-CH-1107 (Cir. Ct. Cook County, Ill.) (same); *Kane v. Conservation Tech. of Ill., LLC*, 18-CH-12194 (Cir. Ct. Cook County, Ill.) (same); *Martinez v. Nando's Rest. Grp., Inc.*, 19-cv-07012 (N.D. Ill.) (awarding \$7,500 service award to BIPA class representative).

For all of the above reasons, a Service Award of \$5,000.00 is eminently justified by Ms. Hughes's time and effort in this case on behalf of the Settlement Class Members 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 \$53,784.50; and (ii) approving a Service Award in the amount of \$5,000.00 to Plaintiff in recognition of her significant efforts on behalf of the Settlement Class Members.

Dated: July 3, 2025

Respectfully submitted,

CASSANDRA HUGHES, individually and
on behalf of other similarly situated
individuals

By: /s/ Joseph M. Dunklin
One of Plaintiff's Attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on July 3, 2025, 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/ Joseph M. Dunklin