

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CHARLENE FIGUEROA and JERMAINE
BURTON, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

KRONOS INCORPORATED,

Defendant.

Case No. 1:19-cv-01306

Honorable Gary M. Feinerman

**PLAINTIFFS' MOTION FOR AND MEMORANDUM OF LAW
FOR ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARDS**

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I. INTRODUCTION

Almost four years ago, Plaintiffs Charlene Figueroa and Jermaine Burton (“Plaintiffs”) brought this class action lawsuit against Defendant Kronos, Inc. (“Defendant” or “Kronos”)—the vendor of a biometric timeclock system—alleging that Kronos collected theirs and thousands of other Illinois workers’ biometric data in violation of the Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*¹ Plaintiffs and Class Counsel litigated the case extensively, which included defeating Defendant’s motion to dismiss and motion to strike class allegations, obtaining significant written discovery, taking seven depositions, each Plaintiff sitting for their own full-day deposition, briefing numerous discovery motions, moving to strike two of Defendant’s affirmative defenses, defeating Defendant’s motion to stay, and participating in a full-day mediation with the Honorable James F. Holderman (ret.). As a result of these efforts, Class Counsel was able to secure a remarkably strong Settlement, which creates a non-reversionary \$15,276,227.00 Settlement Fund for the benefit of 84,193 Settlement Class members. Assuming a 25-30% claims rate,² each Class Member who submits an Approved Claim will receive a cash payment estimated to be between \$385 and \$465, after any fees and costs are deducted.

The Settlement provides non-monetary relief, too. If Kronos continues to host finger-scan data, it will be required to notify its employer-customers that they need to establish and comply with a retention and deletion schedule in line with BIPA and obtain an informed written release from their employees permitting the employer-customer and Kronos to collect, store, use, and

¹ Capitalized terms used in this motion are those used in the Stipulation of Class Action Settlement (“Settlement” or “Agreement”) attached hereto as Exhibit 1.

² As of November 18, 2022, 21.8% of the Settlement Class has submitted an Approved Claim, and there are still 14 days until the December 6, 2022 Claims Deadline.

disclose their finger-scan data. Moreover, the Settlement preserves any Class Members' separate BIPA claims against their employers who deployed Kronos's biometric timeclocks and may have committed separate BIPA violations through their own collection. That means many Class Members likely stand to receive additional monetary relief, on top of this Settlement, for their employers' collection of the same biometric data if they decide to pursue those unreleased claims.

In light of this excellent result, Class Counsel now respectfully move the Court to award 33% of the Settlement Fund (less the amount paid for notice and the proposed incentive award) as attorneys' fees and expenses for a total of \$4,834,287.22. The requested fee award accurately reflects the fee arrangement that a Class Member would have entered into with Class Counsel had they made an *ex ante* bargain before heading into litigation like this, given the risks in the case. *See In re Synthroid Mktg. Litig.*, 264 F.3d 712, 719 (7th Cir. 2001). Moreover, the requested percentage fee award is well in line with common fund fee awards in BIPA cases in this District, (*see* Exhibit 2, Chart 1 (listing 33% fee awards in BIPA cases in the Northern District)) and is in fact less as a percentage than that commonly awarded in BIPA cases, (*see id.*, Charts 2 and 3 (listing 35–40% fee awards)).

The requested incentive awards of \$7,500.00 for each Plaintiff is similarly reasonable. Incentive awards in class action settlements frequently exceed \$10,000.00. *See* Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303, 1348 (2006) (finding that "[t]he average award per class representative was \$15,992"). Plaintiffs' requested awards reflect their participation throughout this case, including in the investigation of the Action, litigation, discovery, and the settlement process and is comfortably in line with what has been awarded in similar BIPA cases in this

District. (*See* Exhibit 2, Chart 4 (listing incentive awards ranging from \$7,500.00 to \$10,000.00 in BIPA cases).) Plaintiffs’ requested fees and incentive award are reasonable and warrant the Court’s approval.

II. BACKGROUND

A brief summary of the underlying facts and law will lend context to the instant motion and demonstrate the reasonableness of the requested fees and incentive award.

A. BIPA and the Underlying Claims

BIPA is landmark privacy law in Illinois and one of the country’s only meaningful regulations on the collection and use of biometric data. Recognizing the “very serious need” to protect Illinois citizens’ biometric data—which includes retina scans, fingerprints, voiceprints, and scans of hand or face geometry—the Illinois legislature unanimously passed BIPA in 2008 to provide individuals recourse when companies failed to appropriately handle their biometric data in accordance with the statute. (*See* Complaint, (“*Compl.*”), dkt. 1-1 ¶ 14; 740 ILCS 14/5.) Thus, BIPA makes it unlawful for any private entity to “collect, capture, purchase, receive through trade, or otherwise obtain a person’s or a customer’s biometric identifier or biometric information, unless it first:

- (1) informs the subject . . . in writing that a biometric identifier or biometric information is being collected or stored;
- (2) informs the subject . . . in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; and
- (3) receives a written release executed by the subject of the biometric identifier or biometric information . . . ”

740 ILCS 14/15(b). BIPA also establishes standards for how companies must handle Illinois citizens’ biometric identifiers and biometric information. For example, BIPA requires companies

to develop and comply with a written policy establishing a retention schedule and guidelines for permanently destroying biometric information. 740 ILCS 14/15(a). As a means of enforcement, BIPA provides a civil private right of action and allows for the recovery of statutory damages in the amount of \$1,000 for negligent violations or \$5,000 for willful violations, plus costs and reasonable attorneys' fees, to any person "aggrieved by a violation" of the statute. *See* 740 ILCS 14/20.

As the Illinois Supreme Court assessed the legislature's intent in passing BIPA, the statute:

vests in individuals and customers the right to control their biometric information by requiring notice before collection and giving them the power to say no by withholding consent. . . . These procedural protections are particularly crucial in our digital world because technology now permits the wholesale collection and storage of an individual's unique biometric identifiers—identifiers that cannot be changed if compromised or misused. When a private entity fails to adhere to the statutory procedures . . . the right of the individual to maintain her biometric privacy vanishes into thin air. The precise harm the Illinois legislature sought to prevent is then realized. This is no mere technicality. The injury is real and significant.

Rosenbach v. Six Flags Ent. Corp., 2019 IL 123186, ¶ 34 (internal citations and quotations omitted).

This case arises from Plaintiffs' experiences with Kronos's biometric timeclocks at their respective jobs in Illinois: Ms. Figueroa was an hourly employee at a grocery store, and Mr. Burton was an hourly employee at metal manufacturing plant. (Compl. ¶¶ 35, 49.) Kronos provides timekeeping systems to hundreds of employers with brick-and-mortar locations in Illinois, including Plaintiffs' former employers. (*Id.* ¶ 1.) As part of its timekeeping system, Kronos provides its employer-customers with physical timeclocks with a finger scanner attached, which are connected to Kronos's cloud-based servers. (*Id.* ¶ 2.) When the Plaintiffs and Class Members started work at an employer using a Kronos timeclock, they were required to scan their

finger to enroll in Kronos’s timekeeping database and then must scan their finger every time they clock in and out of work to track their working hours. (*Id.* ¶¶ 2, 37, 51.) Plaintiffs allege that through this process, Kronos collected, stored, and used their and the class’s biometric information in violation of BIPA. (*Id.* ¶¶ 23-34.) Specifically, Plaintiffs allege that Kronos violated section 15(a) of BIPA by (i) failing to develop a retention policy and guidelines for permanently destroying biometric data, (ii) failing to publicly disclose any such policy, and (iii) failing to comply with any such policy (by actually deleting the data). (*Id.* ¶¶ 28-33.) Plaintiffs further allege that Kronos violated section 15(b) of BIPA by collecting, using, and storing their and other Illinois workers’ biometric data without obtaining their informed, written consent. (*Id.* ¶¶ 26-27.) Finally, Plaintiffs alleged that Kronos violated section 15(d) by disclosing their biometric data to third parties without consent. (*Id.* ¶ 79.)

B. Litigation History and the Work Performed for the Settlement Class

Plaintiffs originally filed their putative class action complaint in the Circuit Court of Cook County, Illinois, on January 18, 2019. Kronos then timely removed the case and, shortly thereafter, removed another substantively identical proposed class action with a different plaintiff represented by different counsel. (Dkt. 1.) On April 29, 2019, Plaintiffs moved to consolidate the cases and for their counsel to be appointed interim class counsel, which the Court granted and appointed Jay Edelson of Edelson PC and James B. Zouras of Stephan Zouras LLP as interim class counsel. (Dkts. 42, 94.)

Meanwhile, Kronos moved to dismiss the complaint under Rule 12(b)(6) and to strike Plaintiffs’ class allegations under Rule 12(f). (Dkts. 29, 30, 32, 33.) In its motion to dismiss, Kronos argued, *inter alia*, (1) that any obligation imposed by BIPA is the responsibility of Plaintiffs’ employers, not Defendant as a vendor; (2) that Kronos did not “possess” Plaintiffs’

data within the meaning of the statute; and (3) that Plaintiffs failed to allege facts sufficient to demonstrate Kronos “negligently” or “recklessly” violated BIPA. (*See* dkt. 30.) Plaintiffs opposed the motion, arguing, *inter alia*, (1) that because BIPA applies to “any private entity” that collects biometric data, it applies to both vendors and employers who collect biometric data; (2) that employers and vendors alike can be in “possession” of biometric data, as possession does not require exclusive control; and (3) that “negligence” and “recklessness” are not pleading requirements for a BIPA claim but measures of culpability after liability is established. (Dkt. 50.) In support of its motion to strike, Kronos argued, *inter alia*, that Plaintiffs were seeking to certify a “mega class,” in which class members would all have different employers who engaged in different courses of conduct such that class certification was doomed from the pleadings. Again, Plaintiffs opposed, explaining, *inter alia*, that Kronos’s motion was wildly premature and that, in any event, Plaintiffs adequately alleged (and would prove) the class members’ employers all used Kronos biometric timekeeping devices and that Kronos uniformly failed to obtain informed written consent from class members, making certification appropriate. (*See* dkt. 51.)

The Court ultimately denied Kronos’s motions in full on April 13, 2020, finding that BIPA applies to defendant-vendors like Kronos; Plaintiffs had stated claims against Kronos under sections 15(a), (b), and (d) of BIPA; and rejecting Kronos’s challenges to Plaintiffs’ class allegations. (Dkt. 128.) The Court then ordered Kronos to answer the complaint and requested supplemental briefing addressing Plaintiffs’ Article III standing to bring their section 15(a) claims. (*Id.* at 26.) Both Parties submitted that briefing, and on July 24, 2020, the Court found that it lacked subject matter jurisdiction over Plaintiffs’ section 15(a) claims and thus severed and remanded those claims to state court. (Dkts. 137, 138, 151.) A few months later, the Seventh Circuit found in *Fox v. Dakota Integrated Systems, LLC* that allegations of a defendant’s

violation “of the full panoply of its section 15(a) duties—the duties to develop, publicly disclose, *and comply with* data retention and destruction policies” were sufficient to establish Article III standing. 980 F.3d 1146, 1149 (7th Cir. 2020) (emphasis in original). Given that ruling, Kronos promptly re-removed the remanded portion of the case, which was then re-consolidated with this action. (Dkt. 179.)

Meanwhile, on May 12, 2020, Kronos answered the Complaint, asserting 13 affirmative defenses. (Dkt. 136.) The Parties then engaged in months of contentious written discovery, which included numerous motions to compel from both Parties, multiple meet-and-confers, and disputes over Kronos’s subpoenas to absent class members. (Dkts. 155, 173, 179, 234.) Plaintiffs served their first written discovery requests to Kronos on June 2, 2020, to which Kronos initially responded on August 3, 2020. (*See* dkt. 293.) In response, Kronos refused to produce discovery related to the full class and instead limited the scope of its production to employees who worked for Kronos customers who had already been sued in separate BIPA suits. Plaintiffs objected to this distinction as arbitrary and moved to compel responses for all relevant Illinois employers (dkt. 155), which the Court denied without prejudice. (Dkt. 166.)

On June 19, 2020, Kronos issued its first set of written discovery requests to Plaintiffs, which sought discovery from Plaintiffs about absent members of the putative class. Plaintiffs objected to this discovery, prompting Kronos to move to compel. (Dkt. 173.) On December 10, 2021, the Court denied Kronos’s motion without prejudice to Kronos issuing subpoenas to absent class members who were plaintiffs in state court BIPA cases. (Dkt. 179.) Kronos then issued 61 subpoenas to absent class members, which prompted Class Counsel to move (1) for a protective order on behalf of Plaintiffs and (2) to quash Kronos’s subpoenas on behalf 17 absent class

members who were separately represented by Edelson PC and Stephan Zouras, LLP. (Dkt. 234.) The Court took the motions under advisement.

While those motions were pending, Kronos moved to compel responses to interrogatories it issued to Plaintiffs seeking evidence in support of its affirmative defenses (dkt. 259) and petitioned the Court for leave to issue additional interrogatories. (Dkt. 261.) These additional discovery efforts were predicated on two affirmative defenses advanced by Kronos, both of which relied on the premise that some legal or equitable principle—like “estoppel,” “waiver,” or “primary assumption of risk”—permits something less than informed written consent to comply with BIPA. Plaintiffs accordingly moved to strike these two defenses, arguing that they fly in the face of the plain language of section 15(b) of BIPA, which permits nothing less than written, informed consent. (Dkt. 267 at 6-8.) After full briefing, the Court granted Plaintiffs’ motion to strike without prejudice to Kronos’s repleading of its defenses. (Dkt. 276.) On April 7, 2021, Kronos filed a second amended answer, and Plaintiffs once again moved to strike, arguing that Kronos’s defenses as amended still relied on a misunderstanding of BIPA’s informed written consent requirement. (Dkt. 285.) This motion was also fully briefed (dkts. 294, 298), and argued (dkt. 299). Though the Court denied Plaintiffs’ second motion to strike on July 20, 2021, it reserved ruling on the merits of the affirmative defenses at issue. (Dkt. 307.)

While the Parties were briefing the motions to strike, Kronos also moved to stay the case pending the Seventh Circuit’s ruling in *Cothron v. White Castle System, Inc.*, No. 20-3202 (7th Cir.), and the Illinois Appellate Court’s decision in *Tims v. Black Horse Carriers, Inc.*, 2021 IL App (1st) 200563. (Dkt. 279.) *Cothron* concerns when BIPA claims accrue for limitations purposes, and *Tims* concerns the applicable statute of limitations for BIPA claims. Plaintiffs opposed the motion, arguing that given the timing of the motion, Kronos had improperly moved

to stay to avoid impending discovery obligations and responding to Plaintiffs' then-pending second motion to strike. (Dkt. 283.) After a hearing, the Court agreed with Plaintiffs and denied Kronos's motion. (Dkt. 288.) On September 27, 2021, the Court granted in part and denied in part the discovery motions concerning the subpoenas issued to absent class members. (Dkt. 323.)

As a result of Class Counsel's continuous efforts to push for discovery, Kronos ultimately produced over 120,000 pages of documents and ESI to Plaintiffs. Class Counsel also deposed seven current and former Kronos employees ranging from product managers to senior directors of the company.³ Both Plaintiffs also sat for their depositions, which Class Counsel defended.

In the midst of discovery and motion practice, the Parties agreed in July 2021 that a mediation would be productive. On August 31, 2021, the Parties participated in a full-day mediation with Judge James F. Holderman (Ret.) of JAMS Chicago. The Parties' settlement negotiations lasted throughout the day and into the evening, but they were unable to reach an agreement. With no deal, the Parties went back to litigating the case, which included Plaintiffs taking their seventh deposition of a Kronos employee. However, the Parties continued to negotiate a possible settlement. After exchanging numerous demands and counteroffers and engaging in several telephone and Zoom conferences from mid-September to mid-October, the Parties ultimately reached an agreement on the principal terms of a class settlement. The Parties then executed a binding Memorandum of Understanding on October 20, 2021, setting forth those terms. After three months of additional negotiation over the final terms of the settlement—which included submitting a dispute about the form of notice and the claim form to Magistrate Judge

³ Deponents included Connor Jarvis, WorkForce Ready Project Manager; David Vo, Manager of Product Support; Jim Puccini, healthcare sales; Larry Florio, Area Vice President of Healthcare; Megan McCaffrey, InTouch Product Manager; and Umesh Gandhi, Software Engineer.

Gilbert for a binding determination—the Parties executed the final Settlement Agreement on January 20, 2022. Plaintiffs then promptly moved for preliminary approval (dkt. 342), which the Court granted on February 18, 2022 (dkt. 358).

But Class Counsel’s work was not over once preliminary approval was secured. To compile the Class List and ensure that as many Settlement Class members as possible would receive direct notice of the Settlement, the Settlement Agreement set forth a detailed procedure for obtaining the names, addresses, and personal e-mail addresses (“Contact Information”) of the Settlement Class members. (Agreement § 7.2.) First, Kronos reached out to all of its Illinois Kronos Cloud Customers asking them to voluntarily provide Contact Information for their current and former employees who are members of the Settlement Class. (*Id.*) While some Illinois Kronos Cloud Customers produced Contact Information, 18 refused or failed to respond. As a result, Class Counsel issued subpoenas to each of those customers and, when six again failed to produce Contact Information, Class Counsel moved to compel their compliance, which the Court granted. (Dkts. 360, 363, 365.) Those six customers ultimately complied with the subpoenas. In the end, the Settlement Administrator has reported that the final Class List contains the names of 84,193 unique individuals and includes a mailing address and/or email address for 81,910 of them, or over 97%. (Declaration of J. Eli Wade-Scott, (“Wade-Scott Decl.”) attached hereto as Exhibit 3, ¶ 14.)

C. The Settlement Secures Excellent Relief for the Settlement Class

As detailed in Plaintiffs’ motion for preliminary approval, the relief to the Settlement Class is an outstanding result. The Settlement creates a non-reversionary fund of \$15,276,277.00 for the 84,193 Class Members, which will be split *pro rata* between approved claimants after

deductions for Court-approved fees and costs. Even if a relatively high 25-30% of Class Members submit an Approved Claim, payments are expected to be between \$385 and \$465 each.

Aside from the monetary relief, the Settlement creates non-monetary benefits as well. If Kronos continues to host customer data on its cloud platform, as Plaintiffs allege, Kronos will notify its Illinois Kronos Cloud Customers that they are required to (1) establish a retention and destruction policy and actually comply with that policy by timely deleting data; (2) notify employees, in writing, that their fingerprints are being collected, stored, used, and disclosed by the employer and Kronos and the purposes and length of time for which the fingerprints are being obtained; and (3) obtain a written release from employees authorizing the employer's and Kronos's collection, storage, use, and disclosure of the data. (Agreement § 2.2.)

Finally, beyond this case, the Settlement explicitly preserves all of Plaintiffs' and the Settlement Class's claims against their employers, including BIPA claims. (*Id.* § 1.27.) With this carve-out, Plaintiffs and the Settlement Class may pursue separate BIPA claims against their respective employers who deployed the Kronos timeclocks at issue—individually or on a class basis—for additional monetary relief for any employer's violations of BIPA.

III. THE REQUESTED ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARDS ARE REASONABLE AND SHOULD BE APPROVED.

Rule 23 authorizes courts to “award reasonable attorney’s fees . . . that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). In common fund settlements like this one, the attorneys’ fee award is typically made as a share of the fund. The common fund doctrine “is based on the notion that not one plaintiff, but all ‘those who have benefitted from litigation should share its costs.’” *Florin v. Nationsbank of Georgia, N.A.*, 34 F.3d 560, 563 (7th Cir. 1994). By awarding fees payable from the common fund created for the benefit of the entire class, the court spreads litigation costs proportionately among those who will benefit from the

fund. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

The Seventh Circuit has consistently directed “that attorneys’ fees in class actions should approximate the market rate that prevails between willing buyers and willing sellers of legal services,” *Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 957 (7th Cir. 2013), taking into account “the risk of nonpayment and the normal rate of compensation in the market at the time.” *Sutton v. Bernard*, 504 F.3d 688, 692 (7th Cir. 2007); *see also In re Synthroid*, 264 F.3d at 719 (cautioning that “any method other than looking to prevailing market rates assures random and potentially perverse results”). In making this determination, “the judge must assess the value of the settlement to the class and the reasonableness of the agreed-upon attorneys’ fees for class counsel, bearing in mind that the higher the fees the less compensation will be received by the class members.” *Redman v. RadioShack Corp.*, 768 F.3d 622, 629 (7th Cir. 2014).

Ultimately, district courts “must set a fee by approximating the terms that [the class and class counsel] would have been agreed to *ex ante*, had negotiations occurred.” *Americana Art China Co., Inc. v. Foxfire Printing & Packaging, Inc.*, 743 F.3d 243, 246–47 (7th Cir. 2014) (internal quotation marks omitted). Because “[s]uch estimation is inherently conjectural,” *In re Trans Union Corp. Privacy Litig.*, 629 F.3d 741, 744 (7th Cir. 2011), and the Seventh Circuit does not prescribe a preferred method of calculation, “in common fund cases, the decision whether to use a percentage method or a lodestar method remains in the discretion of the district court.” *Americana Art*, 743 F.3d at 247.

Finally, courts in the Seventh Circuit do not include notice and administration costs or incentive awards as part of the fund in making percentage-of-the-fund fee awards. *See Redman*, 768 F.3d at 630 (“The ratio that is relevant to assessing the reasonableness of the attorneys’ fee that the parties agreed to is the ratio of (1) the fee to (2) the fee plus what the class members

received.”) Here, on November 22, 2022, the Settlement Administrator provided an up-to-date total cost estimate of \$611,871.79, so that the Court may award attorneys’ fees without unexpected additional expenses coming up later that change the ratio. *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 238 (N.D. Ill. 2016) (Feinerman, J.) (explaining that *total* notice and administration expenses must be deducted from the fund before calculating attorneys’ fees). Accordingly, the \$4,834,287.22 fee request represents 33% of the Net Settlement Fund, that is, after deducting from the Settlement Fund (1) the \$611,871.79 in total notice and administration costs, and (2) the two \$7,500.00 proposed incentive awards. (See Wade-Scott Decl. ¶¶ 14, 15.)

Class Counsel took this case on a contingent basis despite the high risks of no recovery at the outset. (Wade-Scott Decl. ¶ 3; Declaration of Ryan F. Stephan (“Stephan Decl.”), attached hereto as Exhibit 4, ¶ 10.) Now that Class Counsel has achieved the results they did for the Settlement Class, they respectfully request that, after deducting the total amount of notice and administration costs and the proposed incentive awards from the Settlement Fund (i.e., the “Net Settlement Fund”), the Court award Class Counsel 33% of the Net Settlement Fund, or \$4,834,287.22 in attorneys’ fees and expenses.⁴ This request is well in line with what other courts in this District have found a hypothetical *ex ante* bargain to be in BIPA cases as set out in the Charts in Exhibit 2. Accordingly, the requested fees should be approved.

A. Percentage-of-the-Fund Should be Used to Determine Fees Here.

In the Seventh Circuit, district courts deciding common fund cases may choose one of two methods for awarding attorneys’ fees: (1) percentage-of-the-fund or (2) lodestar approach. *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 500 (N.D. Ill. 2015). Under the percentage-

⁴ The requested fee amount is inclusive of the \$46,770.29 in costs fronted by Class Counsel—i.e., Class Counsel is not requesting costs separately. (See Wade-Scott Decl. ¶ 12; Stephan Decl. ¶ 25.)

of-the-fund approach, “plaintiffs’ attorneys . . . petition the court to recover its fees” as a percentage of the total fund. *Florin*, 34 F.3d at 563. In contrast, the lodestar approach requires district courts to determine the reasonable value of the services rendered and increase that amount by a multiplier that factors in various considerations. Under the lodestar approach, the court first determines a “reasonable hourly rate allowable for each attorney . . . involved in the case.” *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 974 (7th Cir. 1991). Then, the court multiplies “the hours reasonably expended by the reasonable hourly rates” to produce the lodestar. *Id.* Finally, the court increases the lodestar by a multiplier that accounts for other relevant considerations, such as the attorneys’ amount of risk in bringing the case or the complexity of the issues. *See id.* (holding that courts should consider from an *ex ante* perspective “what size risk the attorney assumed at the outset by taking this type of case”).

While the court has discretion over whether to use the percentage-of-the-fund or lodestar approach, courts typically select a method by looking “to the calculation method most commonly used in the marketplace at the time such a negotiation would have occurred.” *Kolinek*, 311 F.R.D. at 501. The normal practice in BIPA class actions is, overwhelmingly, “to negotiate a fee arrangement based on a percentage of the plaintiffs’ ultimate recovery.” *Id.*; *see Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986) (“When the prevailing method of compensating lawyers for similar services is the contingent fee, then the contingent fee *is* the market rate.”) (internal quotes omitted). Because the percentage-of-the-fund approach best mirrors typical contingency agreements, it makes sense that “the vast majority of courts in the Seventh Circuit” use it in common fund cases. *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 WL 6606079, at *7 (S.D. Ill. Dec. 16, 2018) (quotation omitted); *see also* Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. EMPIRICAL L. STUD.

811, 814 (2010) (“Most federal judges chose to award fees by using the highly discretionary percentage-of-the-settlement method.”).

A percentage-of-the-fund, contingent approach is what the class would have negotiated with Class Counsel at the outset in a hypothetical *ex ante* bargain; in fact, it has been used to determine a reasonable fee award in virtually every BIPA class action settlement in both federal and state courts. (*E.g.*, Exhibit 2.) *See also In re TikTok, Inc., Consumer Priv. Litig.*, No. 20-cv-04699, 2022 WL 2982782 (N.D. Ill. July 28, 2022). In contrast, the lodestar approach has never been used to evaluate fees in these cases, as far as counsel is aware, where the class received a monetary benefit.⁵ That makes sense because the lodestar method would have “required a level of monitoring the class members were not interested in or capable of providing,” and the percentage approach best “align[s] the incentives of the class[es] and [their] counsel.” *In re Cap. One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 795 (N.D. Ill. 2015). Consequently, the percentage-of-the-recovery is the most appropriate method here.

B. A 33% Fee Award Is Appropriate Here.

The Seventh Circuit has instructed district courts to award reasonable attorneys’ fees, and that “the measure of what is reasonable is what an attorney would receive from a paying client in a similar case.” *Montgomery v. Aetna Plywood*, 231 F.3d 399, 408 (7th Cir. 2000). “[I]n consumer class actions . . . the presumption should . . . be that attorneys’ fees awarded to class counsel should not exceed a third or at most a half of the total amount of money going to class members and their counsel.” *Gehrich*, 316 F.R.D. at 235 (citing *Pearson v. NBTY, Inc.*, 772 F.3d 778, 782 (7th Cir. 2014)); *see also* 5 William Rubenstein, NEWBERG ON CLASS ACTIONS § 15:83

⁵ The one exception is *Carroll v. Crème de la Crème*, 2017-CH-01624 (Cir. Ct. Cook Cnty.), which produced no monetary recovery for the class and instead provided credit monitoring.

(6th ed.) (noting that, generally, “50% of the fund is the upper limit on a reasonable fee award from any common fund”). Courts consider, against that presumption, the benefit achieved for the class, the fee awards made in similar cases, the risks that the particular case presented, the quality of the legal work provided, the anticipated work necessary to resolve the litigation, and the stakes of the case. *See Redman*, 768 F.3d at 633 (“[T]he central consideration is what class counsel achieved for the members of the class”); *Taubenfeld v. AON Corp.*, 415 F.3d 597, 600 (7th Cir. 2005) (“[A]ttorneys’ fees from analogous class action settlements are indicative of a rational relationship between the record in this similar case and the fees awarded by the district court.”); *see also In re Synthroid*, 264 F.3d at 721.

Considering these factors, the Court can confidently find that a hypothetical *ex ante* negotiation would have resulted in at least the one-third Class Counsel now seek; indeed, in similar BIPA cases, courts in this District have routinely awarded at least 33% of the net fund. (*See* Exhibit 2, Chart 1.) The *ex ante* negotiation could have well resulted in an agreement *higher* than the requested 33%, as numerous other Illinois courts, including those in this District, have awarded as much as 35% of the fund in BIPA cases, (*see id.*, Chart 2), and others have awarded up to 40% of the fund, (*see id.*, Chart 3). *See also Kolinek*, 311 F.R.D. at 503 (in TCPA settlement with \$11 million gross fund, awarding 36% of net fund in fees). Accordingly, the requested award is more than appropriate and is what the class would have agreed to in an *ex ante* negotiation. *See Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 201 (N.D. Ill. 2018) (“[A] typical contingency agreement in this circuit might range from 33% to 40% of recovery.”). This makes sense given the risk taken on by Class Counsel, who filed this case in early 2019 when vendor liability under BIPA was entirely unsettled.

The Seventh Circuit’s recent decision in *In re Stericycle Securities Litigation* does not

call for the use of the “sliding-scale” approach here. 35 F.4th 555 (7th Cir. 2022). In *Stericycle*, the Seventh Circuit reversed a fee award of 25% of a \$45 million fund because the district court failed to consider the existence of an actual *ex ante* fee agreement between the parties that included a sliding-scale formula. *Id.* at 560. The Seventh Circuit also noted how the district court failed to give sufficient weight to how early in the litigation the parties settled and how prior litigation with the defendant reduced counsel’s risk of non-payment. *Id.* None of that is present here—the only *ex ante* fee agreements available (to the extent they’re useful) are Plaintiffs’ retention agreements that provide for a percentage of the total recovery in fees (not a sliding scale), the Parties litigated this case tooth and nail for over three years before finally settling, and, at the time of filing, there was no blueprint for successfully litigating a BIPA vendor case, especially one of this magnitude. In any event, “*Stericycle* did not create a general presumption in favor of a sliding-scale approach for large cases.” *In re TikTok, Inc.*, 2022 WL 2982782, at *27 (awarding 33.3% of \$87 million net fund). Rather, it merely “spoke approvingly of using a sliding-scale approach in cases where an actual *ex ante* fee agreement also has adopted a sliding-scale formula,” *id.*, which reaffirms decades of Seventh Circuit precedent—that fee awards must “reflect the market-based approach.” *In re Stericycle Sec. Litig.*, 35 F.4th at 560.

The appropriateness of a 33% fee award here is further justified by (1) the substantial risk that Class Counsel took on in accepting the case, and (2) the excellent relief Class Counsel ultimately obtained for the Settlement Class.

1. This case presented serious obstacles to recovery, and Class Counsel litigated the case mindful of the high possibility that the class might recover nothing.

In a hypothetical *ex ante* negotiation, it would be apparent to the client that at least a 33% contingent fee would be appropriate considering the significant risk Class Counsel took on in

litigating a case mired in issues of first impression. (Wade-Scott Decl. ¶ 3; Stephan Decl. ¶ 10.) Compared to typical contingent-fee litigation, the risks here were particularly acute at the outset because the parties were likely to litigate a number of issues that are either still being resolved by the courts or were matters of first impression, as demonstrated by the number of issues Class Counsel have already litigated in this case. *See Silverman*, 739 F.3d at 958 (“Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel.”). Class Counsel filed this case aware of these risks but confident in their ability to achieve a superior result for the class—which they ultimately did.

Although these risks are inherent in any contingent-fee litigation, class actions especially, there are particularly acute risks here, considering the relative infancy of BIPA. *See Norberg v. Shutterfly, Inc.*, 152 F. Supp. 3d 1103, 1106 (N.D. Ill. 2015) (“The BIPA was enacted in 2008, and to this date, the Court is unaware of any judicial interpretation of the statute.”) At the time of filing, no court had considered BIPA claims against a vendor of biometric timekeeping technology. And a few months after filing, courts began to express considerable skepticism that vendors could be liable under BIPA at all. *See Bernal v. ADP*, 2017-CH-12364 (Cir. Ct. Cook Cnty. Aug. 23, 2019) (Atkins, J.), attached hereto as Exhibit 5. Other courts joined that position to some degree, depending on how the claims were pleaded. *Cameron v. Polar Tech Indus., Inc. and ADP, LLC*, 2019-CH-000013 (Cir. Ct. DeKalb Cnty. Aug. 23, 2019); *Namuwonge v. Kronos, Inc.*, 418 F. Supp. 3d 279, 285–86 (N.D. Ill. Nov. 22, 2019). With the liability of vendors an unresolved issue, the risks that Class Counsel took on here were significant. Nonetheless, Class Counsel forged ahead and eventually defeated Kronos’s arguments that BIPA doesn’t apply to vendors like itself. *Figueroa v. Kronos Inc.*, 454 F. Supp. 3d 772, 784-85 (N.D.

Ill. 2020) (“As to other decisions in this District, they are split on the question whether BIPA governs outside vendors like Kronos in the employment context ... The state of the law is by no means ‘unanimous’ and this court is persuaded that the understanding of Section 15(b) set forth above comports with the ordinary meaning of the word ‘obtain’ ...”).

Even setting aside that case-dispositive issue, there were other major questions that increased the risk of nonpayment. For example, given the functionality of the widely-used fingerprint-scanning technology at issue, Class Counsel pursued this case knowing full well that Kronos would argue at summary judgment that its timeclock systems didn’t collect “biometric identifiers” or “biometric information” as defined by BIPA. *See* 740 ILCS 14/10 (defined, in relevant part, as a “fingerprint” or “information . . . based on an individual's [fingerprint] used to identify an individual”). Rather, Kronos would argue, its scanners collect a fingerprint “template,” consisting of a string of numbers and letters that isn’t regulated by the statute at all. This question is the subject of dispute in existing BIPA cases and hasn’t yet been resolved by the courts. *Cf. In re Facebook Biometric Info. Privacy Litig.*, No. 3:15-CV-03747-JD, 2018 WL 2197546, at *2–3 (N.D. Cal. May 14, 2018) (denying motion for summary judgment on whether facial scans were biometric data regulated by BIPA); *Howe v. Speedway LLC*, No. 19-cv-01374, dkt. 125, 140, 149 (N.D. Ill.) (fully briefed motion for summary judgment on this issue in a fingerprint scan case). Although Class Counsel puts no stock in this argument, it is an issue ungoverned by precedent, and if Kronos were to win on it at summary judgment or trial, Plaintiffs’ case would be defeated entirely, sinking Class Counsel’s substantial investment of time and effort in this case.

Moreover, when this case was filed, it was still unclear what statute of limitations applies to BIPA claims: a one-, two-, or five-year period. Class Counsel nonetheless expended

significant resources on this case knowing that if a one-year limitations period applied, a vast majority of the putative class's claims would be time-barred, drastically reducing the size of the class and, in turn, the potential fees to Class Counsel. Although the First District in *Tims v. Black Horse Carriers, Inc.* clarified the applicable limitations periods—finding that a five-year limitations period applies to claims brought under sections 15(a) and (b) of BIPA, *see* 2021 IL App (1st) 200563—the question remains as the Illinois Supreme Court is expected decide the issue in the near future. 2022 IL 127801. The Illinois Supreme Court will also soon decide whether BIPA claims accrue, for statute of limitations purposes, upon a plaintiff's first biometric scan or the last—another issue that was unknown at the time of filing that could change the scope of this case. *Cothron v. White Castle Systems, Inc.*, No. 128004.

Class certification also remains unanswered, as does the class's ability to actually recover—post-trial—what would be massive damages against Kronos. *See, e.g., Golan v. FreeEats.com, Inc.*, 930 F.3d 950 (8th Cir. 2019) (statutory award in TCPA class action of \$1.6 billion reduced to \$32 million); *Wakefield v. ViSalus, Inc.*, 51 F.4th 1109 (9th Cir. 2022) (in TCPA case, vacating district court's denial of defendant's post-trial motion challenging the constitutionality of \$925 million statutory damages award under TCPA and remanding for further proceedings); *but see United States v. Dish Network L.L.C.*, 954 F.3d 970, 980 (7th Cir. 2020), *cert. dismissed*, 141 S. Ct. 729 (2021) (statutory award of \$280 million for violating various telemarketing statutes over 65 million times did not violate due process). Finally, it is not unprecedented for legislation to be amended while a class action is pending in a way that threatens the class's entire recovery. *See Perlin v. Time Inc.*, 237 F. Supp. 3d 623, 629–30 (E.D.

Mich. 2017) (evaluating the retroactive effect of legislative amendment on pending class action).⁶

Class Counsel accepted this case understanding that a single loss on any of these fronts would decimate the Class's—and Class Counsel's—ability to get paid. In light of those risks, it is appropriate to award 33% of the Net Settlement Fund in attorneys' fees. *See Kolinek*, 311 F.R.D. at 502–03 (adding 6% risk premium to attorneys' fees “based on the degree of effort the attorneys would need to put in, the likelihood of success, and the risks associated with undertaking class representation” when case was filed).

2. Class Counsel achieved an excellent result for the class.

Given the large number of unresolved questions in BIPA vendor cases, and the possibility that the Settlement Class would recover nothing at all, the relief secured by Class Counsel is exceptionally strong. It is appropriate, too, for the Court to consider the actual result achieved—both as a function of the quality of Class Counsel's work, and because litigants often consider the ultimate degree of success in determining a fee schedule. *See Americana Art*, 743 F.3d at 247.

The \$15,276,227.00 fund secured for 84,193 class members is among the highest per-person relief secured in a BIPA case against a biometric technology vendor. *See Thome v. NOVAtime Tech., Inc.*, No. 19-cv-6256, dkt. 90 (N.D. Ill. Mar. 8, 2021) (\$4.1 million fund plus assignment of insurance policies for 62,000 class members); *Kusinski v. ADP LLC*, 2017-CH-

⁶ For example, over the past two years, at least ten bills have been introduced in the Illinois Legislature to either repeal BIPA or amend it in a way that guts its protections. *See* H.B. 559, 102nd Gen. Assembly (Ill. 2021); H.B. 560, 102nd Gen. Assembly (Ill. 2021); H.B. 1764, 102nd Gen. Assembly (Ill. 2021); H.B. 3112, 102nd Gen. Assembly (Ill. 2021); H.B. 3304, 102nd Gen. Assembly (Ill. 2021); H.B. 3414, 102nd Gen. Assembly (Ill. 2021); S.B. 56, 102nd Gen. Assembly (Ill. 2021); S.B. 300, 102nd Gen. Assembly (Ill. 2021); S.B. 1607, 102nd Gen. Assembly (Ill. 2021); S.B. 3874, 102nd Gen. Assembly (Ill. 2022).

12364 (Cir. Ct. Cook Cnty. Feb. 10, 2021) (\$25 million fund for approximately 320,000 class members); *Neals v. ParTech, Inc.*, No. 19-cv-05660, dkt. 140 (N.D. Ill. July 20, 2022) (\$790,000 fund for 3,560 class members); *LaBarre v. Ceridian HCM, Inc.*, 2019-CH-06489 (Cir. Ct. Cook Cnty.) (preliminarily approving \$3,493,074.00 fund for 14,142 class members); *see also Bryant v. Compass Grp. USA, Inc.*, No. 19-cv-06622, dkt. 125 (N.D. Ill. Sept. 8, 2022) (approving \$6.8 million settlement for 66,159 class members, which releases both the vendor of the biometric technology and all of its customers).

Here, assuming the continued trend of claims rates between 25-30% when the class is properly notified, claiming Class Members will receive individual payments of approximately \$385 to \$465 each. Against a backdrop where many privacy claims under similar statutes settled for pennies on the dollar or no monetary relief at all, this is an exceptional result. *See, e.g., In re Google Referrer Header Privacy Litig.*, 869 F.3d 737, 740 (9th Cir. 2017), *vacated on other grounds by Frank v. Gaos*, 139 S. Ct. 1041 (2019) (approving 25% award of attorneys' fees on *cy pres*-only fund with not a penny to class members); *In re Google LLC Street View Elec. Commc'ns Litig.*, No. 10-md-02184-CRB, 2020 WL 1288377, at *11–14 (N.D. Cal. Mar. 18, 2020) (approving, over objections of class members and state attorney general, a settlement providing only *cy pres* relief for violations of the Electronic Communications Privacy Act); *Adkins v. Facebook, Inc.*, No. 18-cv-05982-WHA, dkts. 350, 369 (N.D. Cal. May 6, 2021 and July 13, 2021) (approving settlement for injunctive relief only, in class action arising out of Facebook data breach, and granting \$6.5 million in attorneys' fees and costs).

This result is even more impressive when considering that the Settlement's release preserves Class Member's separate BIPA claims against their employers who deployed the Kronos timeclocks. (Agreement § 1.27 (the Released Parties "expressly excludes any of

Defendant's customers").) That means each Class Member will retain any separate BIPA claims they have against the Kronos customers who employed them and separately collected or stored the same biometric data without complying with BIPA. This is significant because scores of prior BIPA settlements released both the employer claims and the vendor claims together, with no additional compensation for the release of two sets of claims. This carve-out enables Class Members to vitiate the full scope of their privacy rights under BIPA, rather than, as in other cases, forcing Class Members to make a choice about which violations to pursue.

Finally, aside from the monetary relief, the non-monetary benefits created by the Settlement further support the requested fee award. Per the Settlement Agreement, Kronos will require its Illinois Kronos Cloud Customers to obtain written, informed consent from their employees, inform their employees that the employer and Kronos are collecting their biometric data, and establish a retention and deletion schedule for employee biometric data with which they will comply. This non-monetary result is also properly considered for purposes of determining fees. *See Hall v. Cole*, 412 U.S. 1, 5 n.7 (1973).

Ultimately, the monetary and non-monetary relief recovered on behalf of the Settlement Class warrants approving the requested 33% of the monetary benefits of the Net Settlement Fund as attorneys' fees.

3. A lodestar cross-check confirms the reasonableness of the requested fees.

While the Settlement Class would not have agreed to calculate fees using the lodestar method, and the Court need not perform a lodestar "cross-check" to confirm the reasonableness of the fee award, analyzing the fee award under the lodestar method further confirms its reasonableness. *See Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011) ("[C]onsideration of a lodestar check is not an issue of required methodology.") (citing *Cook v.*

Niedert, 142 F.3d 1004, 1013 (7th Cir. 1998) (“[W]e have never ordered the district judge to ensure that the lodestar result mimics that of the percentage approach.”)). A lodestar analysis is properly based on Class Counsel’s current hourly rates. *See Pickett v. Sheridan Health Care Ctr.*, 813 F.3d 640, 647 (7th Cir. 2016).

Class Counsel performed substantial work in this litigation, totaling thousands of attorney and staff hours already. The individuals primarily responsible for the case, along with their years of experience, rates and hours worked are provided in the Declarations of J. Eli Wade-Scott and Ryan F. Stephan. (Wade-Scott Decl. ¶ 10; Stephan Decl. ¶ 19.) As those declarations demonstrate, the value of Class Counsel’s services to the class amounts to \$1,362,670.00 through the present.^{7 8} (*Id.*) Class Counsel has also incurred unreimbursed expenses of \$46,770.29, which are encompassed in the attorneys’ fee request—i.e., Class Counsel are not seeking expenses separately. (Wade-Scott Decl. ¶ 12; Stephan Decl. ¶ 25.)

Calculating Class Counsel’s base lodestar amount is only one part of the inquiry, however, in determining a reasonable fee award under this approach. The base lodestar amount is increased by a “multiplier . . . designed to reflect the fact that, no matter how many hours were invested, there was, at the outset, the possibility of no recovery.” *Harman*, 945 F.2d at 976. A multiplier, accordingly, should be added to reflect the risk that Class Counsel faced in undertaking the litigation, which is discussed above. *See id.* Typically, courts apply a risk multiplier of between 1 and 4. *See* 5 William B. Rubenstein, *NEWBERG ON CLASS ACTIONS*

⁷ The attorney and staff time spent on this fee petition and its supporting documents has been excluded from Class Counsel’s submitted lodestar. *Spicer v. Chicago Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1247 (N.D. Ill. 1993) (“As we have noted in our past opinions determining fee awards, we do not feel that it is appropriate to compensate attorneys for the time spent preparing the fee petition and supporting documentation.”).

⁸ Class Counsel will supply detailed billing records for *in camera* review upon request.

§ 15:87 (6th ed.); *see also Harman*, 945 F.2d at 976 (“Multipliers anywhere between one and four... have been approved.”).

Here, Class Counsel requests a total of \$4,834,287.22 in attorneys’ fees and costs from the Settlement Fund, which amounts to a multiplier of their base lodestar of 3.5. Given the substantial risks Class Counsel took on and the exceptional result they achieved, the award is appropriate.

IV. THE COURT SHOULD APPROVE THE REQUESTED INCENTIVE AWARDS.

The Settlement Agreement also provides for incentive awards of \$7,500.00 to each of the named Plaintiffs, Charlene Figueroa and Jermaine Burton, for serving as class representatives. Incentive awards are appropriate in class actions to compensate individuals for stepping up to protect the interests of a broader class and spending their own time to achieve benefits for the class as a whole. *Cook*, 142 F.3d at 1016.

Here, Ms. Figueroa’s and Mr. Burton’s participation was critical to the case’s ultimate resolution. Their willingness to commit time to this litigation and undertake the responsibilities involved in representative litigation resulted in a substantial benefit to the Settlement Class and fully justifies the requested incentive awards. Throughout the case, they expended time and effort conferring with Class Counsel, providing information to Class Counsel to prepare the pleadings, reviewing the Complaint before filing, preparing and sitting for their depositions, responding to Kronos’s interrogatories, helping to collect documents to produce in discovery, and reviewing and approving the Settlement Agreement before signing it. (Wade-Scott Decl. ¶¶ 16, 17; Stephan Decl. ¶ 28.) These efforts from Ms. Figueroa and Mr. Burton were necessary to secure the \$15,276,227 Settlement Fund for the Settlement Class. (*Id.*) They were also willing to attach their names to this litigation against Kronos and allow it to be transmitted via class notice

to over 80,000 people, subjecting themselves to “scrutiny and attention” which is “certainly worth some remuneration.” *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 601 (N.D. Ill. 2011).

As a monetary matter, Plaintiffs’ requested incentive awards are eminently reasonable: they’re in line with the amounts awarded to plaintiffs in numerous other privacy cases, including BIPA cases, *see Thome*, No. 19-cv-6256, dkt. 90; (Exhibit 2, Chart 3), and a fraction of the amounts often awarded in BIPA class settlements in this District and in other class settlements by this Court. (*See* Exhibit 2, Chart 3 (listing incentive awards in BIPA cases in this District between \$7,500.00 and \$10,000.00).) *See In re Akorn, Inc. Secs. Litig.*, No. 1:15-cv-01944, dkt. 182 (N.D. Ill. June 5, 2018) (Feinerman, J.) (awarding three \$10,000.00 incentive awards in securities case); *Nistra v. Reliance Tr. Co.*, No. 1:16-cv-04773, dkt. 291 (N.D. Ill. June 19, 2020) (Feinerman, J.) (\$25,000.00 incentive award in ERISA case). Accordingly, Plaintiffs’ incentive awards should be granted.

V. CONCLUSION

For the foregoing reasons, Plaintiffs Charlene Figueroa and Jermaine Burton respectfully request that this Court enter an order (1) granting Class Counsel’s request for an award of attorneys’ fees and expenses in the amount of \$4,834,287.22; (2) awarding Plaintiff Figueroa a \$7,500.00 incentive award and awarding Plaintiff Burton a \$7,500.00 incentive award; and (3) providing such other and further relief as the Court deems reasonable and just.

Respectfully submitted,

**CHARLENE FIGUEROA AND JERMAINE
BURTON**, individually and on behalf of all others
similarly situated

Dated: November 22, 2022

By: /s/ J. Eli Wade-Scott
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EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

CHARLENE FIGUEROA and JERMAINE
BURTON, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

KRONOS INCORPORATED,

Defendant.

No. 1:19-CV-01306

Honorable Gary Feinerman

STIPULATION OF CLASS ACTION SETTLEMENT

This Class Action Settlement Agreement (“Settlement Agreement”) is entered into by and among Plaintiff Charlene Figueroa and Plaintiff Jermaine Burton (“Plaintiffs”), for themselves individually and on behalf of the Settlement Class, and Defendant Kronos Incorporated (“Kronos” or “Defendant”) (Plaintiffs and Defendant are referred to separately as “Party” and collectively as the “Parties”). This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims upon and subject to the following terms and conditions, and subject to the approval of the Court.

RECITALS

A. On January 18, 2019, Plaintiffs filed a putative class action complaint against Kronos in the Circuit Court of Cook County, Illinois, alleging violations of the Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”). Plaintiffs claimed that Kronos, as a provider of timekeeping devices with a finger-scanner and “cloud” hosting services, collected and stored their biometric data without authorization when Plaintiffs scanned their fingers at employers that were using Kronos’s timeclocks and cloud-hosting services.

B. On February 21, 2019, Defendant removed the case to the United States District Court for the Northern District of Illinois, where it was assigned the caption *Figueroa v. Kronos Incorporated*, No. 1:19-CV-01306 (N.D. Ill.) (Dkt. 1.)

C. On April 15, 2019, Defendant filed a motion to dismiss the complaint for failure to state a claim. (Dkt. 29, 30.) The same day, Kronos filed a motion to strike Plaintiffs' class allegations. (Dkt. 32, 33.) The motions were fully briefed. (Dkts. 50, 51, 62, 63.)

D. On April 13, 2020, the Court entered an opinion and order denying both Defendant's motion to dismiss and motion to strike Plaintiffs' class allegations. (Dkt. 128.) The Court requested supplemental briefing on Plaintiffs' standing to bring their claims under 740 ILCS 14/15(a) at the same time, which the Parties simultaneously submitted on May 19, 2020. (Dkts. 137, 138.) The Court ultimately severed Plaintiffs' section 15(a) claims and remanded that portion of the case to state court. (Dkt. 150.) After the Seventh Circuit's decision in *Fox v. Dakkota Integrated Systems, LLC*, 980 F.3d 1146 (7th Cir. 2020), Kronos re-removed this portion of the case, which was re-consolidated. (Dkt. 179.)

E. Meanwhile, Defendant filed its answer and affirmative defenses to Plaintiffs' complaint, asserting thirteen affirmative defenses on May 12, 2020. (Dkt. 136.)

F. Following Kronos's answer, the Parties engaged in written discovery and sought the Court's intervention on several discovery disputes. On June 2, 2020, Plaintiffs issued written discovery requests to Kronos. Kronos produced its initial written responses on August 3, 2020. Kronos issued its first written requests to Plaintiffs on June 19, 2020, and Plaintiffs produced their first written responses on July 27, 2020. Both Plaintiffs and Kronos filed motions to compel (dkt. 155, 164); Plaintiffs' motion was fully briefed by the Parties and denied without prejudice

(see dkt. 166), and Kronos's motion was argued orally, with the Court granting in part and denying in part (see dkt. 168.)

G. Kronos also sought discovery from the putative class, which Plaintiffs contested. Kronos moved to compel this discovery (dkt. 173), which was denied without prejudice to Kronos issuing subpoenas. (Dkt. 179.) Kronos then issued more than sixty subpoenas to members of the absent class, upon which Plaintiffs moved for a protective order and absent members of the class moved to quash. (Dkt. 234.) Kronos meanwhile filed another motion to compel (dkt. 259) and moved the Court for leave to issue additional interrogatories. (Dkt. 261.) Each of these motions was fully briefed. (Dkts. 265, 266, 269, 270, 271.)

H. Plaintiffs argued that Kronos's additional discovery efforts—both on Plaintiffs and the putative class—were predicated on defective affirmative defenses. Plaintiffs accordingly moved to strike Kronos's equitable and implied consent defenses. (Dkt. 267.) The motion to strike was fully briefed and the Court granted the motion without prejudice to Kronos's re-pleading its defenses. (Dkt. 276). Kronos filed a second amended answer on April 7, 2021. (Dkt. 278.)

I. Kronos then moved to stay the case pending the Seventh Circuit's ruling on *Cothron v. White Castle System, Inc.*, No 20-3202 (7th Cir.) and the Illinois Appellate Court's decision in *Tims v. Black Horse Carriers, Inc.*, 2021 IL App (1st) 200563. (Dkt. 279.) Plaintiffs opposed, and this too was fully briefed. (Dkts. 283, 284.) The Court denied the motion to stay after a hearing on April 29, 2021. (Dkt. 288.)

J. Meanwhile, Plaintiffs moved to strike Kronos's affirmative defenses as amended. (Dkt. 285.) This motion was fully briefed (dkt. 294, 298), and argued at a hearing on June 29, 2021 (dkt. 299), after which the Court took it under advisement. The Court ultimately denied the

motion to strike on July 20, 2021. (Dkt. 307.) The Court then granted in part and denied in part the pending discovery motions concerning the subpoenas to the absent class. (Dkt. 323.)

K. All the while, the Parties proceeded in discovery. Plaintiffs issued additional requests for production to Kronos on August 24, 2020, and November 20, 2020. Over the course of several months, Kronos produced more than a hundred thousand pages of documents, which Plaintiffs reviewed. Plaintiffs also issued subpoenas to Idemia Identity & Security USA LLC on March 9, 2021, and a subpoena to MorphoTrust USA LLC on March 29, 2021. Idemia responded for both entities on April 23, 2021 and produced documents shortly thereafter.

L. With written discovery substantially complete in the spring of 2021, the Parties proceeded into depositions. Kronos took each Plaintiffs' deposition, one on May 28 and the other on June 2, 2021. Plaintiffs provided Kronos with a list of ten intended deponents in March of 2021, and scheduled depositions through the spring and summer of 2021. Beginning in May and continuing through July of 2021, Plaintiffs took six depositions of current and former Kronos employees ranging from product managers to senior directors of the company.

M. Amid the discovery and motion practice, the Parties agreed that a mediation would be productive. The Parties asked the Court to stay its ruling on the pending discovery motions in light of the forthcoming mediation, which the Court granted. (Dkt. 313, 319.) The Parties participated in a full-day mediation with Judge James F. Holderman (Ret.) of JAMS on August 31, 2021. That mediation was productive but ultimately not successful.

N. Plaintiffs issued a 30(b)(6) deposition notice to Kronos on September 17, 2021 and took another deposition of a current senior director on September 22, 2021. More depositions were scheduled.

O. The Parties, meanwhile, continued to consider the possibility of settlement. The Parties exchanged a number of drafts of a binding Memorandum of Understanding and engaged in several telephone and Zoom conferences beginning in mid-September and through mid-October.

P. Ultimately, after dozens of e-mails, phone calls, and numerous edits on the draft, the Parties executed a binding Memorandum of Understanding late in the evening on October 20, 2021.

Q. Plaintiffs and Class Counsel conducted a comprehensive examination of the law and facts relating to the allegations in the Action and Kronos's potential defenses. Plaintiffs believe that the claims asserted in the Action have merit, that they would have ultimately succeeded in obtaining adversarial certification of the proposed Settlement Class, and that they would have prevailed on the merits at summary judgment or at trial.

R. However, Plaintiffs and Class Counsel recognize that Kronos has raised factual and legal defenses in the Action that presented a significant risk that Plaintiffs may not prevail and/or that a class might not be certified for trial. Class Counsel have also taken into account the uncertain outcome and risks of any litigation, especially in complex actions, as well as difficulty and delay inherent in such litigation.

S. Plaintiffs and Class Counsel believe that this Agreement presents an exceptional result for the Settlement Class, and one that will be provided to the Settlement Class without delay. Plaintiffs and Class Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and based on good faith negotiations, and in the best interests of Plaintiffs and the Settlement Class. Therefore, Plaintiffs believe that it is desirable that the

Released Claims be fully and finally compromised, settled, and resolved with prejudice, and forever barred pursuant to the terms and conditions set forth in the Settlement Agreement.

T. Kronos denies the material allegations in the Action, as well as all allegations of wrongdoing and liability, including that it is subject to or violated BIPA, and believes that it would have prevailed on the merits and that a class would not be certified for trial. Nevertheless, Kronos has similarly concluded that this settlement is desirable to avoid the time, risk, and expense of defending protracted litigation, and to avoid the risk posed by the Settlement Class's claims for statutory damages under BIPA. Kronos thus desires to resolve finally and completely the pending and potential claims of Plaintiffs and the Settlement Class.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiffs, the Settlement Class, and Defendant that, subject to the approval of the Court after a hearing as provided for in this Settlement Agreement, and in consideration of the benefits flowing to the Parties from the Settlement set forth herein, the Released Claims shall be fully and finally compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions set forth in this Settlement Agreement.

AGREEMENT

1. DEFINITIONS

In addition to any definitions set forth elsewhere in this Settlement Agreement, the following terms shall have the meanings set forth below:

1.1 “**Action**” means the case captioned *Figueroa v. Kronos Incorporated*, No. 1:19-CV-01306 (N.D. Ill.).

1.2 “**Agreement**” or “**Settlement Agreement**” means this Stipulation of Class Action Settlement and the attached Exhibits.

1.3 “**Approved Claim**” means a Claim Form submitted by a Settlement Class Member that (a) is timely and submitted in accordance with the directions on the Claim Form and the terms of this Agreement, (b) is fully completed and physically or electronically signed by the Settlement Class Member, and (c) satisfies the conditions of eligibility for a Settlement Payment as set forth in this Agreement.

1.4 “**Claims Deadline**” means the date by which all Claim Forms must be postmarked or submitted on the Settlement Website to be considered timely and shall be set as a date no later than ninety (90) days following the Notice Date, subject to Court approval. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order, as well as in the Notice and the Claim Form.

1.5 “**Claim Form**” means the document substantially in the form attached hereto as Exhibit A, as approved by the Court. The Claim Form, which shall be completed by Settlement Class Members who wish to file a claim for a Settlement Payment, shall be available in paper and electronic format. The Claim Form will require claiming Settlement Class Members to provide the following information: (i) full name, (ii) current U.S. Mail address, and (iii) current contact telephone number and email address. The Claim Form will not require notarization but will require affirmation that the information supplied is true and correct. The online Claim Form will provide Class Members with the option of having their Settlement Payment transmitted to them electronically through Venmo, Zelle, Paypal, or a check. Class Members who submit a paper Claim Form that is approved will be sent a check via U.S. Mail.

1.6 “**Class Counsel**” means attorneys Jay Edelson and J. Eli Wade-Scott of Edelson PC and Ryan F. Stephan and James B. Zouras of Stephan Zouras, LLP.

1.7 **“Class List Determination Date”** means the date upon which a final determination of the Class List is reached as described in Section 7.2(f).

1.8 **“Class Representatives”** or **“Plaintiffs”** means the named Plaintiffs in the Action, Charlene Figueroa and Jermaine Burton.

1.9 **“Court”** means the United States District Court for the Northern District of Illinois, Eastern Division, the Honorable Gary Feinerman presiding, or any judge who shall succeed him as the Judge assigned to the Action.

1.10 **“Kronos Customer Contact Date”** means the date by which Kronos will contact the Illinois Kronos Cloud Customers in accordance with the Confirmatory Discovery provisions contained at Section 7.2 herein, and shall be no later than March 7, 2022.

1.11 **“Defendant”** or **“Kronos”** means Kronos Incorporated.

1.12 **“Defendant’s Counsel”** or **“Kronos’s Counsel”** means attorneys Melissa A. Siebert, Erin Bolan Hines, and Maveric Ray Searle of Shook, Hardy, & Bacon LLP, and Debra Bernard of Perkins Coie LLP.

1.13 **“Effective Date”** means one business day following the later of: (i) the date upon which the time expires for filing or noticing any appeal of the Final Approval Order; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award or incentive award, the date of completion, in a manner that finally affirms and leaves in place the Final Approval Order without any material modification, of all proceedings arising out of the appeal(s) (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal(s) following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari

with respect to the Final Approval Order. If there are no objectors, the Effective Date is one day after the Final Approval Order.

1.14 **“Escrow Account”** means the separate, interest-bearing escrow account to be established by the Settlement Administrator under terms acceptable to Class Counsel and Defendant at a depository institution insured by the Federal Deposit Insurance Corporation. The money in the Escrow Account shall be invested in the following types of accounts and/or instruments and no other: (a) demand deposit accounts and/or (b) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or less. Any interest earned on the Escrow Account shall inure to the benefit of the Settlement Class as part of the Settlement Payment, if practicable. The Settlement Administrator shall be responsible for all tax filings with respect to the Escrow Account.

1.15 **“Fee Award”** means the amount of attorneys’ fees and reimbursement of costs awarded to Class Counsel by the Court to be paid out of the Settlement Fund.

1.16 **“Final Approval Hearing”** means the hearing before the Court where Plaintiffs will request that the Final Approval Order be entered by the Court finally approving the Settlement as fair, reasonable, adequate, and approving the Fee Award and the incentive award to the Class Representatives.

1.17 **“Final Approval Order”** means the final approval order to be entered by the Court approving the settlement of the Action in accordance with this Settlement Agreement after the Final Approval Hearing and dismissing the Action with prejudice.

1.18 **“Illinois Kronos Cloud Customers”** means all individuals and/or entities who use, contract for, and/or otherwise utilize the Kronos Cloud to store finger scan data from a Kronos brand time clock with a finger scan attachment with ship-to and/or bill-to information in

Illinois, and any additional users of Kronos Cloud with pending BIPA lawsuits not otherwise included in the ship-to/bill-to information.

1.19 “**Kronos Cloud**” means data storage servers made available by Kronos to its customers that are accessed over the internet, and/or the data storage servers that are accessed over the internet of any company acquired by Kronos or retained by Kronos to provide data storage services.

1.20 “**Notice**” means the notice of the proposed Settlement and Final Approval Hearing, which is to be disseminated to the Settlement Class substantially in the manner set forth in this Settlement Agreement, fulfills the requirements of Due Process and Federal Rule of Civil Procedure 23, and is substantially in the form of the Exhibits attached hereto.

1.21 “**Notice Date**” means the date by which the Notice is disseminated to the Settlement Class and shall be a date no later than three (3) weeks after the Class List Determination Date.

1.22 “**Objection/Exclusion Deadline**” means the date by which a written objection to the Settlement Agreement by a Class Member must be filed with the Court or a request for exclusion submitted by a person within the Settlement Class must be postmarked or received by the Settlement Administrator, which shall be designated as a date ninety (90) days after the Notice Date, as approved by the Court. The Objection/Exclusion Deadline will be set forth in the Notice and on the Settlement Website.

1.23 “**Preliminary Approval Order**” means the Court’s order preliminarily approving the Agreement, certifying the Settlement Class for settlement purposes, and approving the form and manner of the Notice.

1.24 **“Plaintiffs’ Expert”** means an expert retained by Plaintiffs for purposes of confirmatory discovery and providing information to the Settlement Administrator, as discussed in Section 5.1 and 7.2. The Plaintiffs’ Expert will be Mark Rapazzini from Kroll Business Services.

1.25 **“Proprietary Information”** means information that identifies or that could identify Illinois Kronos Cloud Customers or individual class members obtained by Kronos.

1.26 **“Released Claims”** means any and all past and present claims or causes of action related to BIPA, including, but not limited to, any claims arising out of BIPA, tort or privacy claims, or any other federal, state, or local statute, regulation, or common law, arising out of or related to the alleged possession, collection, capture, purchase, receipt through trade, obtaining, sale, lease, trade, profit from, disclosure, re-disclosure, dissemination, storage, transmittal, and/or protection from disclosure of alleged biometric information or biometric identifiers.

1.27 **“Released Parties”** means Kronos, and its agents, subsidiaries and parents and their respective managers, employees, officers, directors, partners, members, owners, heirs, executors, predecessors, successors, assigns, insurers, agents, and attorneys. Released Parties expressly excludes any of Defendant’s customers, such as i) Kronos’s customers that are employers in Illinois; ii) Kronos’s customers that use, contract for and/or utilize Kronos brand time clocks; and/or iii) Kronos Cloud Customers.

1.28 **“Releasing Parties”** means Plaintiffs and each Settlement Class Member and their respective present or past heirs, executors, estates, administrators, assigns and agents.

1.29 **“Settlement”** or **“Settlement Agreement”** means the final resolution of the Action as embodied by the terms and conditions of this Settlement Agreement.

1.30 “**Settlement Administration Expenses**” means the expenses reasonably incurred by the Settlement Administrator in or relating to administering the Settlement, providing Notice, creating and maintaining the Settlement Website, receiving and processing Claim Forms, dispersing Settlement Payments, related tax expenses, fees of the escrow agent, and other such related expenses, with all such expenses to be paid from the Settlement Fund.

1.31 “**Settlement Administrator**” means Kroll Business Services, subject to approval of the Court, which will provide the Notice, create and maintain the Settlement Website, receive and process Claim Forms, send Settlement Payments to Settlement Class Members, be responsible for tax reporting, and perform such other settlement administration matters set forth herein or contemplated by the Settlement.

1.32 “**Settlement Class**” means all persons who used a Kronos brand time clock with a finger sensor attachment for timekeeping purposes in Illinois and whose finger-scan data was hosted by Kronos between January 18, 2014, and thirty days after the date the Court enters the Preliminary Approval Order. Excluded from the Settlement Class are: (1) any Judge or Magistrate presiding over this action and members of their families, (2) Defendant, Defendant’s subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, (3) persons who properly execute and file a timely request for exclusion from the class, (4) the legal representatives, successors or assigns of any such excluded persons, (5) individuals who only scanned at (i) a State or local government agency; (ii) a banking institution subject to Title V of the federal Gramm-Leach Bliley Act of 1999; or (iii) a court of Illinois, a clerk of the court, or any judge or justice thereof, and (6) persons who were members of the settlement class in the *Diaz v. Greencore, Inc.*, 2017-CH-13198 (Cir. Ct. Cook Cty.) and *Dixon v. Washington Jane Smith Home*, 17-cv-8033 (N.D. Ill.) settlements. The

definition of Settlement Class does not encompass individuals who used finger sensors at employers who never used Kronos Cloud, nor does it encompass individuals who used finger sensors exclusively during a time frame that their employers did not use Kronos Cloud.

1.33 “**Settlement Class List**” or “**Class List**” means the list provided by Defendant or Class Counsel to the Settlement Administrator containing a list of all names, personal e-mail addresses (where available), and last known U.S. mail addresses of all persons in the Settlement Class for whom Defendant or Class Counsel was able to obtain such information pursuant to the process outlined in Section 7.2.

1.34 “**Settlement Class Member**” or “**Class Member**” means a person who falls within the definition of the Settlement Class and who does not submit a valid request for exclusion from the Settlement Class.

1.35 “**Settlement Fund**” means the non-reversionary cash fund that shall be established by Defendant in the amount of Fifteen Million Two Hundred Seventy-Six Thousand Two Hundred and Twenty-Seven dollars (\$15,276,227.00). Within twenty-one (21) days of the entry of the Preliminary Approval Order, Kronos, its insurer(s), or any other party on behalf of Kronos, shall deposit \$750,000 (Seven Hundred and Fifty Thousand Dollars) into the Escrow Account for the purpose of funding Settlement Administration Expenses. If the deposit date falls on Christmas Eve or New Year’s Eve, then the deposit will be made on the Monday following the holiday. Within ten (10) business days of Final Approval, assuming that there are no objections or appeals, Kronos shall transmit the remaining balance of the Settlement Fund to the Escrow Account. In no circumstance shall the Settlement Fund be less than \$15,276,227.00. Subject to confirmatory discovery and potential upward adjustment as set forth in Sections 7.2-7.3, the Settlement Fund shall satisfy all monetary obligations of Defendant under this

Settlement Agreement, including the Fee Award, litigation costs, Settlement Administration Expenses, payments to the Settlement Class Members, any incentive award, and any other payments or other monetary obligations contemplated by this Agreement. The Settlement Fund shall be kept in the Escrow Account with permissions granted to the Settlement Administrator to access said funds until such time as the above-listed payments are made. In no event shall any amount paid by Defendant into the Escrow Account, or any interest earned thereon, revert to Defendant or any other Released Party.

1.36 “**Settlement Payment**” means a *pro rata* portion of the Settlement Fund less any Fee Award, incentive award to the Class Representatives, and Settlement Administration Expenses.

1.37 “**Settlement Website**” means the website to be created, launched, and maintained by the Settlement Administrator, which will provide access to relevant settlement administration documents, including the Notice, relevant court filings, and the ability to submit Claim Forms online. The Settlement Website shall be live and active by the Notice Date, and the URL of the Settlement Website shall be www.kronosbipasettlement.com, or such other URL as the Parties may subsequently agree to.

2. SETTLEMENT RELIEF

2.1 Settlement Payments to Settlement Class Members.

a. Settlement Class Members shall have until the Claims Deadline to submit Claim Forms. Each Settlement Class Member who submits an Approved Claim shall be entitled to a Settlement Payment.

b. The Settlement Administrator shall have sole and final authority for determining if Settlement Class Members’ Claim Forms are complete, timely, and

accepted as an Approved Claim.

c. Within twenty-eight (28) days of the Effective Date, or such other date as the Court may set, the Settlement Administrator shall send Settlement Payments from the Settlement Fund by electronic deposit or by check via First Class U.S. Mail to the account or address provided on the Approved Claim Form, as elected by the Class Member with an Approved Claim.

d. Each payment issued to a Class Member by check will state on the face of the check that it will become null and void unless cashed within one hundred and twenty (120) calendar days after the date of issuance.

e. In the event that an electronic deposit to a Class Member is unable to be processed, the Settlement Administrator shall attempt to contact the Class Member within thirty (30) calendar days to correct the problem.

f. To the extent that a check issued to a Settlement Class Member is not cashed within one hundred twenty (120) days after the date of issuance, or an electronic deposit is unable to be processed within one hundred twenty (120) days of the first attempt, such funds shall be distributed as *cy pres* to Legal Aid Chicago (earmarked for workers' rights representation) and American Civil Liberties Union of Illinois or other appropriate entity agreed upon by the Parties and approved by the Court.

2.2 Prospective Relief.

a. Defendant agrees that, on or before the Effective Date, it shall implement the following policies and procedures should Defendant continue to use Kronos Cloud to host finger scan data provided by Illinois Kronos Cloud Customers:

i. Defendant shall notify its Illinois Kronos Cloud Customers that, to

the extent they are using Kronos time clocks with finger-sensor attachments, the Illinois Kronos Cloud Customers shall:

1. Establish a retention and destruction schedule that complies with BIPA and need to follow that schedule with timely data deletion;
2. Notify the subjects of collection, in writing, that finger-sensor data, which may be considered biometric information under BIPA, is being collected, stored, used, and disclosed by the Illinois Kronos Cloud Customer and/or Kronos;
3. Notify the subjects of collection in writing of the purposes and length of term that finger-sensor data is being collected, stored, used and disclosed; and
4. Obtain a written release to the collection, storage, use and disclosure by the Illinois Kronos Cloud Customer and by Kronos.

3. RELEASE

3.1 **The Release.** Upon the Effective Date, and in consideration of the settlement relief and other consideration described herein, the Releasing Parties, and each of them, shall be deemed to have released, and by operation of the Final Approval Order shall have, fully, finally, and forever released, acquitted, relinquished and completely discharged the Released Parties from any and all Released Claims.

4. NOTICE TO THE CLASS

4.1 The Notice shall include:

a. *Class List.* After the Class List Determination Date, Plaintiffs' Expert shall provide the Settlement Administrator with the Class List pursuant to Section 7.2(f), copying Kronos. All Illinois Kronos Cloud Customers' information provided to the Settlement Administrator from Kronos will be considered Proprietary Information and will not be shared with Class Counsel except as necessary to effectuate Notice. To the extent that it is necessary to disclose Proprietary Information to Class Counsel, the Parties will work cooperatively to determine ways to avoid that information being shared. In the event that no agreement can be reached, and Class Counsel determines it is necessary for Class Counsel to get limited Proprietary Information, Kronos expressly reserves the right to seek a protective order from Magistrate Judge Gilbert prior to Class Counsel receiving any such information. Class Counsel agrees that they shall not disclose or use, directly or indirectly, any information pertaining to Illinois Customers that is disclosed to them hereunder for any purpose other than effectuating the Settlement.

b. The Class List may not be used by the Settlement Administrator for any purpose other than advising specific individual Settlement Class members of their rights, mailing Settlement Payments, and otherwise effectuating the terms of the Settlement Agreement or the duties arising thereunder, including the provision of Notice of the Settlement.

c. The Notice shall include the best notice practicable, including but not limited to:

i. *Update Addresses.* Prior to mailing any Notice, the Settlement Administrator will update the U.S. mail addresses of persons on the Class List using the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. The Settlement Administrator shall take all reasonable steps to obtain the correct address of any Settlement

Class members for whom Notice is returned by the U.S. Postal Service as undeliverable and shall attempt re-mailings as described below.

ii. *Direct Notice.* The Settlement Administrator shall send Notice via e-mail substantially in the form of Exhibit B to all persons in the Settlement Class for whom a personal email address is available on the Class List no later than the Notice Date. The Settlement Administrator is authorized to send up to three (3) reminder emails to each person on the Class List with an email at the request of Class Counsel. The reminder emails shall be substantially in the form of Exhibit B, with minor, non-material modifications to indicate that it is a reminder email rather than an initial notice. The Settlement Administrator shall also, no later than the Notice Date, send a Notice via First Class U.S. Mail substantially in the form of Exhibit C to each such Settlement Class member's physical address in the Class List.

iii. *Internet Notice.* No later than the Notice Date, the Settlement Administrator will develop, host, administer and maintain a Settlement Website containing the notice substantially in the form of Exhibit D. The Settlement Website shall include a toll-free phone number and mailing address through which persons in the Settlement Class may contact the Settlement Administrator or Class Counsel directly.

iv. *CAFA Notice.* Pursuant to 28 U.S.C. § 1715, not later than ten (10) days after the Agreement is filed with the Court, the Settlement Administrator shall cause to be served upon the Attorneys General of each U.S. State in which Settlement Class members reside, the Attorney General of the United States, and

other required government officials, notice of the proposed settlement as required by law.

4.2 The Notice shall advise the Settlement Class of their rights under the Settlement, including the right to be excluded from or object to the Settlement Agreement or its terms. The Notice shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing, only if, on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice, the person making an objection shall file notice of his or her intention to do so and at the same time (a) files copies of such papers he or she proposes to submit at the Final Approval Hearing with the Clerk of the Court, (b) files copies of such papers through the Court's CM/ECF system if the objection is from a Settlement Class Member represented by counsel, who must also file an appearance, and (c) sends copies of such papers via e-mail, U.S. mail, hand, or overnight delivery service to Class Counsel and Defendant's Counsel.

4.3 **Right to Object or Comment.** Any Settlement Class Member who intends to object to this Settlement Agreement must present the objection in writing, which must be personally signed by the objector and must include: (a) the Settlement Class Member's full name and current address, (b) a statement that he or she believes himself or herself to be a member of the Settlement Class, (c) whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class, (d) the specific grounds for the objection, (e) all documents or writings that the Settlement Class Member desires the Court to consider, (f) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection, and (g) a statement indicating whether the objector

intends to appear at the Final Approval Hearing (either personally or through counsel, who must file an appearance or seek *pro hac vice* admission). Any Settlement Class Member who fails to timely file a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Section and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, shall be foreclosed from seeking any review of this Settlement Agreement or the Final Approval Order by appeal or other means, and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action in any other action or proceeding.

4.4 **Right to Request Exclusion.** Any person in the Settlement Class may submit a request for exclusion from the Settlement on or before the Objection/Exclusion Deadline. To be valid, any request for exclusion must (a) be in writing; (b) identify the case name *Figueroa v. Kronos Incorporated*, No. 19-cv-1306 (N.D. Ill.); (c) state the full name and current address of the person in the Settlement Class seeking exclusion; (d) be signed by the person(s) seeking exclusion; and (e) be postmarked or received by the Settlement Administrator on or before the Objection/Exclusion Deadline. In light of the COVID-19 pandemic, the Settlement Administrator shall create a dedicated e-mail address to receive exclusion requests electronically. Each request for exclusion must also contain a statement to the effect that “I hereby request to be excluded from the proposed Settlement Class in *Figueroa v. Kronos Incorporated*, No. 19-cv-1306 (N.D. Ill.).” A request for exclusion that does not include all of the foregoing information, that is sent to an address or e-mail address other than that designated in the Notice, or that is not postmarked or electronically delivered to the Settlement Administrator within the time specified, shall be invalid and the persons serving such a request shall be deemed to remain Settlement

Class Members and shall be bound as Settlement Class Members by this Settlement Agreement, if approved. Any person who elects to request exclusion from the Settlement Class shall not (a) be bound by any orders or the Final Approval Order entered in the Action, (b) receive a Settlement Payment under this Settlement Agreement, (c) gain any rights by virtue of this Settlement Agreement, or (d) be entitled to object to any aspect of this Settlement Agreement or the Final Approval Order or Alternative Approval Order (as defined below). No person may request to be excluded from the Settlement Class through “mass” or “class” opt-outs.

5. SETTLEMENT ADMINISTRATION

5.1 Settlement Administrator’s Duties.

a. *Non-disclosure Obligation:* The Settlement Administrator shall enter into a non-disclosure agreement that provides that any and all Illinois Kronos Cloud Customers’ information provided to the Settlement Administrator from Kronos will be considered Proprietary Information and will not be shared with Class Counsel except as necessary to effectuate notice, as provided in Section 4.1 of this Settlement Agreement.

b. *Dissemination of Notices.* The Settlement Administrator shall disseminate the Notice as provided in Section 4 of this Settlement Agreement.

c. *Undeliverable Notice via U.S. Mail.* If any Notice sent via U.S. mail is returned as undeliverable, the Settlement Administrator shall forward it to any forwarding addresses provided by the U.S. Postal Service. If no such forwarding address is provided, the Settlement Administrator shall perform skip traces to attempt to obtain the most recent addresses for such Settlement Class members.

d. *Maintenance of Records.* The Settlement Administrator shall maintain reasonably detailed records of its activities under this Settlement Agreement. The

Settlement Administrator shall maintain all such records as required by applicable law in accordance with its business practices and such records will be made available to Class Counsel and Defendant's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide weekly reports to Class Counsel and Defendant's Counsel with information concerning the Notice, the number of Claim Forms submitted, the number of Approved Claims, any requests for exclusion, and the administration and implementation of the Settlement. The Settlement Administrator shall make available for inspection by Defendant's Counsel all of the Approved Claim Forms received by the Settlement Administrator at any time upon reasonable notice. The Settlement Administrator shall confirm whether an individual submitted an Approved Claim Form upon request by Class Counsel. The Settlement Administrator shall make available for inspection by Class Counsel and Defendant's Counsel the Claim Forms for denied Claims received by the Settlement Administrator at any time upon reasonable notice. The Settlement Administrator will redact information that identifies the Claimant's employer prior to making any Claim Forms available for inspection by Class Counsel. Should the Court request, the Parties shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a post-distribution accounting of all amounts from the Settlement Fund paid to Settlement Class Members, the number and value of checks not cashed, the number and value of electronic payments unprocessed, and the amount distributed to any *cy pres* recipient.

e. *Receipt of Requests for Exclusion.* The Settlement Administrator shall receive requests for exclusion from persons in the Settlement Class and provide to Class

Counsel and Defendant's Counsel a copy thereof within five (5) days of the Objection/Exclusion Deadline. If the Settlement Administrator receives any requests for exclusion or other requests from Settlement Class Members after the Objection/Exclusion Deadline, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel.

f. *Processing Claim Forms.* The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner. The Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud, including by cross-referencing Approved Claims with the Class List. The Settlement Administrator shall determine whether a Claim Form submitted by a Settlement Class Member is an Approved Claim and shall reject Claim Forms that fail to (a) comply with the instructions on the Claim Form or the terms of this Agreement, or (b) provide full and complete information as requested on the Claim Form. In the event a person submits a timely Claim Form by the Claims Deadline, but the Claim Form is not otherwise complete, then the Settlement Administrator shall give such person reasonable opportunity to provide any requested missing information, which information must be received by the Settlement Administrator no later than twenty-eight (28) calendar days after the Claims Deadline. In the event the Settlement Administrator does not receive such information within twenty-eight (28) calendar days after the Claims Deadline, then any such claim shall be denied. The Settlement Administrator may contact any person

who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form.

g. *Timing of Settlement Payments.* The Settlement Administrator shall make Settlement Payments contemplated in Section 2 of this Settlement Agreement to all Settlement Class Members, who, if necessary, have completed required tax forms, within twenty-eight (28) days after the Effective Date.

h. *Tax Reporting.* The Settlement Administrator shall be responsible for all tax filings related to the Escrow Account, including requesting Form W-9's from Settlement Class Members and performing back-up withholding as necessary, and making any required "information returns" as that term is used in 26 U.S.C. § 1 *et seq.* Neither Class Counsel nor Defendant make any representations regarding the tax treatment of the Settlement Fund nor will Defendant accept any responsibility for the tax treatment to the Settlement Payments received by any Settlement Class Member.

6. PRELIMINARY APPROVAL AND FINAL APPROVAL

6.1 **Preliminary Approval.** Promptly after execution of this Settlement Agreement, Class Counsel shall submit this Settlement Agreement to the Court and shall move the Court to enter a Preliminary Approval Order, which shall include, among other provisions, a request that the Court:

- a. Appoint Plaintiffs as Class Representatives of the Settlement Class for settlement purposes only;
- b. Appoint Class Counsel to represent the Settlement Class;
- c. Certify the Settlement Class under Federal Rule of Civil Procedure 23, for settlement purposes only;

d. Preliminarily approve this Settlement Agreement for purposes of disseminating Notice to the Settlement Class; and

e. Approve the form and contents of the Notice and the method of its dissemination to members of the Settlement Class.

One week prior to the Notice Date, the Parties will request that the Court schedule a status hearing to set the date for the Final Approval Hearing after the expiration of the CAFA notice period, to review comments and/or objections regarding this Settlement Agreement, to consider its fairness, reasonableness and adequacy, to consider the application for a Fee Award and incentive award to the Class Representatives, and to consider whether the Court shall enter a Final Approval Order approving this Settlement Agreement and dismissing the Action with prejudice.

6.2 Final Approval. After Notice to the Settlement Class is given, Class Counsel shall move the Court for entry of a Final Approval Order, which shall include, among other provisions, a request that the Court:

a. find that it has personal jurisdiction over all Settlement Class Members and subject matter jurisdiction to approve this Settlement Agreement, including all attached Exhibits;

b. approve the Settlement as fair, reasonable and adequate as to, and in the best interests of, the Settlement Class Members;

c. direct the Parties and their counsel to implement and consummate the Settlement according to its terms and conditions;

d. declare the Settlement to be binding on, and have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and all other Settlement Class Members and Releasing Parties;

e. find that the Notice implemented pursuant to the Settlement Agreement (1) constitutes the best practicable notice under the circumstances, (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and their rights to object to or exclude themselves from this Settlement Agreement and to appear at the Final Approval Hearing, (3) is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice, and (4) fulfills the requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court;

f. find that the Class Representatives and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement;

g. dismiss the Action on the merits and with prejudice, without fees or costs to any Party except as provided in this Settlement Agreement;

h. incorporate the Release set forth above, make the Release effective as of the Effective Date, and forever discharge the Released Parties as set forth herein;

i. authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement and its implementing documents (including all Exhibits to this Settlement Agreement) that (i) shall be consistent in all material respects with the Final Approval Order, and (ii) do not limit the rights of Settlement Class Members;

j. without affecting the finality of the Final Approval Order for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement and interpretation of the Settlement Agreement and the Final Approval Order, and for any other necessary purpose; and

6.3 **Cooperation.** The Parties shall, in good faith, cooperate, assist and undertake all reasonable actions and steps in order to accomplish these required events on the schedule set by the Court, subject to the terms of this Settlement Agreement.

7. TERMINATION OF THE SETTLEMENT AGREEMENT, CONFIRMATORY DISCOVERY, & ADJUSTMENT OF THE SETTLEMENT FUND

7.1 **Termination.** Subject to Section 9 below, the Class Representatives, on behalf of the Settlement Class, or Defendant, shall have the right to terminate this Agreement by providing written notice of the election to do so to Class Counsel or Defendant's Counsel within ten (10) days of any of the following events: (i) the Court's refusal to enter the Preliminary Approval Order approving of this Agreement in any material respect; (ii) the Court's refusal to enter the Final Approval Order in this Action in any material respect; (iii) the Court's refusal to enter a final judgment in this Action in any material respect; (iv) the date upon which the Final Approval Order is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; or (v) the date upon which an Alternative Approval Order is modified or reversed in any material respect by the Court of Appeals or the Supreme Court. If the Class List exceeds 200,000 total individuals as determined by the confirmatory discovery process below, the Parties shall return to mediation with Judge Holderman, but the Agreement is voidable at the option of either Plaintiffs or Defendant upon seven (7) days' written notice by electronic mail. If the Class List exceeds 200,000 total individuals, at any time between the Class List Determination Date and the date the Agreement becomes void, Plaintiffs may unilaterally exercise the option to accept a total

Settlement Fund amount of Seventeen Million Eight Hundred Thousand dollars (\$17,800,000.00). Plaintiffs' exercise of this option will prevent the Agreement from becoming void. Plaintiffs may exercise this option without returning to mediation with the Defendant and without waiting for Defendant to provide notice of intention to void the agreement.

7.2 Confirmatory Discovery. Defendant has represented that there are approximately 171,643 persons in the Settlement Class. The size of the Settlement Class and Class List shall be confirmed through the following process:

a. By no later than the Kronos Customer Contact Date, Kronos will contact all Illinois Kronos Cloud Customers and request the name, email address, and last-known U.S. mailing address information for all individuals in the Settlement Class. Kronos shall request that the Illinois Kronos Cloud Customers respond no later than thirty-five (35) days after the Kronos Customer Contact Date;

b. Plaintiffs' Expert will have access to all the information that Kronos obtains from the Illinois Kronos Cloud Customers on an expert's eyes-only basis to verify its receipt and to ask Kronos questions about the information. Plaintiffs' Expert and Kronos will execute a non-disclosure agreement that governs the protection of the information received from the Illinois Kronos Cloud Customers. The Parties must agree on the content of the non-disclosure agreement between Plaintiffs' Expert and Kronos, which must include that Plaintiffs' Expert will not share individual class member information or information that identifies the Illinois Kronos Cloud Customer with Plaintiffs or Class Counsel but may share any other information necessary to describe the quantity, quality, or issues with the acquired information to Plaintiffs as necessary to effectuate an accurate Settlement Class List. If the Parties do not agree on the content of

the non-disclosure agreement, this matter shall be submitted to Magistrate Judge Gilbert (or a judge sitting in his stead) to resolve the dispute. To the extent there is a dispute about sharing information with Plaintiffs, such disputes shall be resolved by Magistrate Judge Gilbert;

c. Within forty-two (42) days of the Kronos Customer Contact Date, Kronos shall compile all information received from the Illinois Kronos Cloud Customers and will provide Class List information to Plaintiffs' Expert. At the same time, Kronos will provide Class Counsel with a list of all Illinois Kronos Cloud Customers who declined to provide the name, email address, and last-known U.S. mailing address information for all individuals in the Settlement Class;

d. Within fourteen (14) days of receiving the list of non-compliant Illinois Kronos Cloud Customers, Plaintiffs will subpoena any Illinois Kronos Cloud Customers who decline to voluntarily provide the name, email address, and last-known U.S. mailing address information for all individuals in the Settlement Class to Kronos. Class Counsel will have a return date for compliance on all subpoenas of twenty-eight (28) days for non-compliant Illinois Kronos Cloud Customers to provide the name, email address, and last-known U.S. mailing address of members of the Settlement Class;

e. Within seven (7) days of receiving subpoena responses from Illinois Kronos Cloud Customers, Class Counsel will (1) provide Plaintiffs' Expert with the name, email address, and last-known U.S. mailing address information for all individuals in the Settlement Class obtained; and (2) initiate proceedings to compel responses from any Illinois Kronos Cloud Customers that fails to comply with the subpoena;

f. Unless there is a pending request for judicial resolution of any subpoena, within seven (7) days of receiving the name, personal email address, and last-known U.S. mailing address information for individuals in the Settlement Class obtained from Class Counsel's subpoenas, Plaintiffs (in conjunction with Plaintiffs' Expert) will confirm the total number of individuals in the Settlement Class to Kronos and provide the information that it obtained through the subpoena process to arrive at this number. In the event that the Parties disagree on the number of individuals or propriety of certain individuals' inclusion in the Settlement Class, the Parties will meet and confer over the subsequent fourteen (14) days to attempt to resolve the dispute. If the Parties are unable to resolve the dispute within that time, the dispute will be resolved by Magistrate Judge Gilbert. Once the Parties have reached agreement or Magistrate Judge Gilbert has resolved disputes, the individuals identified through the foregoing process (as agreed or decided by Magistrate Judge Gilbert) will comprise the Class List. Once agreed or decided, there will be no further changes to the Class List.

g. The Parties will request referral of the case to Magistrate Judge Gilbert, pursuant to FRCP 72(a), for oversight of the information-gathering/subpoena process and resolution of any disputes in connection with carrying out the confirmatory discovery in this Section. Determinations by Magistrate Judge Gilbert shall be final and binding when entered. If the Parties are unable to come to an agreement, then either Party may seek resolution of the dispute by filing a motion before Magistrate Judge Gilbert. The Parties each agree to waive any and all rights to appeal Magistrate Judge Gilbert's final determination of any dispute related to this confirmatory discovery, including the right to appeal to the district judge pursuant to Federal Rule of Civil Procedure 72(a) and any right

to appeal to the United States Court of Appeals for the Seventh Circuit, but not their right to contest such determination in mediation should the Parties return to mediation before Judge Holderman pursuant to Section 7.3 of this Agreement.

7.3 Adjustment of Settlement Fund. Following the Class List Determination Date, if the Class List exceeds 180,225 individuals, the Settlement Fund shall equal eighty-nine dollars (\$89) per person on the Class List. By way of example, if the Settlement Class Size after the Class List Determination Date is 190,000 individuals, then the Settlement Fund will be \$16,910,000.00. If, after the Class List Determination Date, the Settlement Class Size exceeds 200,000 total individuals, the Parties shall return to mediation with Judge Holderman, but the Agreement is voidable at the option of either Plaintiffs or Defendant upon seven days' written notice by electronic mail, subject to Plaintiffs' unilateral option to accept a total Settlement Fund amount of Seventeen Million Eight Hundred Thousand dollars (\$17,800,000.00) as set forth in Section 7.1 above.

8. INCENTIVE AWARD AND CLASS COUNSEL'S ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

8.1 Defendant agrees that Class Counsel is entitled to reasonable attorneys' fees and unreimbursed expenses incurred in the Action as the Fee Award from the Settlement Fund. The amount of the Fee Award shall be determined by the Court based on petition from Class Counsel. Class Counsel has agreed, with no consideration from Defendant, to limit their request for attorneys' fees and unreimbursed costs to thirty-three percent (33%) of the Settlement Fund, after costs of Notice and Settlement Administration Expenses are deducted. Defendant may challenge the amount requested. Payment of the Fee Award shall be made from the Settlement Fund and should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this Section shall remain in

the Settlement Fund and be distributed to Settlement Class Members with Approved Claims as Settlement Payments. The Fee Award shall be payable within five (5) business days after the Effective Date. Payment of the Fee Award shall be made by the Settlement Administrator via wire transfer to accounts designated by Class Counsel after providing necessary information for electronic transfer.

8.2 Defendant agrees that the Class Representatives shall each be paid an incentive award in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00) from the Settlement Fund, in addition to any Settlement Payment pursuant to this Settlement Agreement and in recognition of their efforts on behalf of the Settlement Class, subject to Court approval. Should the Court award less than this amount, the difference in the amount sought and the amount ultimately awarded pursuant to this Section shall remain in the Settlement Fund and be distributed to Settlement Class Members as Settlement Payments. Any incentive award shall be paid from the Settlement Fund (in the form of a check to the Class Representative that is sent care of Class Counsel), within five (5) business days after the Effective Date.

9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION.

9.1 The Effective Date shall not occur unless and until each and every one of the following events occurs, and shall be the date upon which the last (in time) of the following events occurs subject to the provisions in Section 1.12:

- a. This Agreement has been signed by the Parties, Class Counsel and Defendant's Counsel;
- b. The Court has entered a Preliminary Approval Order;
- c. The Court has entered a Final Approval Order, or a judgment materially identical to this Settlement Agreement that has become final and unappealable, following

Notice to the Settlement Class and a Final Approval Hearing, as provided in the Federal Rules of Civil Procedure; and

d. In the event that the Court enters an approval order and final judgment in a form other than that provided above (the “Alternative Approval Order”) to which the Parties have consented, that Alternative Approval Order has become final and unappealable.

9.2 If some or all of the conditions specified in Section 9.1 are not met, or in the event that this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Agreement shall be canceled and terminated subject to Section 9.3, unless Class Counsel and Defendant’s Counsel mutually agree in writing to proceed with this Settlement Agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Settlement Agreement on notice to all other Parties. Notwithstanding anything herein, the Parties agree that the following shall not prevent the Settlement Agreement from becoming effective, nor shall they be grounds for termination of the Agreement: (1) the Court’s decision as to the amount of the Fee Award to Class Counsel set forth above or the incentive award to the Class Representative, regardless of the amounts awarded, or (2) the Court’s determination that it lacks jurisdiction such that the Parties’ Agreement will be renewed in an appropriate forum.

9.3 If this Settlement Agreement is terminated or fails to become effective for the reasons set forth above, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Approval Order or other order entered by the Court in accordance with the terms of this Agreement shall be treated as

vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Settlement Agreement had never been entered into.

10. MISCELLANEOUS PROVISIONS.

10.1 The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Settlement Agreement. Class Counsel and Defendant's Counsel agree to cooperate with one another in seeking entry of the Preliminary Approval Order and the Final Approval Order, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement Agreement.

10.2 Each signatory to this Agreement represents and warrants (a) that he, she, or it has all requisite power and authority to execute, deliver and perform this Settlement Agreement and to consummate the transactions contemplated herein, (b) that the execution, delivery and performance of this Settlement Agreement and the consummation by it of the actions contemplated herein have been duly authorized by all necessary corporate action on the part of each signatory, and (c) that this Settlement Agreement has been duly and validly executed and delivered by each signatory and constitutes its legal, valid and binding obligation.

10.3 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiffs and the other Settlement Class Members, and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand subject to the voidability provisions contained herein. Accordingly, the Parties and their attorneys agree not to assert that

the Action was brought by Plaintiffs or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis. Plaintiffs, Defendant, and their respective counsel further agree not to make defamatory or disparaging remarks, comments, or statements concerning Kronos or Plaintiffs in media outlets or on social media, though this provision shall expressly exclude statements made by Plaintiffs' counsel or their clients in the course of other litigation. Kronos reserves any and all rights and claims it may have related to statements made by Plaintiffs' counsel or their clients in the course of other litigation.

10.4 The Parties have relied upon the advice and representation of their respective counsel, selected by them, concerning the claims hereby released. The Parties have read and understand fully this Settlement Agreement and have been fully advised as to the legal effect hereof by counsel of their own selection and intend to be legally bound by the same.

10.5 Whether the Effective Date occurs or this Settlement is terminated, neither this Settlement Agreement nor the Settlement contained herein, nor any court order, communication, act performed or document executed pursuant to or in furtherance of this Settlement Agreement or the Settlement:

a. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission, concession or evidence of, the validity of any Released Claims, the appropriateness of class certification, the truth of any fact alleged by Plaintiffs, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the Settlement Fund, Settlement Payment or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

b. is, may be deemed, or shall be used, offered or received against Defendant as, an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

c. is, may be deemed, or shall be used, offered or received against Plaintiffs or the Settlement Class, or each or any of them as an admission, concession or evidence of, the infirmity or strength of any claims asserted in the Action, the truth or falsity of any fact alleged by Defendant, or the availability or lack of availability of meritorious defenses to the claims raised in the Action;

d. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the Settlement, this Settlement Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Settlement Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Settlement Agreement. Moreover, if this Settlement Agreement is approved by the Court, any of the Released Parties may file this Settlement Agreement and/or the Final Approval Order in any action that may be brought against such parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion, or similar defense or counterclaim;

e. is, may be deemed, or shall be construed against Plaintiffs and the Settlement Class, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

f. is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiffs and the Settlement Class, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiffs' claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

10.6 The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

10.7 The waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Settlement Agreement.

10.8 All of the Exhibits to this Settlement Agreement are material and integral parts hereof and are fully incorporated herein by reference.

10.9 This Settlement Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits A–D other than the representations, warranties and covenants contained and memorialized in such documents. This Settlement Agreement may be

amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

10.10 Except as otherwise provided herein, each Party shall bear its own attorneys' fees and costs incurred in any way related to the Action.

10.11 Plaintiffs represent and warrant that they have not assigned any claim or right or interest relating to any of the Released Claims against the Released Parties to any other person or party and that they are fully entitled to release the same.

10.12 Each counsel or other Person executing this Settlement Agreement, any of its Exhibits, or any related settlement documents on behalf of any Party hereto, hereby warrants and represents that such Person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

10.13 This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Signature by digital, facsimile, or in PDF format will constitute sufficient execution of this Settlement Agreement. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

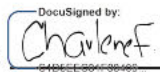
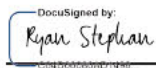
10.14 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement.

10.15 This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without reference to the conflicts of law provisions thereof.

10.16 This Settlement Agreement is deemed to have been prepared by counsel for all Parties, as a result of arm's-length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Settlement Agreement, it shall not be construed more strictly against one Party than another.

10.17 Where this Settlement Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: J. Eli Wade-Scott, ewadescott@edelson.com, EDELSON PC, 350 North LaSalle Street, 14th Floor, Chicago, Illinois 60654; Melissa A. Siebert, masiebert@shb.com, SHOOK, HARDY, & BACON LLP, 111 S Wacker Dr, Chicago, IL 60606.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

CHARLENE FIGUEROADated: 1/20/2022By (signature):  _____
DocuSigned by: Charlene FigueroaName (printed): Charlene Figueroa**JERMAINE BURTON**Dated: 1/18/2022By (signature):  _____Name (printed): Jermaine Burton**EDELSON PC**Dated: 1/18/2022By (signature):  _____Name (printed): J. Eli Wade-ScottIts (title): Partner**STEPHAN ZOURAS, LLP**Dated: 1/20/2022By (signature):  _____
DocuSigned by: Ryan StephanName (printed): Ryan StephanIts (title): Founding Partner/Attorney**KRONOS INCORPORATED**

Dated: _____

By (signature): _____

Name (printed): _____

Its (title): _____

SHOOK HARDY AND BACON, LLP

Dated: _____

By (signature): _____

Name (printed): _____

CHARLENE FIGUEROA

Dated: _____

By (signature): _____

Name (printed): _____

JERMAINE BURTON

Dated: _____

By (signature): _____

Name (printed): _____

EDELSON PC

Dated: _____

By (signature): _____

Name (printed): _____

Its (title): _____

STEPHAN ZOURAS, LLP

Dated: _____

By (signature): _____

Name (printed): _____

Its (title): _____

KRONOS INCORPORATED

Dated: January 19, 2022


By (signature):  _____

Name (printed): Elizabeth M. McCarron

Its (title): SVP, Chief Legal Officer

SHOOK HARDY AND BACON, LLP

Dated: January 20, 2022

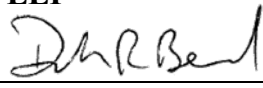
By (signature):  _____

Name (printed): Melissa Siebert

Its (title): Counsel

PERKINS COIE LLP

Dated: January 20, 2022

By (signature): 

Name (printed): Debra R. Bernard

Its (title): Partner

Exhibit A

Figueroa v. Kronos Incorporated, Case No. 1:19-CV-01306**CLAIM FORM**

Instructions: You are eligible for a payment as part of the Settlement for this case if you meet the class definition. If you received notice in this case, our records indicate that you are a member of the Class. Fill out each section of this form and sign where indicated. Please select whether you prefer to receive payment via check, Venmo, PayPal, or Zelle. If you opt for payment via check and your Claim Form is approved, you will receive a check in the mail at the address you provide below. Depending on the number of valid claims submitted, you may need to complete an IRS Form W-9 to satisfy tax reporting obligations. You may complete the Form W-9 now at [\[link to W-9\]](#); doing so now will ensure that you receive your full payment as soon as possible. THIS CLAIM FORM MUST BE SUBMITTED BY **[CLAIMS DEADLINE]** AND MUST BE FULLY COMPLETED (EXCEPT WHERE OPTIONAL), BE SIGNED, AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT.

The Settlement Administrator will review your Claim Form. If accepted, you will receive payment for an equal, or *pro rata*, share depending on the number of valid claim forms received. This process takes time; please be patient.

<u>First Name</u>		<u>Last Name</u>
<u>Street Address</u>		
<u>City</u>	<u>State</u>	<u>ZIP Code</u>
<u>Email Address</u>		
<u>Contact Phone #:</u> (You may be contacted if further information is required)		

Please provide the information in this box if you can do so. If you are not able to provide it, it will not impact your claim.	
Employer Where You Used Kronos Timeclock	Approximate Dates of Employment

Select Payment Method. Select the box of how you would like to receive your payment and provide the requested information:

- Check
- Zelle®
- PayPal®
- Venmo®

[Based on the selection, the claimant will be prompted to provide the information the Settlement Administrator requires to complete the payment]

Para informacion en Espanol, visitar [www.\[tobedetermined\].com](http://www.[tobedetermined].com).

Settlement Class Member Verification: By submitting this Claim Form, I declare that I am an individual who scanned my finger on a Kronos-brand timeclock in Illinois between January 18, 2014, and [date 30 days after preliminary approval].

E- Signature: _____

Date: __ __/ __ __/ __ __

Exhibit B

From: tobedetermined@domain.com
To: JohnDoeClassMember@domain.com
Re: Legal Notice of Proposed Class Action Settlement

RECORDS INDICATE YOU SCANNED YOUR FINGER ON A KRONOS-BRAND TIMECLOCK IN ILLINOIS AND ARE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

This is a court-authorized notice. You are not being sued. This is not an ad for a lawyer.

For more information, visit www.tobedetermined.com.

Para una notificación en Español, visitar www.tobedetermined.com.

This notice is to inform you that a proposed Settlement has been reached in a class action lawsuit between Kronos Incorporated (“Kronos”) and all individuals who scanned their fingers on Kronos-brand timeclocks at work in Illinois and had their finger-scan data hosted by Kronos between January 18, 2014 and [30 days after preliminary approval]. The case is called *Figueroa v. Kronos Incorporated*, Case No. 1:19-CV-01306. The lawsuit claims that Kronos violated an Illinois law called the Illinois Biometric Information Privacy Act when it collected and stored biometric data from workers through Kronos-brand timeclocks, without complying with the law’s requirements. Kronos denies those allegations and that the law applies to Kronos. The Court has not decided who is right or wrong. Please read this notice carefully. Your legal rights are affected whether you act or don’t act.

Who is included in the Settlement Class? Records indicate that you are included in the Settlement Class. The Settlement Class includes all persons who scanned their finger on Kronos-brand timeclocks at their job in Illinois, and whose finger-scan data was hosted by Kronos, between January 18, 2014 and [30 days after preliminary approval].

What can I get out of the Settlement? If you’re eligible and the Court approves the Settlement, you can file a claim to receive a cash payment. The payment amount is estimated to be approximately \$290-\$580, depending on the number of valid and timely claims approved. This amount is an equal share of a \$15,276,277 fund that Kronos agreed to create, after any Court-approved payment of Settlement administration expenses, attorneys’ fees, and any incentive award.

How do I get my payment? Just complete and verify the short and simple Claim Form online at [Claim Form Link], or you can visit www.tobedetermined.com and download a paper Claim Form and submit it by mail. When submitting by mail, you will receive a check. By submitting online you can choose to receive your payment via check, Venmo, PayPal, or Zelle. ***All Claim Forms must be submitted online or postmarked by [Claims Deadline].***

What are my other options? You can do nothing, comment on or object to any of the Settlement terms, or exclude yourself from the Settlement. If you do nothing, you won’t get a payment, and you won’t be able to sue Kronos or certain related companies and individuals in a future lawsuit about the claims addressed in the Settlement.

You can also object to the Settlement if you disagree with any of its terms by writing to the Court. You can only exclude yourself, not others. If you exclude yourself, you won't get a payment but you'll keep your right to sue Kronos on the issues the Settlement concerns. You must contact the Settlement Administrator by mail or email ([email address]) to exclude yourself from the Settlement. *All Requests for Exclusion and Objections must be received by [Objection/Exclusion Deadline].*

Do I have a lawyer? Yes. The Court has appointed lawyers from the law firms Edelson PC and Stephan Zouras, LLP as "Class Counsel." They represent you and other Settlement Class Members. The lawyers will request to be paid from the total amount that Kronos agreed to pay to the Settlement Class Members after payment of notice and administration costs. You can hire your own lawyer, but you'll need to pay that lawyer's legal fees if you do. The Court has also chosen Charlene Figueroa and Jermaine Burton—Class Members like you—to represent the Settlement Class as Class Representatives.

When will the Court approve the Settlement? The Court will hold a final approval hearing on [date] at [time] before the Honorable Gary S. Feinerman in Room 2141 at the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604. Instructions for participating remotely may be posted on the Settlement Website. During the hearing, the Court will hear objections, determine if the Settlement is fair, and consider Class Counsel's request for fees and expenses of up to 33% of the Settlement Fund and an incentive award of \$7,500 each for both Class Representatives. The request will be posted on the Settlement Website by [two weeks prior to Objection/Exclusion Deadline].

Exhibit C

COURT AUTHORIZED NOTICE OF CLASS
ACTION AND PROPOSED SETTLEMENT

RECORDS INDICATE YOU
SCANNED YOUR FINGER ON
A KRONOS-BRAND
TIMECLOCK IN ILLINOIS
AND ARE ENTITLED TO A
PAYMENT FROM A CLASS
ACTION SETTLEMENT

Figueroa v. Kronos Incorporated
c/o Settlement Administrator
P.O. Box 0000
City, ST 00000-0000

First-Class
Mail
US Postage
Paid
Permit #



Postal Service: Please do not mark barcode

XXX—«ClaimID» «MailRec»

«First1» «Last1»
«C/O»
«Addr1» «Addr2»
«City», «St» «Zip» «Country»

By Order of the Court Dated: [date]

XXX

CLAIM FORM

THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR POSTMARKED BY [CLAIMS DEADLINE] AND MUST BE FULLY COMPLETED, BE SIGNED, AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT.

Instructions: Fill out each section of this form and sign where indicated. If you prefer to receive payment via Venmo, PayPal, or Zelle (instead of a check), you must submit a Claim Form online on the Settlement Website at [www.\[tobedetermined\].com](http://www.[tobedetermined].com). If you submit this paper Claim Form by mail and it is approved, you will receive a check in the mail at the address you provide below. Depending on the number of valid claims submitted, you may need to complete an IRS Form W-9 to satisfy tax reporting obligations. You may complete the Form W-9 now on the Settlement Website at [www.\[tobedetermined\].com](http://www.[tobedetermined].com); doing so now will ensure that you receive your full payment as soon as possible.

Name (First, M.I., Last): _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Email Address (optional): _____

Contact Phone #: (_____) _____ - _____ (You may be contacted if further information is required.)

Please provide the information in this box if you can do so. If you are not able to provide it, it will not impact your claim.

Employer Where You Used Kronos Timeclock

Approximate Dates of Employment

Settlement Class Member Verification: By submitting this Claim Form, I declare that I am an individual who scanned my finger on a Kronos-brand timeclock in Illinois between January 18, 2014, and [date 30 days after preliminary approval].

Signature: _____ Date: ____/____/____

Print Name: _____

The Settlement Administrator will review your Claim Form. If approved, you will be mailed a check for an equal, or *pro rata*, share depending on the number of valid claim forms received. This process takes time; please be patient.

Questions, visit [www.\[tobedetermined\].com](http://www.[tobedetermined].com) or call [toll free number]

This notice is to inform you that a proposed Settlement has been reached in a class action lawsuit between Kronos Incorporated (“Kronos”) and individuals who scanned their fingers on Kronos-brand timeclocks at work in Illinois. The case is called *Figueroa v. Kronos Incorporated*, Case No. 1:19-CV-01306. The lawsuit claims that Kronos violated an Illinois law called the Illinois Biometric Information Privacy Act when it collected and stored biometric data from workers through Kronos-brand timeclocks, without complying with the law’s requirements. Kronos denies those allegations and if the law applies to Kronos. The Court has not decided who is right or wrong. Please read this notice carefully. Your legal rights are affected whether you act, or don’t act.

Who is included in the Settlement Class? Our records indicate that you are included in the Settlement Class. The Settlement Class includes all persons who scanned their finger on Kronos-brand timeclocks at work in Illinois, and whose finger-scan data was hosted by Kronos, between January 18, 2014 and [30 days after preliminary approval].

What can I get out of the Settlement? If you’re eligible and the Court approves the Settlement, you can file a claim to receive a cash payment. The payment amount is estimated to be approximately \$290-\$580, depending on the number of valid claims submitted. This amount is an equal share of a \$15,276,277 fund that Kronos agreed to create, after any Court-approved payment of Settlement expenses, attorneys’ fees, and any incentive award.

How do I get my payment? Just complete and return the attached Claim Form by mail, or you can visit the Settlement Website, www.[tobedetermined].com, and submit a Claim Form online. All Claim Forms must be postmarked or submitted online by [Claims Deadline].

What are my other options? You can do nothing, comment on or object to any of the Settlement terms, or exclude yourself from the Settlement. If you do nothing, you won’t get a payment, and you won’t be able to sue Kronos or certain related companies and individuals in a future lawsuit about the claims addressed in the Settlement. You can also comment on or object to the Settlement if you disagree with any of its terms by writing to the Court. If you exclude yourself, you won’t get a payment but you’ll keep your right to sue Kronos on the issues the Settlement concerns. You must contact the Settlement Administrator by mail or email to exclude yourself from the Settlement. All Requests for Exclusion and Objections must be received by [Objection/Exclusion Deadline].

Do I have a lawyer? Yes. The Court has appointed lawyers from the law firms Edelson PC and Stephan Zouras, LLP as “Class Counsel.” They represent you and other Settlement Class Members. The lawyers will request to be paid from the total amount that Kronos agreed to pay to the Settlement Class Members, after payment of notice and administration costs. You can hire your own lawyer, but you’ll need to pay that lawyer’s legal fees if you do. The Court has also chosen Charlene Figueroa and Jermaine Burton—Class Members like you—to represent the Settlement Class as Class Representatives.

When will the Court approve the Settlement? The Court will hold a final approval hearing on [date] at [time] before the Honorable Gary S. Feinerman in Room 2141 at the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604. Instructions for participating remotely may be posted on the Settlement Website. During the hearing, the Court will hear objections, determine if the Settlement is fair, and consider Class Counsel’s request for fees and expenses of up to 33% of the Settlement Fund, and an incentive award of \$7,500 each for both Class Representatives. The request will be posted on the Settlement Website by [2 weeks before Objection/Exclusion Deadline].

NO POSTAGE
NECESSARY
IF MAILED IN
THE UNITED
STATES

Figueroa v. Kronos Incorporated Settlement
c/o Settlement Administrator
PO Box 0000
City, ST 00000-0000

XXX

Exhibit D

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Figueroa v. Kronos Incorporated, Case No. 1:19-CV-01306
(United States District Court Northern District of Illinois)

IF YOU SCANNED YOUR FINGER ON A KRONOS-BRAND TIMECLOCK IN ILLINOIS AND HAD YOUR FINGER-SCAN DATA HOSTED BY KRONOS BETWEEN JANUARY 18, 2014 AND [30 DAYS AFTER PRELIMINARY APPROVAL], YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

This is a court-authorized notice. You are not being sued. This is not an ad for a lawyer.

Para una notificacion en Espanol, visitar [www.\[tobedetermined\].com](http://www.[tobedetermined].com).

- A proposed Settlement has been reached in a class action lawsuit between Kronos Incorporated (“Kronos” or “Defendant”) and individuals who scanned their fingers on Kronos-brand timeclocks at their jobs in Illinois and whose finger-scan data was hosted by Kronos between January 18, 2014 and [30 days after preliminary approval]. The lawsuit claims that Kronos collected and stored biometric data from workers through Kronos-brand timeclocks when Kronos provided “cloud” hosting for their employers. The lawsuit claims these activities required compliance with an Illinois law called the Illinois Biometric Information Privacy Act, and that Kronos did not comply. Kronos denies these allegations and that the law applies to Kronos. The Court has not decided who is right or wrong. The Settlement has been preliminarily approved by a federal court in Chicago.
- You are included in the Settlement if you scanned your finger on a Kronos-brand timeclock at your job in Illinois and your finger-scan data was hosted by Kronos between January 18, 2014, and [30 days after preliminary approval]. If you received a notice of the Settlement in the mail or by email, records indicate that you are included in the Settlement, you may submit a Claim Form online or by mail to receive a cash payment.
- If the Court approves the Settlement, members of the Class who submit valid, timely and approved claims will receive an equal share of a \$15,276,277 settlement fund that Kronos has agreed to create, after all notice and administration costs, incentive award, and attorneys’ fees have been paid. Individual payments to Settlement Class Members who submit a valid claim form are estimated to be \$290-\$580, depending on the number of approved claims.
- Please read this notice carefully. Your legal rights are affected whether you act, or don’t act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	This is the only way to receive a payment.
DO NOTHING	You will receive no payment under the Settlement and give up your rights to sue Kronos or certain related companies and individuals about the issues in this case.
EXCLUDE YOURSELF	You will receive no payment, but you will retain any rights you currently have to sue Kronos about the issues in this case.
OBJECT	Write to the Court explaining why you don't like the Settlement.
ATTEND A HEARING	Ask to speak in Court about the fairness of the Settlement

These rights and options—**and the deadlines to exercise them**—are explained in this notice.

The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be provided only after any issues with the Settlement are resolved. Please be patient.

BASIC INFORMATION

1. What is this notice and why should I read it?

The Court authorized this notice to let you know about a proposed Settlement with Kronos. You have legal rights and options that you may act on before the Court decides whether to give final approval to the proposed Settlement. You may be eligible to receive a cash payment as part of the Settlement. This notice explains the lawsuit, the Settlement, and your legal rights.

The Honorable Gary S. Feinerman of the United States District Court for the Northern District of Illinois is overseeing this class action. The case is called *Figueroa v. Kronos Incorporated*, Case No. 1:19-CV-01306. The persons who filed the lawsuit, Charlene Figueroa and Jermaine Burton, are the Plaintiffs. The company they sued, Kronos Incorporated, is the Defendant.

2. What is a class action lawsuit?

A class action is a lawsuit in which individuals called “Class Representatives” bring a single lawsuit on behalf of other people who they assert have similar legal claims. All of these people together are potential members of the “Class.” When a Class is certified for settlement and the Settlement is finally approved by the Court, the Settlement resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement Class.

THE CLAIMS IN THE LAWSUIT AND THE SETTLEMENT

3. What is this lawsuit about?

The Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*, regulates the collection, storage, and/or use of a person’s biometric data in Illinois, including requiring consent to the collection of biometric data. Biometric data includes fingerprints. This lawsuit alleges that Kronos as a provider of timekeeping devices with a finger-scanner and “cloud” hosting services collected and stored biometric data without authorization from individuals who scanned their fingers at employers that were using Kronos-brand timeclocks and cloud-hosting services. Kronos denies these allegations and denies that it was subject to or violated BIPA.

More information about Plaintiff’s complaint in the lawsuit and the Defendant’s defenses can be found in the “Court Documents” section of the Settlement Website at [www.\[tobedetermined\].com](http://www.[tobedetermined].com).

4. Who is included in the Settlement Class?

You are a member of the Settlement Class if you scanned your finger on a Kronos-brand timeclock at your job in Illinois, and that finger-scan data was hosted by Kronos, between January 18, 2014, and [30 days after preliminary approval] If you received a notice of the Settlement via email or in the mail, records indicate that you are a Class Member and are included in the Settlement. You may call or email the Settlement Administrator at [phone number] or [email address] to ask whether you are a member of the Settlement Class.

Pictured below are examples of Kronos-brand timeclocks with the finger-scan attachment:



THE SETTLEMENT BENEFITS

5. What does the Settlement provide?

Cash Payments. If you're eligible, you can file a claim to receive a cash payment. The amount of such payment is estimated to be \$290-\$580, depending on the number of approved claims. This is a *pro rata*, or equal, share of a \$15,276,277 fund that Kronos has agreed to create, after the payment of settlement expenses, attorneys' fees, and any incentive award for the two Class Representatives in the litigation approved by the Court.

Prospective Relief. Under the settlement, Kronos has agreed to notify employers that use Kronos-brand timeclocks and use Kronos as a host for finger-scan data that they need to obtain written releases from individuals who scan their fingers on Kronos-brand timeclocks, make all BIPA-required disclosures, and establish and maintain a retention and destruction policy that is made available to the public.

HOW TO GET SETTLEMENT BENEFITS

6. How do I get a payment?

If you are a Settlement Class Member and you want to get a payment, you must complete and submit a valid Claim Form by **[Claims Deadline]**. If you received an email notice, it contained a link to the online Claim Form, which is also available on this website here **[Claim Form Link]** and can be filled out and submitted online. The online Claim Form lets you select to receive your payment by Venmo, Zelle, PayPal, or check. A paper Claim Form with pre-paid postage was attached to the postcard notice you may have received in the mail. Those who submit a paper Claim Form will receive a check by mail, if the claim is approved.

Depending on the number of approved claims, you may need to complete an IRS Form W-9 to satisfy IRS tax reporting obligations related to the payment. You may complete the **[Form W-9 link]** now on the Settlement Website; doing so now will ensure that you receive your full payment as soon as possible.

7. When will I get my payment?

The hearing date to consider the fairness of the Settlement is scheduled for **[Final Approval Hearing Date]**. If the Court approves the Settlement, Class Members whose claims were approved by the Settlement Administrator and, if necessary, who have completed a W-9 Form on the Settlement Website will be issued a check or electronic payment (as chosen by the Settlement Class Member) within 60 days after the Settlement has been finally approved by the Court and/or after any appeals process is complete. Please be patient. Uncashed checks and electronic payments that are unable to be completed will expire and become void 120 days after they are issued and will be donated to **[name of cy pres recipient]**, or such other not-for-profit organization(s) as the Court may order as *cy pres* recipient.

THE LAWYERS REPRESENTING YOU

8. Do I have a lawyer in the case?

Yes, the Court has appointed Jay Edelson and J. Eli Wade-Scott of Edelson PC and Ryan F. Stephan and James B. Zouras of Stephan Zouras, LLP as the attorneys to represent the Settlement Class. These attorneys are called "Class Counsel." In addition, the Court appointed Plaintiffs Charlene

Figueroa and Jermaine Burton to serve as the Class Representatives. They are Settlement Class Members like you. Class Counsel can be reached by calling [x-xxx-xxxx].

9. Should I get my own lawyer?

You don't need to hire your own lawyer because Class Counsel is working on your behalf. You may hire your own lawyer, but if you do so, you will have to pay that lawyer.

10. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees and expenses of up to 33% of the Settlement Fund (after payment of notice and administration costs) and will also request an incentive award of \$7,500 for each of the two Class Representatives from the Settlement Fund. The Court will determine the proper amount of any attorneys' fees and expenses to award Class Counsel and the proper amount of any award to the Class Representatives. The Court may award less than the amounts requested.

YOUR RIGHTS AND OPTIONS

11. What happens if I do nothing at all?

If you do nothing, you will receive no money from the Settlement Fund, but you will still be bound by all orders and judgments of the Court. Unless you exclude yourself from the Settlement, you will not be able to file or continue a lawsuit against Kronos or other Released Parties (defined in the Settlement Agreement) regarding any of the Released Claims. **Submitting Claim Form that is approved by the Settlement Administrator is the only way to receive a payment from this Settlement.**

To submit a Claim Form, or for information on how to request exclusion from the class or file an objection, please visit the Settlement Website, [www.\[to be determined\].com](http://www.[to be determined].com), or call (XXX) XXX-XXXX.

12. What happens if I ask to be excluded?

You may exclude yourself from the Settlement. If you do so, you will not receive any cash payment, but you will not release any claims you may have against the Kronos and the Released Parties and are free to pursue whatever legal rights you may have by pursuing your own individual lawsuit against Kronos and the Released Parties at your own risk and expense.

13. How do I ask to be excluded?

You can mail or email a letter stating that you want to be excluded from the Settlement. Your letter must: (a) be in writing; (b) identify the case name, *Figueroa v. Kronos Incorporated*, No. 19-cv-1306 (N.D. Ill.); (c) state the full name and current address of the person in the Settlement Class seeking exclusion; (d) be signed by the person seeking exclusion; and (e) be postmarked or received by the Settlement Administrator on or before [Objection/Exclusion Deadline]. Each request for exclusion must also contain a statement to the effect that "I hereby request to be excluded from the proposed Settlement Class in *Figueroa v. Kronos Incorporated*, No. 19-cv-1306 (N.D. Ill.)." You must mail or email your exclusion request no later than [Objection/Exclusion Deadline] to:

Figueroa v. Kronos Settlement Administrator
P.O. Box 0000
City, ST 00000-0000

-or-

[email address]

You can't exclude yourself over the phone. No person may request to be excluded from the Settlement Class through "mass" or "class" opt-outs.

14. If I don't exclude myself, can I sue Kronos for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Kronos and any other Released Party for the claims being resolved by this Settlement.

15. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, you will not receive a payment.

16. How do I object to the Settlement?

If you do not exclude yourself from the Settlement Class, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should deny approval by filing an objection. To object, you must file a letter or brief with the Court stating that you object to the Settlement in *Figueroa v. Kronos Incorporated*, Case No. 1:19-CV-01306 (N.D. Ill.), no later than [Objection/Exclusion Deadline]. Your objection must be e-filed or delivered to the Court at the following address:

Clerk of the United States District Court for the Northern District of Illinois
Everett McKinley Dirksen United States Courthouse
219 South Dearborn Street
Chicago, Illinois 60604

Due to the COVID-19 pandemic, the Court is accepting filings from pro se litigants via email. Instructions on how to file via email can be found [here](#).

The objection must be in writing, must be signed, and must include the following information: (a) your full name and current address, (b) a statement that you believe you are a member of the Settlement Class, (c) whether the objection applies only to you, to a specific subset of the Settlement Class, or to the entire Settlement Class, (d) the specific grounds for your objection, (e) all documents or writings that you wish the Court to consider, (f) the name and contact information of any attorneys representing, advising, or in any way assisting you in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection, and (g) a statement indicating whether you intend to appear at the Final Approval Hearing. If you hire an attorney in connection with making an objection, that attorney must file an appearance with the Court or seek *pro hac vice* admission to practice before the Court, and electronically file the objection by the objection deadline of [Objection/Exclusion Deadline]. If you do hire your own attorney, you will

be solely responsible for payment of any fees and expenses the attorney incurs on your behalf. If you exclude yourself from the Settlement, you cannot file an objection.

In addition to filing your objection with the Court, you must send via mail, email, hand, or overnight delivery service, by no later than **[Objection/Exclusion Deadline]**, copies of your objection and any supporting documents to both Class Counsel and Kronos's lawyers at the addresses listed below:

Class Counsel	Kronos's Counsel
J. Eli Wade-Scott ewadescott@edelson.com EDELSON PC 350 North LaSalle Street, 14th Floor Chicago, Illinois 60654	Melissa A. Siebert masiebert@shb.com SHOOK, HARDY, & BACON LLP 111 S Wacker Drive Chicago, Illinois 60606

Class Counsel will file with the Court and post on the Settlement Website its request for attorneys' fees and incentive awards on **[date 2 weeks before Objection / Exclusion deadline]**.

17. What's the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class as a Class Member. Excluding yourself from the Settlement Class is telling the Court that you don't want to be a Settlement Class Member. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

18. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Final Approval Hearing at **[time]** on **[date]** before the Honorable Gary S. Feinerman in Room 2141 of the Northern District Court of Illinois, Dirksen U.S. Courthouse, 219 South Dearborn Street, Chicago, Illinois, 60604, or via remote means as instructed by the Court. The purpose of the hearing is for the Court to determine whether the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed Settlement, including those related to the amount requested by Class Counsel for attorneys' fees and expenses and the incentive award to the Class Representatives.

Note: The date and time of the Final Approval Hearing are subject to change by Court Order. Any changes will be posted at the Settlement Website, [www.\[tobedetermined\].com](http://www.tobedetermined.com).

19. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. You are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as your written objection was filed or mailed on time and meets the other criteria described in the Settlement, the Court will consider it. You may also pay a lawyer to attend, but you don't have to.

20. May I speak at the hearing?

Yes. If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the hearing concerning any part of the proposed Settlement. If you filed an objection (*see* Question 16 above) and intend to appear at the hearing, you must state your intention to do so in your objection.

GETTING MORE INFORMATION

21. Where do I get more information?

This notice summarizes the proposed Settlement. More details, including the Settlement Agreement and other documents are available at www.tobedetermined.com or at the Clerk's Office in the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays and any closures as a result of the COVID-19 pandemic. You can also contact the Settlement Administrator at [x-xxx-xxxx] or Class Counsel at the number provided above with any questions.

PLEASE DO NOT CONTACT THE COURT, THE JUDGE, THE DEFENDANT OR THE DEFENDANT'S LAWYERS WITH QUESTIONS ABOUT THE SETTLEMENT OR DISTRIBUTION OF SETTLEMENT PAYMENTS.

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

CHARLENE FIGUEROA and JERMAINE
BURTON, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

KRONOS INCORPORATED,

Defendant.

Case No. 1:19-cv-01306

Honorable Gary M. Feinerman

**PERCENTAGE FEE AWARDS AND
INCENTIVE AWARDS IN SIMILAR BIPA CASES**

CHART 1 - BIPA CASES IN N.D. ILL. AWARDING 33.3% OF COMMON FUND		
Case	Judge	Fund Size
<i>In re TikTok, Inc., Consumer Priv. Litig.</i> , No. 20-cv-04699, 2022 WL 2982782 (N.D. Ill. July 28, 2022)	Lee, J.	\$92,000,000.00
<i>Crumpton v. Octapharma Plasma, LLC</i> , No. 19-cv-08402, dkt. 92 (N.D. Ill. Feb. 16, 2022)	Kendall, J.	\$9,987,380.00
<i>Bryant v. Compass Grp. USA, Inc.</i> , No. 19-cv-06622, dkt. 125 (N.D. Ill. Sept. 8, 2022)	Kendall, J.	\$6,800,000.00
<i>Davis v. Heartland Emp. Servs., LLC</i> , No. 1:19-cv-00680, dkt. 130 (N.D. Ill. Oct. 25, 2021)	Valderrama, J.	\$5,418,000.00
<i>Thome v. NOVAtime Tech., Inc.</i> , No. 19-cv-6256, dkt. 90 (N.D. Ill. Mar. 8, 2021)	Kennelly, J.	\$4,100,000.00
<i>Jones v. CBC Restaurants Corp.</i> , No. 19-cv-6736, dkt. 53 (N.D. Ill. Oct. 22, 2020)	Alonso, J.	\$3,242,400.00
<i>Burlinski v. Top Golf USA Inc.</i> , No. 19-cv-06700, dkt. 103 (N.D. Ill. Oct. 13, 2021)	Chang, J.	\$2,633,400.00
<i>Martinez v. Nando's Rest. Grp., Inc.</i> , 19-cv-07012, dkt. 63 (N.D. Ill. Oct. 27, 2020)	Ellis, J.	\$1,787,000.00

<i>Dixon v. Washington & Jane Smith Cmty.-Beverly</i> , No. 17-cv-8033, dkt. 103 (N.D. Ill. May 31, 2018)	Kennelly, J.	\$1,356,000.00
<i>Bryant v. Loews Chicago Hotel, Inc.</i> , No. 19-cv-03195, dkt. 78 (N.D. Ill. Oct. 30, 2020)	Norgle, J.	\$1,036,396.48
<i>Bedford v. Lifespace Communities, Inc.</i> , No. 20-cv-04574, dkt. 31 (N.D. Ill. May 12, 2021)	Shah, J.	\$987,850.00
<i>Wickens v. Thyssenkrupp</i> , No. 19-cv-6100, dkt. 52 (N.D. Ill. Jan. 26, 2021)	Dow, J.	\$894,000.00
<i>Montgomery v. Peri Framework Sys., Inc.</i> , No. 20-cv-07771, dkt. 33 (N.D. Ill. Nov. 9, 2021)	Pallmeyer, J.	\$165,000.00

CHART 2 - BIPA CASES IN ILLINOIS AWARDING 35% OF COMMON FUND

Case	Judge	Fund Size
<i>Lark, et al v. McDonald's USA, LLC, et al.</i> , No. 17-L-559 (Cir. Ct. St. Clair Cnty. Feb. 28, 2022) (awarding 37% of fund)	Rudolf, J.	\$50,000,000.00
<i>Kusinski v. ADP LLC</i> , 2017-CH-12364 (Cir. Ct. Cook Cnty. Feb. 10, 2021)	Atkins, J.	\$25,000,000.00
<i>Miracle-Pond v. Shutterfly</i> , 2019-CH-07050 (Cir. Ct. Cook Cnty. Sept. 9, 2021)	Mitchell, J.	\$6,750,000.00
<i>Parsons, et al. v. Personnel Staffing Group, LLC</i> , No. 20-CH-473 (Cir. Ct. Cook Cnty. Apr. 12, 2022)	Mitchell, J.	\$4,689,750.00
<i>Barnes v. Aryzta</i> , No. 2017-CH-11312 (Cir. Ct. Cook Cnty. Nov. 13, 2020)	Moreland, J.	\$2,900,000.00
<i>Mosby v. The Ingalls Mem. Hosp., et al.</i> , No. 18-CH-5031 (Cir. Ct. Cook Cnty. Mar. 14, 2022)	Meyerson, J.	\$2,420,962.50
<i>Brown v. MacNeil Automotive Prod., Ltd.</i> No. 19-CH-503 (Cir. Ct. Cook Cnty. Sept. 26, 2022)	Horan, J.	\$1,375,000.00
<i>Alvarado v. Int'l Laser Prods., Inc.</i> , No. 18-cv-7756, dkt. 70 (N.D. Ill. Jan. 24, 2020)	Pallmeyer, J.	\$895,788.74
<i>Neals v. ParTech, Inc.</i> , No. 19-cv-05660, dkt. 140 (N.D. Ill. July 20, 2022)	Valderrama, J.	\$790,000.00

<i>Lopez-McNear v. Superior Health Linens, LLC</i> , No. 19-cv-2390, dkt. 69 (N.D. Ill. Apr. 27, 2021)	Pallmeyer, J.	\$790,000.00
<i>Peatry v. Bimbo Bakeries USA, Inc.</i> , No. 1:19-CV-2942, dkt. 101 (N.D. Ill. Jan. 12, 2022)	Ellis, J.	\$295,000.00
<i>Cornejo v. Amcor Rigid Plastics USA, LLC</i> , No. 18-cv-07018, dkt. 57 (N.D. Ill. Sept. 10, 2020)	Pacold, J.	\$175,000.00

CHART 3 - BIPA CASES IN ILLINOIS AWARDING 40% OF COMMON FUND

Case	Judge	Fund Size
<i>Prelipceanu v. Jumio Corp.</i> , 2018-CH-15883 (Cir. Ct. Cook Cnty. July 21, 2020)	Mullen, J.	\$7,000,000.00
<i>Sekura v. L.A. Tan Enters., Inc.</i> , 2015-CH-16694 (Cir. Ct. Cook Cnty. Dec. 1, 2016)	Garcia, J.	\$1,500,000.00
<i>McGee v. LSC Commc'ns, Inc.</i> , 2017-CH-12818 (Cir. Ct. Cook Cnty. Nov. 11, 2019)	Atkins, J.	\$700,000.00
<i>Zepeda v. Intercontinental Hotels Grp., Inc.</i> , 2018-CH-02140 (Cir. Ct. Cook Cnty.)	Atkins, J.	\$500,000.00
<i>Svagdis v. Alro Steel Corp.</i> , 2017-CH-12566 (Cir. Ct. Cook Cnty. Jan. 14, 2019)	Larsen, J.	\$300,000.00
<i>Zhirovetskiy v. Zayo Grp., LLC</i> , 2017-CH-09323 (Cir. Ct. Cook Cnty. Apr. 8, 2019)	Flynn, J.	\$900,000.00 ¹

CHART 4 – INCENTIVE AWARDS IN N.D. ILL. BIPA CASES

Case	Judge	Award
<i>Martinez v. Nando's Rest. Grp., Inc.</i> , 19-cv-07012, dkt. 63 (N.D. Ill. Oct. 27, 2020)	Ellis, J.	\$7,500.00
<i>Thome v. NOVAtime Tech., Inc.</i> , No. 19-cv-6256, dkt. 90 (N.D. Ill. Mar. 8, 2021)	Kennelly, J.	\$7,500.00
<i>Jones v. CBC Rests. Corp.</i> , No. 19-cv-6736, dkt. 53 (N.D. Ill. Oct. 22, 2020)	Alonso, J.	\$7,500.00

¹ Though the percentage fee award was based on a \$990,000 fund, individual payments were capped at \$400, and the settlement allowed for up to \$490,000 of unclaimed funds to revert back to defendant.

<i>Burlinski v. Top Golf USA Inc.</i> , No. 19-cv-06700, dkt. 103 (N.D. Ill. Oct. 13, 2021)	Chang, J.	\$7,500.00
<i>Wickens v. Thyssenkrupp</i> , No. 19-cv-6100, dkt. 52 (N.D. Ill. Jan. 26, 2021)	Dow, J.	\$7,500.00
<i>Montgomery v. Peri Framework Sys., Inc.</i> , No. 20-cv-07771, dkt. 33 (N.D. Ill. Nov. 9, 2021)	Pallmeyer, J.	\$7,500.00
<i>Dixon v. Washington & Jane Smith Cmty.-Beverly</i> , No. 17-cv-8033, dkt. 103 (N.D. Ill. May 31, 2018)	Kennelly, J.	\$10,000.00
<i>Davis v. Heartland Emp. Servs., LLC</i> , No. 19-cv-00680, dkt. 130 (N.D. Ill. Oct. 25, 2021)	Valderrama, J.	\$10,000.00
<i>Bryant v. Loews Chicago Hotel, Inc.</i> , No. 19-cv-03195, dkt. 78 (N.D. Ill. Oct. 30, 2020)	Norgle, J.	\$10,000.00
<i>Bedford v. Lifespace Communities, Inc.</i> , No. 20-cv-04574, dkt. 31 (N.D. Ill. May 12, 2021)	Shah, J.	\$10,000.00

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CHARLENE FIGUEROA and JERMAINE
BURTON, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

KRONOS INCORPORATED,

Defendant.

Case No. 1:19-cv-01306

Honorable Gary M. Feinerman

**DECLARATION OF J. ELI WADE-SCOTT
IN SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARDS**

Pursuant to 28 U.S.C. § 1746, I hereby declare and state as follows:

1. I am an attorney admitted to practice before the Supreme Court of the State of Illinois and the Northern District of Illinois. I am over the age of eighteen years old. I am entering this Declaration in support of Plaintiffs' Motion for and Memorandum in Support of Approval of Attorneys' Fees, Expenses, and Incentive Awards ("Fee Petition"). This Declaration is based upon my personal knowledge except where expressly noted otherwise. If called upon to testify to the matters stated herein, I could and would competently do so.

2. I am a partner at the law firm of Edelson PC (also referred to as the "Firm"), which has been retained to represent the named Plaintiffs in this matter, Charlene Figueroa and Jermaine Burton ("Plaintiffs"), and I have been appointed Class Counsel—along with Jay

Edelson of Edelson PC and Ryan F. Stephan and James B. Zouras of Stephan Zouras, LLP—on behalf of the Settlement Class.¹

Class Counsel's Work in this Litigation

3. In this case, my Firm agreed to undertake this case on a contingent basis. We recognized from the beginning that achieving recovery for the class was far from guaranteed, given the many issues of first impression presented in a case brought under the Illinois Biometric Information Privacy Act.

4. Nevertheless, given our Firm's proven track record of effectively and successfully prosecuting complex class actions (*see* Firm Resume of Edelson PC, attached hereto as Exhibit 3-A), we undertook the prosecution of the class's claims on a purely contingent basis.

5. The Firm Resume of Edelson PC attached hereto as Exhibit 3-A is a true and accurate copy.

6. The hourly rates charged by attorneys at Edelson PC correlate to their respective experience and are consistent with the rates of attorneys with similar backgrounds and experience practicing in the Chicago legal market. Edelson PC's rates have been frequently approved by courts in the Seventh Circuit, as well as in federal courts across the country. *See In re Facebook Biometric Info. Priv. Litig.*, 3:15-cv-03747-JD, 522 F. Supp. 3d 617, 633 (N.D. Cal. 2021) (finding Edelson PC's hourly rates reasonable for their experience and locality); *id.* at dkt. 499-3 at ¶¶ 25–33 (Declaration of Professor William B. Rubenstein finding that “the hourly rates [Edelson PC] utilize are entirely consistent with the rates judges in [the Northern District of California] explicitly approved in overseeing class action settlements in 2019, and the average,

¹ Except as otherwise indicated, all defined terms used in this Declaration shall have the same meanings ascribed to them in the proposed Settlement Agreement.

or blended, hourly rate—while above the median—appropriately reflects the level of lawyering required for a case of this magnitude”); *Barnes v. Arzyta, LLC*, No. 1:17-cv-07358, 2019 WL 277716, at *4 (N.D. Ill. Jan. 22, 2019) (finding Edelson PC’s rates “reasonable given the market rate that hourly clients are willing to pay, judicial approval of their rates, and their level of reputation and expertise in the area”); *Goodman v. Hangtime, Inc.*, No. 14-cv-01022, dkt. 124 (N.D. Ill. Sept. 29, 2015) (granting Edelson PC’s fee request in full, the reasonableness of which was demonstrated under the lodestar method). Edelson PC’s experience and expertise in consumer class action litigation is further detailed in its Firm Resume, attached hereto as Exhibit 3-A.

7. To date, our Firm has logged 1,581.7 hours in representing Plaintiffs and the Settlement Class without compensation in this Action.

8. Our Firm’s total lodestar of \$1,062,670.00 represents the work that we have undertaken since the inception of this case and does not include additional work that will be required through final approval. Our Firm’s total lodestar also does not include any time spent preparing Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Incentive Awards or any supporting documents.

9. It is our Firm’s policy that each attorney is responsible for keeping track of his or her billable time by, at least, the tenth of an hour in a billing management software program known as “Freshbooks[.]”

10. The rates and hours that each attorney and paralegal at our Firm has worked on this matter, as recorded in Freshbooks,² are incorporated into the chart below:

² Our Firm will produce the detailed billing records contained in Freshbooks for *in camera* review at the Court’s request.

EDELSON PC				
ATTORNEY	YEAR	HOURS	HOURLY RATE	LODESTAR
Ryan Andrews	18	70.3	\$800.00	\$56,240.00
Amy Hausmann	3	30.2	\$500.00	\$15,100.00
Hannah Hilligoss	1	28.0	\$250.00	\$7,000.00
Aaron Lawson	10	58.7	\$800.00	\$46,960.00
Roger Perlstadt	21	51.1	\$800.00	\$40,880.00
Angela Reilly	2	118.7	\$400.00	\$47,480.00
Nick Rosinia	11	13.6	\$800.00	\$10,880.00
Daniel Schneider	6	19.8	\$450.00	\$8,910.00
Zoë Seaman-Grant	2	40.3	\$400.00	\$16,120.00
Alex Tievsky	8	113.3	\$800.00	\$90,640.00
James Tsang	2	1.8	\$250.00	\$450.00
Schuyler Ufkes	6	196.5	\$600.00	\$117,900.00
J. Eli Wade-Scott	9	687.9	\$800.00	\$550,320.00
STAFF MEMBER		HOURS	HOURLY RATE	LODESTAR
Jack Barbour	--	13.8	\$300.00	\$4,140.00
Christopher Campbell	--	3.6	\$300.00	\$1,080.00
Samuel Cardwell	--	3.4	\$300.00	\$1,020.00
Shawn Davis	--	41.7	\$500.00	\$20,850.00
Austin Prather	--	10.7	\$300.00	\$3,210.00
Andrew Schmidt	--	2.1	\$300.00	\$630.00
Jessica Woodard	--	76.2	\$300.00	\$22,860.00
TOTALS		1,581.7		\$1,062,670.00

11. Our Firm's Founder and CEO, Jay Edelson, was involved in a supervisory role throughout this Action but is not including his time in the above as an exercise of billing discretion.

12. In addition, the Firm has incurred \$28,573.10 in reimbursable expenses, which includes mediation fees and related delivery costs for mediation briefing, deposition fees and transcript costs, e-discovery storage fees, service of process fees, and court travel costs.

13. Furthermore, we continue to expend time and other resources in an effort to ensure that the Settlement Class Members secure their relief under the Settlement. Class Counsel will continue to work diligently to ensure the best relief possible for the class members.

Settlement Administration

14. The Settlement Administrator, Kroll Settlement Administration, LLC, has reported that the final Class List contains the names of 84,193 unique individuals and includes a mailing address and/or email address for 81,910 of them.

15. On November 22, 2022, the Settlement Administrator informed me that the total Settlement Administration Expenses for this case will be approximately \$611,871.79 through completion.

Plaintiff Burton's Involvement in this Action

16. Finally, I believe that Plaintiff Jermaine Burton's participation was critical to the case's resolution and Mr. Burton dutifully represented the interests of the Settlement Class throughout the case. Mr. Burton was involved in all aspects of the case, including assisting in Class Counsel's pre-suit investigation, providing information to Class Counsel to prepare the complaint, reviewing the complaint before filing, responding to Defendant's interrogatories and document requests, preparing and sitting for his deposition, conferring with Class Counsel throughout the litigation and settlement process, and ultimately reviewing and approving the Settlement Agreement before signing it.

17. Were it not for Plaintiff Burton's efforts and contributions to the litigation, the Settlement Class would not have obtained the substantial benefits conferred by the Settlement.

18. Neither Plaintiff Burton's retention agreement nor his participation in this Action were in any way predicated on him receiving any benefit based on his involvement. Plaintiff

Burton was not promised anything in exchange for his service as a named plaintiff or putative class representative.

19. Ultimately, Plaintiff Burton's willingness to commit time to this litigation and undertake the responsibilities involved in representative litigation resulted in substantial benefits to the Settlement Class and fully justifies the requested incentive award.

* * *

I declare under penalty of the perjury that the foregoing is true and correct. Executed on November 22, 2022 at Chicago, Illinois.

/s/ J. Eli Wade-Scott

EXHIBIT 3-A



June 2022



Inside the Firm

We are a nationally recognized leader in high-stakes plaintiffs' work, ranging from class and mass actions, to public client investigations and prosecutions.

[edelson.com](https://www.edelson.com)

☆☆☆☆☆☆

**“National reputation as a maverick in [its]
commitment to pursuing big-ticket . . .
cases.”**

—Law360

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Who We Are

EDELSON PC is a law firm concentrating on high stakes plaintiff's work ranging from class and mass actions to public client investigations and prosecutions. The cases we have litigated—as either lead counsel or as part of a broader leadership structure—have resulted in settlements and verdicts totaling over \$20 billion.

- ▶ We hold records for the largest jury verdict in a privacy case (\$925m), the largest consumer privacy settlement (\$650m), and the largest TCPA settlement (\$76m). We also secured one of the most important consumer privacy decisions in the U.S. Supreme Court (*Robins v. Spokeo*). Our class actions, brought against the national banks in the wake of the housing collapse, restored over \$5 billion in home equity credit lines. We served as counsel to a member of the 11-person Tort Claimant's Committee in the PG&E Bankruptcy, resulting in a historic \$13.5 billion settlement. We are the only firm to have established that online apps can constitute illegal gambling under state law, resulting in settlements that are collectively worth \$200 million. We are co-lead counsel in the NCAA personal injury concussion cases, leading an MDL involving over 300 class action lawsuits. And we are representing, or have represented, regulators in cases involving the deceptive marketing of opioids, environmental cases, privacy cases against Facebook, Uber, Google and others, cases related to the marketing of e-cigarettes to children, and cases asserting claims that energy companies and for-profit hospitals abused the public trust.
- ▶ We have testified before the United States Senate and state legislative and regulatory bodies on class action and consumer protection issues, cybersecurity and privacy (including election security, children's privacy and surreptitious geotracking), sex abuse in children's sports, and gambling, and have repeatedly been asked to work on federal, state, and municipal legislation involving a broad range of issues. We speak regularly at seminars on consumer protection and class action issues, and routinely lecture at law schools and other graduate programs.
- ▶ We have a "one-of-a-kind" investigation team that sets us apart from others in the plaintiff's bar. Our dedicated "internal lab of computer forensic engineers and tech-savvy lawyers" investigate issues related to "fraudulent software and hardware, undisclosed tracking of online consumer activity and illegal data retention," among numerous other technology related issues facing consumers. Cybersecurity & Privacy Practice Group of the Year, Law360 (January 2019).

► Instead of chasing the headlines, our case development team is leading the country in both identifying emerging privacy and technology issues, as well as crafting novel legal theories to match. Some examples of their groundbreaking accomplishments include: demonstrating that Microsoft and Apple were continuing to collect certain geolocation data even after consumers turned “location services” to “off”; filing multiple suits revealing mobile apps that “listen” through phone microphones without consent; filing a lawsuit stemming from personal data collection practices of an intimate IoT device; and filing suit against a data analytics company alleging that it had surreptitiously installed tracking software on consumer computers.

As the Hollywood Reporter explained, we are “accustomed to big cases that have lasting legacy.”

In the News

The firm and our attorneys regularly get recognized for our groundbreaking work. We have been named by Law360 as a Consumer Protection Group of the Year (2016, 2017, 2019, 2020), a Class Action Group of the Year (2019), a Plaintiff's Class Action Powerhouse (2017, 2018, 2019), a Cybersecurity and Privacy Group of the Year (2017, 2018, 2019, 2020), a "Privacy Litigation Heavyweight," a "Cybersecurity Trailblazer" by The National Law Journal (2016) and won sole recognition in 2019 as "Elite Trial Lawyers" in Gaming Law. The National Law Journal also recognized us as "Elite Trial Lawyers" in Consumer Protection (2020, 2021), Class Action (2021), Privacy/Data Breach (2020), Mass Torts (2020), and Sports, Entertainment and Media Law (2020). In 2019, we were recognized for the third consecutive year as an "Illinois Powerhouse," alongside Barack Ferrazzano, Winston & Strawn, Schiff Hardin and Mayer Brown; in each year, we were the only plaintiff's firm, and the only firm with fewer than one hundred lawyers, recognized. In 2021, we were awarded the Diversity Initiative Award by The National Law Journal, given to the plaintiff's firm demonstrating a concerted and successful effort to promote diversity within its organization and the profession at large.

► Our founder has been recognized as a "Titan of the Plaintiff's Bar" by Law360, one of "America's top trial lawyers" in the mass action arena, a LawDragon 2020 Leading Plaintiff Financial Lawyer, and one of "Chicago's Top Ten Startup Founders Over Age 45" by Tech.co—the only law firm founder to win such an award. Our Global Managing Partner was recognized as a top 100 lawyer in California by California Daily Journal (2020, 2021).

► We have also been recognized by courts for our approach to litigation, which led the then-Chief Judge of the United States Court for the Northern District of Illinois to praise our work as "consistent with the highest standards of the profession" and "a model of what the profession should be. . . ." *In re Kentucky Fried Chicken Coupon Mktg. & Sales Practices Litig.*, No. 09-cv-7670, MDL 2103 (N.D. Ill. Nov. 30, 2011). Likewise, in appointing our firm interim co-lead in one of the most high-profile banking cases in the country, a federal court pointed to our ability to be "vigorous advocates, constructive problem-solvers, and civil with their adversaries." *In Re JPMorgan Chase Home Equity Line of Credit Litig.*, No. 10-cv-3647 (N.D. Ill. July 16, 2010).

Our Practice

General Mass/Class Tort Litigation

We currently represent, among others, labor unions seeking to recover losses arising out of the opioid crisis, classes of student athletes suffering from the long-term effects of concussive and sub-concussive injuries, hundreds of families suffering the ill-effects of air and water contamination in their communities, and individuals damaged by the “Camp Fire” in Northern California.

Representative cases and settlements include:

- ▶ Representing over 1,000 victims of the Northern California “Camp Fire,” allegedly caused by utility company Pacific Gas & Electric. Served as counsel to a member of the 11-person Tort Claimants' Committee in the PG&E Bankruptcy, resulting in a historic \$13.5 billion settlement.
- ▶ Representing hundreds of victims of Oregon's 2020 "Beachie Creek" and "Holiday Farm" fires, allegedly caused by local utility companies. The Beachie Creek and Holiday Farm fires together burned approximately 400,000 acres, destroyed more than 2,000 structures, and took the lives of at least six individuals.
- ▶ *In re Nat'l Collegiate Athletic Ass'n Single School/Single Sport Concussion Litig.*, No. 16-cv-8727, MDL No. 2492 (N.D. Ill.): Appointed co-lead counsel in MDL against the NCAA, its conferences, and member institutions alleging personal injury claims on behalf of college football players resulting from repeated concussive and sub-concussive hits.
- ▶ Representing numerous labor unions and health and welfare funds seeking to recover losses arising out of the opioid crisis. See, e.g., *Illinois Public Risk Fund v. Purdue Pharma L.P., et al.*, No. 2019-CH-05847 (Cir. Ct. Cook Cty., Ill.); *Int'l Union of Operating Eng'rs, Local 150, et al. v. Purdue Pharma L.P., et al.*, No. 2019-CH-01548 (Cir. Ct. Cook Cty., Ill.); *Village of Addison et al. v. Actavis LLC et al.*, No. 2020-CH-05181 (Cir. Ct. Cook Cty., Ill.).

Environmental Litigation

We represent hundreds of families harmed by the damaging effects of ethylene oxide exposure in their communities, consumers and businesses whose local water supply was contaminated by a known toxic chemical, and property owners impacted by the flightpath of Navy fighter planes.

Representative cases and settlements include:

- ▶ Representing three state Attorneys General in their investigations into contamination and exposure issues resulting from a “forever chemical” commonly referred to as PFAS.
- ▶ Representing a state Attorney General in investigating and potentially litigating matters related to the problematic use of a pesticide used in homes, on agricultural crops, lawns, and gardens, and as a fumigating agent—that is now known to have contaminated soil and groundwater.
- ▶ Representing hundreds of individuals around the country that are suffering the ill-effects of ethylene oxide exposure—a gas commonly used in medical sterilization processes. We have brought over 100 personal injury and wrongful death cases against EtO emitters across the country, as well as numerous medical monitoring class actions. *Brincks et al. v. Medline Indus., Inc., et al.*, No. 2020-L-008754 (Cir. Ct. Cook Cty., Ill.); *Leslie v. Steris Isomedix Operations, Inc., et al.*, No. 20-cv-01654 (N.D. Ill.); *Jackson v. 3M Company, et al.*, No. 19-cv-00522 (D.S.C.).
- ▶ Representing hundreds of individuals who have been exposed through their own drinking water and otherwise to PFAS and related “forever chemicals” used in various applications. This exposure has allegedly led to serious health issues, including cancer, as well as the devaluation of private property due to, among other things, the destruction of the water supply. In conjunction with our work in this space, we have been appointed to the Plaintiff's Executive Committee in *In re: Aqueous Film-Forming Foams (AFFF) Prods. Liability Litig.*, 18-mn-2873-RMG, MDL No. 2873 (D.S.C.).
- ▶ Representing property owners on Whidbey Island, Washington, whose homes sit directly in the flightpath of dozens of Navy fighter planes. The Navy is alleged to have significantly increased the number of these planes at the bases at issue, as well as the frequency of their flights, to the detriment of our clients’ privacy and properties. *Pickard v. USA*, No. 19-1928L (Ct. Fed. Claims); *Newkirk v. USA*, No. 20-628L (Ct. Fed. Claims).
- ▶ Our team has been designated as Panel Members on a State Attorney General's Environmental Counsel Panel.

Banking, Lending, and Finance Litigation

We were at the forefront of litigation arising from the aftermath of the federal bailouts of the banks. Our suits included claims that certain banks unlawfully suspended home credit lines based on pretextual reasons, and that certain banks failed to honor loan modification programs. We achieved the first federal appellate decision in the country recognizing the right of borrowers to enforce HAMP plans under state law. The court noted that “[p]rompt resolution of this matter is necessary not only for the good of the litigants but for the good of the Country.” *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547, 586 (7th Cir. 2012) (Ripple, J., concurring). Our settlements restored billions of dollars in home credit lines to people throughout the country.

Representative cases and settlements include:

- ▶ *In re JP Morgan Chase Bank Home Equity Line of Credit Litig.*, No. 10-cv-3647 (N.D. Ill.): Co-lead counsel in nationwide putative class action alleging illegal suspensions of home credit lines. Settlement restored between \$3.2 billion and \$4.7 billion in credit to the class.
- ▶ *Hamilton v. Wells Fargo Bank, N.A.*, No. 09-cv-04152-CW (N.D. Cal.): Lead counsel in class actions challenging Wells Fargo’s suspensions of home equity lines of credit. Nationwide settlement restored access to over \$1 billion in credit and provides industry leading service enhancements and injunctive relief.
- ▶ *In re Citibank HELOC Reduction Litig.*, No. 09-cv-0350-MMC (N.D. Cal.): Lead counsel in class actions challenging Citibank’s suspensions of home equity lines of credit. The settlement restored up to \$653 million worth of credit to affected borrowers.
- ▶ *Wigod v. Wells Fargo*, No. 10-cv-2348 (N.D. Ill.): Obtained first appellate decision in the country recognizing the right of private litigants to sue to enforce HAMP plans. Settlement provided class members with permanent loan modifications and substantial cash payments.

Privacy and Data Security

The New York Times has explained that our “cases read like a time capsule of the last decade, charting how computers have been steadfastly logging data about our searches, our friends, our bodies.” Courts have described our attorneys as “pioneers in the electronic privacy class action field, having litigated some of the largest consumer class actions in the country on this issue.” See *In re Facebook Privacy Litig.*, No. 10-cv-02389 (N.D. Cal. Dec. 10, 2010) (order appointing us interim co-lead of privacy class action); see also *In re Netflix Privacy Litig.*, No. 11-cv-00379 (N.D. Cal. Aug. 12, 2011) (appointing us sole lead counsel due, in part, to our “significant and particularly specialized expertise in electronic privacy litigation and class actions”). In *Barnes v. Aрызta*, No. 17-cv-7358 (N.D. Ill. Jan. 22, 2019), the court endorsed an expert opinion finding that we “should ‘be counted among the elite of the profession generally and [in privacy litigation] specifically’ because of [our] expertise in the area.”

Representative cases and settlements include:

- ▶ *In re Facebook Biometric Privacy Litig.*, No. 15-cv-03747 (N.D. Cal.): Filed the first of its kind class action against Facebook under the Illinois Biometric Information Privacy Act, alleging Facebook collected facial recognition data from its users without authorization. Appointed Class Counsel in securing adversarial certification of class of Illinois Facebook users. Case settled on the eve of trial for a record breaking \$650 million.
- ▶ *Wakefield v. Visalus*, No. 15-cv-01857 (D. Ore. Apr. 12, 2019): Lead counsel in class action alleging that defendant violated federal law by making unsolicited telemarketing calls. Obtained jury verdict and judgment equating to more than \$925 million in damages to the class.

Privacy and Data Security

- ▶ *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016): Lead counsel in the landmark case affirming the ability of plaintiffs to bring statutory claims for relief in federal court. The United States Supreme Court rejected the argument that individuals must allege “real world” harm to have standing to sue in federal court; instead the court recognized that “intangible” harms and even the “risk of future harm” can establish “standing.” Commentators have called *Spokeo* the most significant consumer privacy case in recent years.
- ▶ *Birchmeier v. Caribbean Cruise Line, Inc., et al.*, No. 12-cv-4069 (N.D. Ill.): Co-lead counsel in class action alleging that defendant violated federal law by making unsolicited telemarketing calls. On the eve of trial, the case resulted in the largest Telephone Consumer Protection settlement to date, totaling \$76 million.
- ▶ *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946 (9th Cir. 2009): Won first ever federal decision finding that text messages constituted “calls” under the TCPA. In total, we have secured text message settlements worth over \$100 million.
- ▶ *Kusinski v. ADP LLC*, No. 2017-CH-12364 (Cir. Ct. Cook Cty. Ill.): Secured key victories establishing the liability of time clock vendors under the Illinois Biometric Information Privacy Act and the largest-ever BIPA settlement in the employment context with a time clock vendor for \$25 million.
- ▶ *Dunstan v. comScore, Inc.*, No. 11-cv-5807 (N.D. Ill.): Lead counsel in certified class action accusing Internet analytics company of improper data collection practices. The case settled for \$14 million.
- ▶ *Doe v. Ann & Robert H. Lurie Children’s Hosp. of Chi.*, No. 2020-CH-04123 (Cir. Ct. Cook Cty., Ill.): Lead counsel in a class action alleging breach of contract, breach of confidentiality, negligent supervision, and other claims against Lurie Children’s Hospital after employees allegedly accessed medical records without permission.

Privacy and Data Security

- ▶ *American Civil Liberties Union et al. v. Clearview AI, Inc.*, No. 2020-CH-04353 (Cir. Ct. Cook Cty., Ill.): Representing the American Civil Liberties Union in lawsuit against Clearview AI for violating the Illinois Biometric Information Privacy Act through its collection and storage of Illinois residents' faceprints.
- ▶ *Consumer Watchdog v. Zoom Video Commc'ns, Inc.*, No. 20-cv-02526 (D.D.C): Representing advocacy group Consumer Watchdog in its lawsuit against Zoom Video Communications Inc, alleging the company falsely promised to protect communications through end-to-end encryption.
- ▶ *Mocek v. AllSaints USA Ltd.*, No. 2016-CH-10056 (Cir. Ct. Cook Cty, Ill.): Lead counsel in a class action alleging the clothing company AllSaints violated federal law by revealing consumer credit card numbers and expiration dates. Case settled for \$8 million with class members receiving about \$300 each.
- ▶ *Resnick v. Avmed*, No. 10-cv-24513 (S.D. Fla.): Lead counsel in data breach case filed against a health insurance company. Obtained landmark appellate decision endorsing common law unjust enrichment theory, irrespective of whether identity theft occurred. Case also resulted in the first class action settlement in the country to provide data breach victims with monetary payments irrespective of whether they suffered identity theft.
- ▶ *N.P. v. Standard Innovation (US), Corp.*, No. 1:16-cv-08655 (N.D. Ill.): Brought and resolved first ever IoT privacy class action against adult-toy manufacturer accused of collecting and recording highly intimate and sensitive personal use data. Case resolved for \$3.75 million.
- ▶ *Halaburda v. Bauer Publ'g Co.*, No. 12-cv-12831 (E.D. Mich.); *Grenke v. Hearst Commc'ns, Inc.*, No. 12-cv-14221 (E.D. Mich.); *Fox v. Time, Inc.*, No. 12-cv-14390 (E.D. Mich.): Lead counsel in consolidated actions brought under Michigan's Preservation of Personal Privacy Act, alleging unlawful disclosure of subscribers' personal information to data miners. In a ground-breaking decision, the court denied three motions to dismiss finding that the magazine publishers were covered by the act and that the illegal sale of personal information triggers an automatic \$5,000 award to each aggrieved consumer. Secured a \$30 million in cash settlement and industry-changing injunctive relief.

General Consumer Matters

We have represented plaintiffs in consumer fraud cases in courts nationwide against companies alleged to have been peddling fraudulent software, engaging in online gambling businesses in violation of state law, selling defective products, or engaging in otherwise unlawful conduct.

Representative cases and settlements include:

- ▶ Having secured a watershed Ninth Circuit victory for consumers in *Kater v. Churchill Downs Inc.*, 886 F.3d 784 (9th Cir. 2018), we are now pursuing consumer claims against more than a dozen gambling companies for allegedly profiting off of illegal internet casinos. Settlements in several of these cases total \$200 million.
- ▶ Prosecuted over 100 cases alleging that unauthorized charges for mobile content were placed on consumer cell phone bills. Cases collectively settled for over \$100 million. See, e.g., *McFerren v. AT&T Mobility LLC*, No. 08-cv-151322 (Sup. Ct. Fulton Cty., Ga.); *Paluzzi et al. v. mBlox, Inc., et al.*, No. 2007-CH-37213, (Cir. Ct. Cook Cty., Ill.); *Williams et al. v. Motricity, Inc. et al.*, No. 2009-CH-19089 (Cir. Ct. Cook Cty., Ill.).
- ▶ *Edelson PC v. Christopher Bandas, et al.*, No. 1:16-cv-11057 (N.D. Ill.): Filed groundbreaking lawsuit seeking to hold professional objectors and their law firms responsible for, among other things, alleged practice of objecting to class action settlements in order to extort payments for themselves, and the unauthorized practice of law. After several years of litigation and discovery, secured first of its kind permanent injunction against the objector and his law firm, which, inter alia, barred them from practicing in Illinois or asserting objections to class action settlements in any jurisdiction absent meeting certain criteria.
- ▶ Brought numerous cases alleging that defendants deceptively designed and marketed computer repair software. Cases collectively settled for over \$45 million. *Beaton v. SpeedyPC Software*, 907 F.3d 1018 (7th Cir. 2018).

General Consumer Matters

- ▶ *McCormick, et al. v. Adtalem Glob. Educ., Inc., et al.*, No. 2018-CH-04872 (Cir. Ct. Cook Cty., Ill): After students at one of the country's largest for-profit colleges, DeVry University, successfully advanced their claims that the school allegedly induced them to enroll and charged a premium based on inflated job placement statistics, the parties agreed to a \$45 million settlement—the largest private settlement DeVry has entered into regarding the claims.
- ▶ *1050 W. Columbia Condo. Ass'n v. CSC ServiceWorks, Inc.*, No. 2019-CH-07319 (Cir. Ct. Cook Cty., Ill): Representing a class of landlords in securing a multifaceted settlement—including a cash component of up to \$30 million—with a laundry service provider over claims that the provider charged fees that were allegedly not permitted in the parties' contracts. The settlement's unique structure allows class members to choose repayment in the near term, or to lock in more favorable rates for the next decade.
- ▶ *Dickey v. Advanced Micro Devices, Inc.*, No. 15-cv-4922 (N.D. Cal.): Lead counsel in a complex consumer class action alleging AMD falsely advertised computer chips to consumers as “eight-core” processors that were, in reality, disguised four-core processors. The case settled for \$12.1 million.
- ▶ *Barrett v. RC2 Corp.*, No. 2007 CH 20924 (Cir. Ct. Cook Cty., Ill.): Co-lead counsel in lead paint recall case involving Thomas the Tank toy trains. Settlement was valued at over \$30 million and provided class with full cash refunds and reimbursement of certain costs related to blood testing.
- ▶ *In re Pet Food Prods. Liability Litig.*, No. 07-cv-2867 (D.N.J.): Part of mediation team in class action involving largest pet food recall in United States history. Settlement provided \$24 million common fund and \$8 million in charge backs.



Prior to entering academia, I was a lawyer at the national office of the American Civil Liberties Union (ACLU) for nearly a decade, during which time I pursued civil rights campaigns on behalf of minority groups. Based on that experience, it strikes me that what Class Counsel have pursued here is closer in form to a civil rights litigation campaign than it is to a series of discrete class action settlements. Class Counsel saw an injustice – a thinly disguised form of gambling preying on those most vulnerable to addictive gambling – and they sought to fix it. Their goal was not to win a case but to reform an entire industry, much like a civil rights campaign might aim to reform a particular type of discriminatory practice across an entire employment sector. To accomplish this end, Class Counsel went far beyond what lawyers pursuing a simple class action case would normally do. Class Counsel pursued multiple cases. Class Counsel pursued multiple defendants. Class Counsel filed actions in multiple forums. Class Counsel tested various state laws. Class Counsel built websites to help app users avoid forced arbitration clauses, lobbied legislators and regulators, and took their efforts to the media. When Class Counsel lost, they did not give up, but changed tactics or forums and kept going. And they did all of this with their own funds, risking millions of dollars of their own money to end this practice. What they have achieved so far, with these initial settlements, is an astounding accomplishment that begins to chip away at the pernicious underlying social casinos.

-William B. Rubenstein, Bruce Bromley Professor of Law at Harvard Law School and sole author of
the Newberg on Class Actions (5th Edition).

Insurance Matters

We have successfully represented individuals and companies in a multitude of insurance related actions, including dozens of businesses whose business interruption insurance claims were denied by various insurers in the wake of the COVID-19 crisis. We successfully prosecuted and settled multi-million dollar suits against J.C. Penney Life Insurance for allegedly illegally denying life insurance benefits under an unenforceable policy exclusion and against a Wisconsin insurance company for terminating the health insurance policies of groups of self-insureds.

Representative cases and settlements include:

- ▶ *Biscuit Cafe Inc. et al. v. Society Ins., Inc.*, No. 20-cv-02514 (N.D. Ill.); *America's Kids, LLC v. Zurich American Ins. Co.*, No. 20-cv-03520 (N.D. Ill.); *MAIA Salon Spa and Wellness Corp. et al. v. Sentinel Ins. Co., Ltd. et al.*, No. 20-cv-3805 (E.D.N.Y.); *Badger Crossing, Inc. v. Society Ins., Inc.*, No. 2020CV000957 (Cir. Ct. Dane Cty., WI); and *Sea Land Air Travel, Inc. v. Auto-Owners Inc. Co. et al.*, No. 20-005872-CB (Cir. Ct. Wayne Cty., MI): In one of the most prominent areas for class action litigation related to the COVID-19 pandemic, we were among the first to file class action lawsuits against the insurance industry to recover insurance benefits for business owners whose businesses were shuttered by the pandemic. We represent an array of small and family-owned businesses—including restaurants and eateries, movie theatres, salons, retail stores, healthcare providers, and travel agencies—in a labyrinthine legal dispute about whether commercial property insurance policies cover business income losses that occurred as a result of business interruptions related to the COVID-19 pandemic. With over 800 cases filed nationwide to date, we have played an active role in efforts to coordinate the work of plaintiffs' attorneys through the Insurance Law Section of the American Association for Justice (AAJ), including by leading various roundtables and workgroups as the State Co-Chairs for Illinois, Wisconsin, and Michigan of the Business Interruption Litigation Taskforce (BILT), a national collaborative of nearly 300 practitioners representing policyholders in insurance claims arising out of the COVID-19 pandemic.

Insurance Matters

- ▶ *Holloway v. J.C. Penney*, No. 97-cv-4555 (N.D. Ill.): One of the primary attorneys in a multi-state class action suit alleging that the defendant illegally denied life insurance benefits to the class. Case settled, resulting in a multi-million dollar cash award to the class.
- ▶ *Ramlow v. Family Health Plan*, 2000CV003886 (Wis. Cir. Ct.): Co-lead counsel in a class action suit challenging defendant's termination of health insurance to groups of self-insureds. The plaintiff won a temporary injunction, which was sustained on appeal, prohibiting such termination. Case eventually settled, ensuring that each class member would remain insured.

Public Client Litigation and Investigations

We have been retained as outside counsel by states, cities, and other regulators to handle investigations and litigation relating to environmental issues, the marketing of opioids and e-cigarettes, privacy issues, and general consumer fraud.

Representative cases and settlements include:

- ▶ *State of Idaho v. Purdue Pharma L.P., et al.*, No. CV01-19-10061 (Cir. Ct. Ada Cty., Idaho): Representing the State of Idaho, and nearly 50 other governmental entities—with a cumulative constituency of over three million Americans—in litigation against manufacturers and distributors of prescription opioids.
- ▶ *District of Columbia v. Juul Labs, Inc.*, No. 2019 CA 07795 B (D.C. Super. Ct.): Representing the District of Columbia in a suit against e-cigarette giant Juul Labs, Inc. for alleged predatory and deceptive marketing.
- ▶ *State of New Mexico, ex. rel. Hector Balderas v. Google, LLC*, No. 20-cv-00143 (D.N.M.): Representing the State of New Mexico in a case against Google for violating the Children's Online Privacy Protection Act by collecting data from children under the age of 13 through its G-Suite for Education products and services.
- ▶ *District of Columbia v. Facebook, Inc.*, No. 2018 CA 8715 B (D.C. Super. Ct.) and *People of Illinois v. Facebook Inc., et al.*, No. 2018-CH-03868 (Cir. Ct. Cook Cty., Ill.): Representing the District of Columbia as well as the People of the State of Illinois (through the Cook County State's Attorney) in lawsuits against the world's largest social network, Facebook, and Cambridge Analytica—a London-based electioneering firm—for allegedly collecting (or allowing the collecting of) and misusing the private data of 50 million Facebook users.
- ▶ ComEd Bribery Litigation: Representing the Citizens Utility Board, the statutorily-designated representative of Illinois utility ratepayers, in pursuing Commonwealth Edison for its alleged role in a decade-long bribery scheme.

Public Client Litigation and Investigations

- ▶ *City of Cincinnati, et al. v. FirstEnergy, et al.*, No. 20CV007005 (Ohio C.P.): Representing Columbus and Cincinnati in litigation against First Energy over the largest political corruption scandal in Ohio's history. Obtained preliminary injunction, which prevented electric utilities from collecting more than \$1 billion of new fees from being collected from ratepayers
- ▶ *Village of Melrose Park v. Pipeline Health Sys. LLC, et al.*, No. 19-CH-03041 (Cir. Ct. Cook Cty., Ill.): Successfully represented the Village of Melrose Park in litigation arising from the closure of Westlake Hospital in what has been called "one of the most complicated hospital closure disputes in the state's history."
- ▶ *In re Marriott Int'l, Inc. Customer Data Security Breach Litig.*, 19-md-02879, MDL 2879 (D. Md.): Representing the City of Chicago in the ongoing Marriott data breach litigation.
- ▶ *In re Equifax, Inc., Customer Data Security Breach Litig.*, 17-md-02800 (N.D. Ga.): Successfully represented the City of Chicago in the Equifax data breach litigation, securing a landmark seven-figure settlement under Chicago's City-specific ordinance.
- ▶ *City of Chicago, et al. v. Uber Techs., Inc.*, No. 17-CH- 15594 (Cir. Ct. Cook Cty., Ill.): Representing both the City of Chicago and the People of the State of Illinois (through the Cook County State's Attorney) in a lawsuit against tech giant Uber Technologies, stemming from a 2016 data breach at the company and an alleged cover-up that followed.

General Commercial Litigation

Our attorneys have also handled a wide range of general commercial litigation matters, from partnership and business-to-business disputes to litigation involving corporate takeovers. We have handled cases involving tens of thousands of dollars to “bet the company” cases involving up to hundreds of millions of dollars. Our attorneys have collectively tried hundreds of cases, as well as scores of arbitrations. We have routinely been brought on to be “negotiation” counsel in various high-stakes or otherwise complex commercial disputes.



Our Team



Jay Edelson

Founder and CEO

Secured over \$3 billion in settlements and verdicts for his clients while serving as lead counsel (over \$20b in total).

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Law360 described Jay as a “Titan of the Plaintiff’s Bar.” The American Bar Association recognized Jay Edelson as one of the “most creative minds in the legal industry.” Jay has also been recognized as one of “America’s top trial lawyers” in the mass action arena, and was included in LawDragon’s 2020 list of Leading Plaintiff Financial Lawyers. Law360 noted that he has “taken on some of the biggest companies and law firms in the world and has had success where others have not.” Another publication explained that “when it comes to legal strategy and execution, Jay is simply one of the best in the country.” Professor Todd Henderson, the Michael J. Marks Professor of Law at the University of Chicago Law School, opined that when thinking about “who’s the most innovative lawyer in the US ... [Jay is] at or near the top of my list.”

Of Counsel explained that Jay has made a career out of “battling bullies”:

Big banks. Big tech firms. Big Pharma. The big business that is the NCAA. Plaintiff’s attorney Jay Edelson wages battle against many of the nation’s most fortified institutions. Not only does he refuse to back down to anyone, regardless of their stature or deep pockets, he welcomes the challenge.

Edelson earned a monumental victory in the US Supreme Court in what’s been characterized as one of the most important consumer privacy cases of the last several years, Robins v. Spokeo. He and his team are leading the charge against the NCAA in representing former college football players who suffered concussions, and their families. And, on behalf of labor unions and governmental bodies, he’s elbow-deep in litigation against pharmaceutical companies and distributors for their pivotal role in the opioid crisis.

Simply put, he’s a transformational lawyer.

- ▶ Jay has been appointed to represent state and local regulators on some of the largest issues of the day, ranging from opioids suits against pharmaceutical companies, to environmental actions against polluters, to breaches of trust against energy companies and for-profit hospitals, to privacy suits against Google, Facebook, Uber, Marriott, and Equifax.

Jay Edelson

Founder and CEO

- ▶ Jay has received special recognition for his success in taking on Silicon Valley. The national press has dubbed Jay and the firm the “most feared” litigators in Silicon Valley and, according to the New York Times, tech’s “babyfaced ... boogeyman.” Most recently, Chicago Lawyer Magazine dubbed Jay “Public Enemy No. 1 in Silicon Valley.” In the emerging area of privacy law, the international press has called Jay one of the world’s “profilertesten (most prominent)” privacy class action attorneys. The National Law Journal has similarly recognized Jay as a “Cybersecurity Trailblazer”—one of only two plaintiff’s attorneys to win this recognition.
- ▶ Jay has taught seminars on class actions and negotiations at Chicago-Kent College of Law and privacy litigation at UC Berkeley School of Law. He has written a blog for Thomson Reuters, called Pardon the Disruption, where he focused on ideas necessary to reform and reinvent the legal industry and has contributed opinion pieces to TechCrunch, Quartz, the Chicago Tribune, Law360, and others. He also serves on Law360’s Privacy & Consumer Protection editorial advisory board. In recognition of the fact that his firm runs like a start-up that “just happens to be a law firm,” Jay was recently named to “Chicago’s Top Ten Startup Founders over 40” by Tech.co.
- ▶ Jay has been regularly appointed to lead complicated MDLs and other coordinated litigation, including those seeking justice for college football players suffering from the effects of concussions to homeowners whose HELOCs were improperly slashed after the 2008 housing collapse to some of the largest privacy cases of the day.
- ▶ Jay recieved his JD from the University of Michigan Law School.
- ▶ For a more complete bio, see <https://edelson.com/team/jay-edelson/>



Rafey S. Balabanian

Global Managing Partner
Director of Nationwide Litigation

Appointed lead class counsel in more than two dozen class actions in state and federal courts across the country.

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Rafey started his career as a trial lawyer, serving as a prosecutor for the City of Chicago where he took part in dozens of trials. Rafey went on to join a litigation boutique in Chicago where he continued his trial work, before eventually starting with Edelson in 2008. He is regarded by his peers as a highly skilled litigator, and has been appointed lead class counsel in more than two dozen class actions in state and federal courts across the country. His work has led to groundbreaking results in trial courts nationwide, including a \$925 million jury verdict in *Wakefield v. ViSalus*—the largest privacy verdict in this nation's history. In 2020 and 2021, Rafey was recognized as a top 100 lawyer in California by California Daily Journal.

- ▶ Rafey has been at the forefront of protecting consumer data, and in 2018 helped lead the effort to obtain adversarial class certification for the first time in the history of the Illinois Biometric Information Privacy Act, on behalf of a class of Illinois users. On the eve of trial, the case settled for a record-breaking \$650 million.
- ▶ Some of Rafey's more notable achievements include nationwide settlements involving the telecom industry, including companies such as AT&T, Google, Sony, Motricity, and OpenMarket valued at more than \$100 million.
- ▶ Rafey has been appointed to represent state Attorneys General and regulators on a variety of issues including the District of Columbia in a suit against Facebook for the Cambridge Analytica scandal. He also represents labor unions and governmental entities in lawsuits against the drug manufacturers and distributors over the ongoing opioid crisis.
- ▶ Rafey has also been appointed to the Executive Committee in the NCAA concussion cases, considered to be "one of the largest actions pending in the country, a multi district litigation ... that currently include [more than 300] personal injury class actions filed by college football players[.]" And he represents a member of the Tort Claimant's Committee in the PG&E Bankruptcy action, which resulted in a historic \$13.5 billion settlement.
- ▶ Rafey served as trial court counsel in *Robins v. Spokeo, Inc.*, 2:10-cv-05306-ODW-AGR (C.D. Cal.), which has been called the most significant consumer privacy case in recent years.

Rafey S. Balabanian

Global Managing Partner
Director of Nationwide Litigation

- ▶ Rafey's class action practice also includes his work in the privacy sphere, and he has reached groundbreaking settlements with companies like Netflix, LinkedIn, Walgreens, and Nationstar. Rafey also served as lead counsel in the case of *Dunstan, et al. v. comScore, Inc.*, No. 11-cv-5807 (N.D. Ill.), where he led the effort to secure class certification of what is believed to be the largest adversarial class to be certified in a privacy case in the history of U.S. jurisprudence.
- ▶ Rafey's work in general complex commercial litigation includes representing clients ranging from "emerging technology" companies, real estate developers, hotels, insurance companies, lenders, shareholders and attorneys. He has successfully litigated numerous multi-million dollar cases, including several "bet the company" cases.
- ▶ Rafey is a frequent speaker on class and mass action issues, and has served as a guest lecturer on several occasions at UC Berkeley School of Law. Rafey also serves on the Executive Committee of the Antitrust, Unfair Competition and Privacy Section of the State Bar of California where he has been appointed Vice Chair of Privacy, as well as the Executive Committee of the Privacy and Cybersecurity Section of the Bar Association of San Francisco.
- ▶ Rafey received his J.D. from the DePaul University College of Law in 2005. A native of Colorado, Rafey received his B.A. in History, with distinction, from the University of Colorado – Boulder in 2002.



Eve-Lynn J. Rapp

Managing Partner, Boulder

Secured a \$76 million settlement—the largest ever for a TCPA case—four days before trial.

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Eve is a partner and Co-Chair of Edelson's Public Client team, and has extensive complex litigation experience in class, mass, and governmental litigation, including matters on behalf of various Attorneys General and municipalities across the country. Eve has been appointed class counsel or led the litigation efforts in dozens of privacy and consumer protection matters and has recovered or secured verdicts of over a billion dollars for her clients.

- ▶ Specific to her Public Client and Government Affairs practice, Eve is presently leading the litigation on behalf of the City of Chicago in the Marriott data breach litigation, which seeks to hold the hotel giant accountable for a massive data breach where attackers stole the personal data of up to 383 million guests—including over 5 million unencrypted passport numbers. She likewise represented the City of Chicago in the data breach litigation against Equifax where she secured a landmark seven-figure settlement under Chicago's City-specific ordinance.
- ▶ Eve is part of the team representing the District of Columbia in its litigation against Juul for its deceptive e-cigarette manufacturing and sales and the State of New Mexico in its suit against Google alleging that its G-Suite for Education product and services illegally collected data from New Mexico school children in violation of COPPA. Eve also counsels governments on a range of issues involving consumer protection, privacy, technology, and data security and was recently designated a Panel Member of Delaware's Department of Justice's Environmental Counsel Panel.
- ▶ Eve devotes a considerable amount of her practice to consumer technology and privacy cases. Eve was appointed Class Counsel in *Wakefield v. ViSalus, Inc.*, No. 15-cv-01857 (D. Or.), where she led and coordinated Edelson's litigation efforts, achieved certification of an adversarial TCPA class, and paved the way to a \$925 million jury verdict. She also led Edelson's efforts in *Birchmeier v. Caribbean Cruise Line, Inc. et al.*, No. 12-cv-04069 (N.D. Ill.), where, after obtaining class certification and partial summary judgment, she secured a \$76 million settlement—the largest ever for a TCPA case—four days before trial. She is also responsible for leading one of the first "Internet of Things" cases under the Federal

Eve-Lynn Rapp

Managing Partner, Boulder

Wiretap Act against a company collecting highly sensitive personal information from consumers, in which she obtained a \$5 million (CAD) settlement that afforded individual class members over one hundred dollars in relief.

- ▶ In addition to her government and privacy work, Eve has led over a dozen consumer fraud cases, against a variety of industries, including e-cigarette sellers, on-line gaming companies, and electronic and sport products distributors. She lead and resolved a case against a 24 Hour Fitness for misrepresenting its “lifetime memberships,” which resulted in over 25 million dollars of relief.
- ▶ Due to Eve’s knowledge and practice in the data privacy, technology and consumer protection space, Eve serves as the Chair of the San Francisco Bar Association’s Cybersecurity and Privacy Committee, where she is responsible for hosting and speaking about a range of cutting-edge issues. She also speaks on various panels about cutting edge issues ranging from upcoming regulatory efforts, “issues to watch,” and litigation trends.
- ▶ Eve is passionate about diversity and social justice. She is a Board Member of the Law Firm Antiracism Alliance, a coalition of more than 240 law firms that team up with organizations to amplify voices of communities impacted by systemic racism, promote racial equality in the law, and support the use of law that benefits communities of color. She also works with various organizations such as the Diverse Attorney Pipeline Program, where she helps her firm conduct over 20 mock interviews for women of color each year in effort to help expand their postgraduate opportunities, and organizations like the East Bay Community Law Center and Berkeley’s Women of Color Collective. As a young attorney, Eve likewise devoted a significant amount of time to the Chicago Lawyers’ Committee for Civil Rights Under Law’s Settlement Assistance Project, where she represented a number of pro bono clients for settlement purposes.
- ▶ From 2015-2019, Eve was selected as an Illinois Emerging Lawyer by Leading Lawyers.
- ▶ Eve received her J.D. from Loyola University of Chicago-School of Law, graduating cum laude, with a Certificate in Trial Advocacy. During law school, she was an Associate Editor of Loyola’s International Law Review and externed as a “711” at both the Cook County State’s Attorney’s Office and for Cook County Commissioner Larry Suffredin. Eve also clerked for both civil and criminal judges (The Honorable Judge Yvonne Lewis and Plummer Lott) in the Supreme Court of New York. Eve graduated from the University of Colorado, Boulder, with distinction and Phi Beta Kappa honors, receiving a B.A. in Political Science.



Benjamin H. Richman

Managing Partner, Chicago

Recovered hundreds of millions of dollars for his clients.

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Benjamin handles plaintiff's-side class and mass actions, helping employees in the workplace, consumers who were sold deceptive products or had their privacy rights violated, individuals and families suffering the ill-effects of exposure to toxic chemicals, student athletes suffering from the effects of concussions, and labor unions and governmental bodies seeking to recover losses arising out of the opioid crisis. He also routinely represents technology and brick and mortar companies in a wide variety of commercial litigation and other matters. Overall, Ben has been appointed by the federal and state courts to be Class or Lead Counsel in dozens of cases.

- ▶ Ben represents state Attorneys General, counties, and cities in high-stakes litigation and investigations, including the State of Idaho, in asserting claims against some of the largest pharmaceutical manufacturers and distributors in the world related to the ongoing opioid epidemic, including in the MDL pending in the Northern District of Ohio. Ben also leads the team representing approximately 50 other governmental entities in opioid litigation; the State of New Mexico in its lawsuit against Google LLC for allegedly collecting data from children under the age of 13 through its G-Suite for Education products and services; the District of Columbia in a suit against e-cigarette giant Juul for alleged predatory and deceptive marketing; and was appointed as a Special Assistant State's Attorney to prosecute Facebook's violations of the Illinois Consumer Fraud Act in the Cambridge Analytica scandal.
- ▶ Ben has been one of the primary forces behind the development of the firm's environmental practice. In the last year alone, Ben led a team representing hundreds of individuals across the country suffering from the effects of exposure to ethylene oxide—a carcinogenic chemical compound used in sterilization applications—emitted into the air in their communities, which included coordinating litigation across state and federal courts in various jurisdictions; was appointed to the Plaintiffs' Executive Committee overseeing the prosecution of the *In re: Aqueous Film-Forming Foams Prods. Liability Litig.*, No. 18-mn-2873, MDL No. 2873 (D.S.C.) (which includes more than 500 cases against the largest chemical manufacturers in the world, among others); and was designated as a Panel Member on a State Attorney General's Environmental Counsel Panel, which was formed to assist and represent the State in a wide range of environmental litigation.
- ▶ Ben is currently part of the team leading the *In re National Collegiate Athletic Association*

Benjamin H. Richman

Managing Partner, Chicago

Student-Athlete Concussion Injury Litigation – Single Sport/Single School (Football) multidistrict litigation, bringing personal injury lawsuits against the NCAA, athletic conferences, and its member institutions over concussion-related injuries. In addition, Ben has and is currently acting as lead counsel in numerous class actions involving alleged violations of class members' common law and statutory rights (e.g., violations of Alaska's Genetic Privacy Act, Illinois' Biometric Information Privacy Act, the federal Telephone Consumer Protection Act, and others).

- ▶ Some of Ben's notable achievements include acting as class counsel in litigating and securing a \$45 million settlement of claims against for-profit DeVry University related to its allegedly false reporting of job placement statistics. He has acted as lead counsel in securing settlements collectively worth \$50 million in over a half-dozen nationwide class actions against software companies involving claims of fraudulent marketing and unfair business practices. He was part of the team that litigated over a half-dozen nationwide class actions involving claims of unauthorized charges on cellular telephones, which ultimately led to settlements collectively worth hundreds of millions of dollars. And he has been lead counsel in numerous multi-million dollar privacy settlements, including several that resulted in individual payments to class members reaching into the tens of thousands of dollars and another that—in addition to securing millions of dollars in monetary relief—also led to a waiver by the defendants of their primary defenses to claims that were not otherwise being released.
- ▶ Ben's work in complex commercial matters includes successfully defending multiple actions against the largest medical marijuana producer in the State of Illinois related to the issuance of its cultivation licenses, and successfully defending one of the largest mortgage lenders in the country on claims of unjust enrichment, securing dismissals or settlements that ultimately amounted to a fraction of typical defense costs in such actions. Ben has also represented startups in various matters, including licensing, intellectual property, and mergers and acquisitions.
- ▶ Each year since 2015, Ben has been recognized by Super Lawyers as a Rising Star and Leading Lawyers as an Emerging Lawyer in both class action and mass tort litigation.
- ▶ Ben received his J.D. from the University of Illinois Chicago School of Law, where he was an Executive Editor of the Law Review and earned a Certificate in Trial Advocacy. While in law school, Ben served as a judicial extern to the late Honorable John W. Darrah of the United States District Court for the Northern District of Illinois. Ben also routinely guest-lectures at various law schools on issues related to class actions, complex litigation and negotiation.



Tracy Hernandez

Chief Financial Officer

Graduated with a Bachelor of Business Administration degree with a concentration in Accounting.

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Tracy is a CPA and her work focuses on the day-to-day financial management of the firm.

- ▶ Tracy is the Chief Financial Officer of Edelson PC and a member of the Executive Committee.
- ▶ Prior to joining Edelson PC, she was the CFO of Ocean Tomo, LLC which is a financial consulting firm that specializes in Intellectual Property (IP) as economic damages experts in IP lawsuits and as management advisors for companies looking to monetize or value their IP assets. During her nine years with Ocean Tomo, Tracy oversaw the administrative, human resources and finance departments before moving into the CFO role. As CFO, she worked through the due diligence process and sale to a Private Equity firm as well as a subsequent acquisition of a 20-person consulting firm.
- ▶ Tracy began her career in public accounting working at KPMG for several years before joining the Chicago Blackhawks as the Controller. As Controller, she was responsible for the day-to-day accounting and reporting to the owners and the NHL. After six years with the Blackhawks, she worked with National Equity Fund as Controller and then began to work independently as a consultant for several small businesses prior to joining Ocean Tomo.
- ▶ Tracy graduated from Saint Mary's College (IN) with a Bachelor of Business Administration degree with a concentration in Accounting.



Kelsey McCann

Chief of Staff

As a result of her efforts, Edelson is considered one of the most diverse “high stakes” plaintiff’s firms in the country.

Kelsey weighs in on and executes strategic planning, including HR issues, public relations, pro bono initiatives, staffing and the firm’s general strategic vision.

- ▶ As the Chair of the Hiring Committee, Kelsey develops and executes the firm’s recruitment efforts, including screening and evaluating lateral hires (including attorneys and non-attorneys) for both permanent and temporary work. She also leads the Summer Associate committee, where she evaluates law students and college interns for the firm’s summer program and structuring the various aspects of the summer program, including the firm’s unique training model.
- ▶ Kelsey’s creation and leadership of diversity efforts within the firm has made her a national thought leader. She created novel outreach programs to law schools, law school groups, and attorney organizations in order to broaden the pool of applicants the firm was seeing. Today, as a result of her efforts, Edelson PC is considered one of the most diverse “high stakes” plaintiff’s firms in the country, and was recently awarded the Diversity Initiative Award, given to the plaintiff’s firm demonstrating a successful effort to promote diversity within its organization and the profession at large by The National Law Journal. The firm also has been recognized as having the second highest lawyer satisfaction rate in the country by law360 and the highest one nationally by Above the Law.
- ▶ Kelsey also works with the different practice groups and the individual employees to set and execute short and long term individual and firm-specific goals.
- ▶ Kelsey also works with the different practice groups and the individual employees to set and execute short and long term individual and firm-specific goals.
- ▶ Kelsey graduated summa cum laude with dual degrees from DePaul University.

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Amy B. Hausmann

Associate Committee Liaison

Served as a law clerk to the Honorable Michael P. Shea of the U.S. District Court for District of Connecticut.

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Amy's practice focuses on consumer and privacy-related class actions, as well as government enforcement litigation.

- ▶ Specific to her public client practice, Amy secured preliminary injunction on behalf of the Cities of Cincinnati, Columbus, Dayton, and Toledo in action against FirstEnergy Corp. for alleged violations of the Ohio Corrupt Practices Act, saving the Cities and all Ohio consumers from paying \$170 million per year in added electric bill fees. *City of Cincinnati v. FirstEnergy Corp.*, No. 20 CV 7005 (Ohio Ct. Common Pleas).
- ▶ Amy represents consumers who have suffered losses to illegal interest casinos. Three of those cases recently settled for approximately \$200 million, with damages-adjusted claims rates of 15%-33% and class members recovering up to hundreds of thousands of dollars. The largest of the remaining cases is set for trial in November 2021. See, e.g., *Benson v. DoubleDown Interactive, LLC*, No. 18-cv-525 (W.D. Wash.); *Wilson v. PTT, LLC*, No. 18-cv-5275 (W.D. Wash.); *Reed v. Scientific Games Corp.*, No. 18-cv-565 (W.D. Wash.).
- ▶ Amy received her J.D. from Yale Law School where she participated in the San Francisco Affirmative Litigation Project, a clinic partnering with the San Francisco City Attorney's Office to bring suits challenging unfair and deceptive business practices. She also participated in the Housing Clinic of the Jerome N. Frank Legal Services Organization, defending homeowners in judicial foreclosure proceedings and bringing affirmative suits against mortgage lenders and servicers. She served as Co-Chair of the law school's Clinical Student Board and as a Practical Scholarship Editor on the Yale Law Journal, helping solicit and publish pieces based on legal practice or clinical experience.
- ▶ Before law school, Amy worked as a legal assistant at a plaintiffs' firm in New York City focusing on employment and False Claims Act cases.



Ryan D. Andrews

Partner

Litigated issues of first impression nationwide securing pathmarking victories.

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Ryan presently leads the firm's complex case resolution and appellate practice group, which oversees the firm's class settlements, class notice programs, and briefing on issues of first impression.

- ▶ Ryan has been appointed class counsel in numerous federal and state class actions nationwide that have resulted in over \$100 million in refunds to consumers, including: *Satterfield v. Simon & Schuster*, No. 06-cv-2893 (N.D. Cal.); *Ellison v. Steve Madden, Ltd.*, No. 11-cv-5935 (C.D. Cal.); *Robles v. Lucky Brand Dungarees, Inc.*, No. 10-cv-04846 (N.D. Cal.); *Lozano v. 20th Century Fox*, No. 09-cv-06344 (N.D. Ill.); *Paluzzi v. Cellco P'ship*, No. 2007 CH 37213 (Cir. Ct. Cook Cty., Ill.); and *Lofton v. Bank of America Corp.*, No. 07-5892 (N.D. Cal.).
- ▶ Representative reported decisions include: *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016); *Kater v. Churchill Downs Inc.*, 886 F.3d 784 (9th Cir. 2018); *Warciak v. Subway Rests., Inc.*, 880 F.3d 870 (7th Cir. 2018), cert. denied, 138 S. Ct. 2692 (2018); *Beaton v. SpeedyPC Software*, 907 F.3d 1018 (7th Cir. 2018), cert. denied, 139 S. Ct. 1465 (2019); *Klaudia Sekura v. Krishna Schaumburg Tan, Inc.*, 2018 IL App (1st) 180175; *Yershov v. Gannett Satellite Info. Network, Inc.*, 820 F. 3d 482 (1st Cir. 2016); *Resnick v. AvMed, Inc.*, 693 F. 3d 1317 (11th Cir. 2012); and *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946 (9th Cir. 2009).
- ▶ Ryan graduated from the University of Michigan, earning his B.A., with distinction, in Political Science and Communications. Ryan received his J.D. with High Honors from the Chicago-Kent College of Law and was named Order of the Coif. Ryan has served as an Adjunct Professor of Law at Chicago-Kent, teaching a third-year seminar on class actions. While in law school, Ryan was a Notes & Comments Editor for The Chicago-Kent Law Review, earned CALI awards for the highest grade in five classes, and was a teaching assistant for both Property Law and Legal Writing courses. Ryan externed for the Honorable Joan B. Gottschall in the United State District Court for the Northern District of Illinois.



J. Aaron Lawson

Partner

Argued in four federal Courts of Appeals and numerous district courts around the country.

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Aaron's practice focuses on appeals and complex motion practice. Aaron regularly litigates complex issues in both trial and appellate courts, including jurisdictional issues and class certification.

- ▶ Aaron has argued in four federal Courts of Appeals and numerous district courts around the country. In 2019, Aaron won and successfully defended class certification in a case challenging Facebook's collection of facial recognition data gathered through the platform's photo tagging feature. The case settled on the eve of trial for a record breaking \$650 million. *In re Facebook Biometric Info. Privacy Litig.*, 326 F.R.D. 535 (N.D. Cal. 2018); 932 F.3d 1264 (9th Cir. 2019). W
- ▶ Aaron won and successfully defended class certification in case involving allegedly fraudulently advertised computer software. *Beaton v. SpeedyPC Software*, No. 13-cv-08389 (N.D. Ill.); 907 F.3d 1018 (7th Cir. 2018).
- ▶ Aaron helped achieve a landmark decision affirming the ability of plaintiffs to bring statutory claims for relief in federal court. *Robins v. Spokeo*, No. 10-cv-5306 (C.D. Cal.).
- ▶ In addition to his work at Edelson PC, Aaron serves on the Privacy Subcommittee of the California Lawyers Association's Antitrust, UCL & Privacy Section, and edits the yearly treatise produced by the subcommittee
- ▶ Prior to joining Edelson PC, Aaron served for two years as a Staff Attorney for the United States Court of Appeals for the Seventh Circuit, handling appeals involving a wide variety of subject matter, including consumer-protection law, employment law, criminal law, and federal habeas corpus.
- ▶ While at the University of Michigan Law School, Aaron served as the Managing Editor for the Michigan Journal of Race & Law, and participated in the Federal Appellate Clinic. In the clinic, Aaron briefed a direct criminal appeal to the United States Court of Appeals for the Sixth Circuit, and successfully convinced the court to vacate his client's sentence.



Todd Logan

Partner

Led the litigation and settlement of a variety of class action cases alleging claims under federal, state, and local laws.

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Todd focuses his practice on class and mass actions and large-scale governmental suits.

- ▶ Todd is routinely appointed by courts nationwide to serve as class counsel in major class action litigation. In recent years, Todd has been appointed Class Counsel in, and led the litigation of, several related cases alleging that internet slot machine apps constitute illegal gambling. Three of those cases recently settled for approximately \$200 million, with damages-adjusted claims rates of 15%-33% and class members recovering up to hundreds of thousands of dollars.
- ▶ Todd represents Butte County residents who lost their homes and businesses in the Camp Fire, governments and other entities seeking to recover losses arising out of the nationwide opioid epidemic, former NCAA football players suffering from the harmful effects of concussions, consumers seeking compensation for their gambling losses to illegal internet casinos, and consumers who have been defrauded or otherwise suffered damages under state consumer protection laws.
- ▶ In recent years, Todd has led the litigation and settlement of a variety of class action cases alleging claims under federal, state, and local laws. For example, in *Dickey v. Advanced Micro Devices, Inc.*, No. 15-cv-04922, 2019 WL 251488, (N.D. Cal. Jan. 17, 2019), Todd briefed and argued a successful motion for nationwide class certification in a complex consumer class action alleging claims under California Law. In *Robins v. Spokeo*, No. 10-cv-5306 (C.D. Cal.), after remand from both the Supreme Court and the Ninth Circuit, Todd led the litigation of the class' claims under the Fair Credit Reporting Act for more than a year before the case entered settlement posture on favorable terms. And in *Sekura v. L.A. Tan Enterprises, Inc.*, No. 2015-CH-16694 (Cir. Ct. Cook Cty., Ill.), Todd represented a class of consumers alleging claims under Illinois' Biometric Information Privacy Act (BIPA) and ultimately obtained a seven-figure class action settlement – the first ever BIPA class action settlement.
- ▶ Before becoming a lawyer, Todd built SQL databases for a technology company and worked at various levels in state and local government. Todd received his J.D. cum laude from Harvard Law School, where he was Managing Editor of the Harvard Journal of Law and Technology. Todd also assisted Professor William B. Rubenstein with research and analysis on a wide variety of class action issues, and is credited for his work in more than eighty sections of Newberg on Class Actions.
- ▶ From 2016-17, Todd served as a judicial law clerk for the Honorable James Donato of the Northern District of California.



David I. Mindell

Partner

Co-Chair, Public Client and Government Affairs group

Counsels governments and state and federal lawmakers on a range of policy issues.

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David represents state Attorneys General, counties, and cities in high-stakes litigation and investigations involving consumer protection, information security and privacy violations, the opioid crisis, and other areas of enforcement that protect government interests and vulnerable communities. David also counsels governments and state and federal lawmakers on a range of policy issues involving consumer protection, privacy, technology, and data security.

- ▶ In addition to his Public Client and Government Affairs practice, David helps direct the firm's Investigations team, including the group's internal lab "of computer forensic engineers and tech-savvy lawyers [who study] fraudulent software and hardware, undisclosed tracking of online consumer activity and illegal data retention." Cybersecurity & Privacy Practice Group of the Year, Law360 (Jan. 2019). His team's research has led to lawsuits involving the fraudulent development, marketing and sale of computer software, unlawful tracking of consumers through mobile-devices and computers, unlawful collection, storage, and dissemination of consumer data, mobile-device privacy violations, large-scale data breaches, unlawful collection and use of biometric information, unlawful collection and use of genetic information, and the Bitcoin industry.
- ▶ David also helps oversee the firm's class and mass action investigations, including claims against helmet manufacturers and the National Collegiate Athletic Association by thousands of former high school, college, and professional football players suffering from the long-term effects of concussive and sub-concussive hits; claims on behalf of hundreds of families and business who lost their homes, businesses, and even loved ones in the "Camp Fire" that ravaged thousands of acres of Northern California in November 2018; and on behalf of survivors of sexual abuse.
- ▶ Prior to joining Edelson PC, David co-founded several tech, real estate, and hospitality related ventures, including a tech startup that was acquired by a well-known international corporation within its first three years. David has advised tech companies on a variety of legal and strategic business-related issues, including how to handle and protect consumer data. He has also consulted with startups on the formation of business plans, product development, and launch.
- ▶ While in law school, David was a research assistant for University of Chicago Law School Kauffman and Bigelow Fellow, Matthew Tokson, and for the preeminent cybersecurity professor, Hank Perritt at the Chicago-Kent College of Law. David's research included cyberattack and denial of service vulnerabilities of the internet, intellectual property rights, and privacy issues.
- ▶ David has spoken to a wide range of audiences about his investigations and practice.



Roger Perlstadt

Partner

Briefed appeals and motions in numerous federal and state appellate courts.

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Roger's practice focuses on appeals and critical motions. He has briefed appeals and motions in numerous federal and state appellate courts, including the United States Supreme Court's seminal case of *Spokeo, Inc. v. Robins*, and has argued multiple times before the United States Courts of Appeals for the Sixth, Seventh, Eighth, and Ninth Circuits.

- ▶ Roger has briefed complex issues at the trial court level in cases throughout the country. These cases generally involve matters of first impression relating to new statutes or novel uses of long-standing statutes, as well as the intersection of privacy law and emerging technologies.
- ▶ Prior to joining Edelson PC, Roger was an associate at a litigation boutique in Chicago, and a Visiting Assistant Professor at the University of Florida Levin College of Law. He has published articles on the Federal Arbitration Act in various law reviews.
- ▶ Roger has been named a Rising Star by Illinois Super Lawyer Magazine four times since 2010.
- ▶ Roger graduated from the University of Chicago Law School, where he was a member of the University of Chicago Law Review. After law school, he served as a clerk to the Honorable Elaine E. Bucklo of the United States District Court for the Northern District of Illinois.



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Jimmy Rock

Partner

Jimmy spent twelve years with the Office of the Attorney General for the District of Columbia.

Jimmy Rock is a partner at Edelson PC where his work focuses on consumer protection and environmental cases. He is also the lead for the firm's Public Client Litigation.

- ▶ Prior to coming to Edelson PC, Jimmy spent twelve years with the Office of the Attorney General for the District of Columbia where he helped to start OAG's Office of Consumer Protection and transform it into one of the preeminent State AG consumer practices.
- ▶ Jimmy served for five years as an Assistant Deputy Attorney General managing OAG's Public Advocacy Division, a 40+ lawyer group that enforced the District's consumer protection, antitrust, workers' rights, housing, nonprofit and environmental laws.
- ▶ Jimmy led a trial team against one of the largest online travel companies for failing to pay the District sales taxes on service fees charged for selling hotel rooms, recovering more than \$90 million in unpaid taxes and fees. To this day, this remains the largest litigated affirmative judgment obtained by the DC Attorney General's Office. *D.C. v. Expedia, Inc.*, 120 A.3d 623 (D.C. 2015).
- ▶ Jimmy was the lead attorney on a consumer protection enforcement case stemming from a multistate investigation into Marriott's deceptive advertising of hotel rooms with mandatory resort fees included in the nightly room rate. *D.C. v. Marriott Intl., Inc.*, No. 2019-CA-004497 B (D.C. Super. Ct.).
- ▶ In 2015, Jimmy received the Attorney General's Distinguished Service Award for Trial of Affirmative Litigation.
- ▶ From 2014-2018, Jimmy served as an Adjunct Professor at Georgetown University Law Center teaching a year-long course on Civil Litigation Practice and Procedure.
- ▶ Jimmy received his J.D. with honors from Emory University School of Law.



Nicholas Rosinia

Partner

Experience handling high-stakes trials before judges, juries, and arbitration panels.

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Nick's practice focuses on litigating class actions, mass torts, and high-profile matters on behalf of government entities. In addition to his trial experience, Nick has managed extensive pre-trial discovery, crafted major motions and briefs, taken and defended scores of depositions, worked with expert witnesses to develop and defend their opinions and reports, and presented argument in federal and state courts.

- ▶ Nick is a trial lawyer with more than eight years of experience litigating and leading teams of lawyers through eight- and nine-figure disputes from initial advice to jury verdict. Nick second-chaired two major, multi-week arbitration hearings, and played key roles during an eight-day bench trial and a six-week jury trial.
- ▶ Currently, Nick represents hundreds of survivors of wildfires in Oregon who lost their homes, businesses, and livelihoods over the 2020 Labor Day weekend. Nick also represents a putative class of ADT customers in litigation against ADT and one of its former technicians. Nick is additionally assisting with the litigation of several government enforcement actions on behalf of the District of Columbia, including Facebook for its role in the Cambridge Analytica scandal and JUUL Labs for its e-cigarette marketing practices.
- ▶ Nick represented a putative class of California raisin growers seeking just compensation from the federal government under the Fifth Amendment's Takings Clause. Following a Supreme Court decision establishing the predicate legal theory, Nick helped conceptualize and develop an ensuing class action that ultimately resulted in an eight-figure class-action settlement. *Clapessoni, et. al. v. The United States of America*, No. 1:15-cv-00938 (Court of Federal Claims 2015). Along the way, Nick drafted the complaint, worked directly with the class representatives, and helped devise a novel statute of limitations theory that ultimately prevailed and paved the way for the class's recovery.
- ▶ Prior to joining Edelson PC, Nick worked at two prominent, international law firms.
- ▶ Nick received his J.D. magna cum laude from Washington University in St. Louis School of Law.



Yaman Salahi

Partner

Co-drafted a successful class certification motion certifying a first-of-its-kind medical battery class.

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Yaman's practice focuses on litigating consumer protection, antitrust, civil rights, and administrative law claims, including in complex class action proceedings and multi-district litigation.

- ▶ Yaman devised the legal strategy, researched the legal theories, and briefed all merits motions challenging the Trump administration's denial of COVID-19 stimulus relief under the CARES Act to people in prison. Yaman was the lead author of the winning motion for class certification, preliminary injunction, and summary judgment, which ultimately resulted in over \$465 million in cash assistance to over 385,000 people living in prison, and preventing the IRS from seeking over \$1 billion already issued from recoupment. Yaman also authored a successful opposition to the IRS's attempt in the Ninth Circuit Court of Appeals to stay the district court's rulings pending appeal. *Scholl v. Mnuchin*, No. 20-cv-5309-PJH (N.D. Cal.).
- ▶ In antitrust no-poach litigation, Yaman obtained a \$54.5 million settlement for medical professors and \$19 million for other faculty at Duke University and University of North Carolina-Chapel Hill, and \$48.95 million for railway industry workers.
- ▶ Before joining Edelson PC, Yaman was a Partner at another prominent plaintiff-side class action firm in San Francisco.
- ▶ From 2017-2018, Yaman served as a judicial law clerk for the Honorable Edward M. Chen in the Northern District of California.
- ▶ From 2013-2016 Yaman worked as a Staff Attorney in the National Security and Civil Rights Program at Asian Americans Advancing Justice-Asian Law Caucus, where he focused on legal issues surrounding government surveillance and freedom of speech, and an Arthur Liman Fellow at the American Civil Liberties Union of Southern California.
- ▶ Yaman received his J.D. Yale Law School in 2012.



Ari J. Scharg

Partner
Co-Chair, Government Affairs Group

Recognized as one of the leading experts on privacy and emerging technologies.

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Ari is a Partner at Edelson PC and Co-Chair of the firm's Public Client and Government Affairs Group, where he leverages his experience litigating hundreds of complex class and mass action lawsuits to help state and local governments investigate and prosecute consumer fraud, data privacy, and other areas of enforcement that protect government interests and vulnerable communities.

- ▶ Ari has been appointed as a Special Assistant Cook County State's Attorney to litigate cases against Facebook and Cambridge Analytica for their alleged misuse of consumer data and against Uber for its alleged violations of the state's data breach notification law and information security requirements. He is currently representing the Illinois Citizens Utility Board in litigation against Commonwealth Edison for its alleged role in a decade-long bribery scheme, and serves as Special Counsel for Columbus and Cincinnati in litigation alleging money laundering and corruption against FirstEnergy, where he recently secured a preliminary injunction blocking more than \$1 billion of new fees from being collected from ratepayers. Ari also represent a broad range of stakeholders in litigation against opioid companies, including governments, municipal risk pools, labor unions, and health and welfare funds.
- ▶ Ari is passionate about social justice causes, and in 2017, the Michigan State Bar Foundation presented both Edelson PC and Ari, personally, with its Access to Justice Award for "significantly advancing access to justice for the poor" through his consumer class actions.
- ▶ As Special Counsel for Melrose Park, Ari served as lead trial counsel in first-of-its-kind litigation seeking to block the closure of Westlake Hospital, a community hospital providing safety net services to medically and socially vulnerable minority populations. *Village of Melrose Park v. Pipeline Health System LLC, et al.*, No. 19-CH-03041 (Cir. Ct. Cook Cty., Ill.). In what has been called "one of the most complicated hospital closure disputes in the state's history," Ari worked tirelessly to preserve access to healthcare for the community by securing a series of in-court victories, including a temporary restraining order prohibiting the owners from closing the hospital, and later, after a full-day evidentiary hearing, an order holding the owner in contempt for attempting to shut down hospital services prematurely.
- ▶ Recognized as a leader on privacy and emerging technologies, Ari serves on the Executive Oversight Council for the Array of Things Project where he advises on privacy and data security matters, founded and chaired the Illinois State Bar Association's Privacy and Information Security Section (2017-2019), and served as Co-Chair of the Illinois Blockchain and Distributed Ledgers Task Force. Ari also enjoys working with law students through the Diverse Attorney Pipeline Program (DAPP) and Berkeley's Women of Color Collective.



Alexander G. Tievsky

Partner

Obtained preliminary injunction preventing electric utilities from collecting more than \$1 billion in surcharges.

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Alex concentrates on complex motion practice and appeals in consumer class action litigation.

- ▶ Alex has briefed and argued cases in numerous federal appellate and district courts, and he has successfully defended consumers' right to have their claims heard in a federal forum, including, for example, defeating Facebook's attempt to deprive its users of a federal forum to adjudicate their claims for wrongful collection of biometric information in violation of a state privacy statute in *In re Facebook Biometric Info. Privacy Litig.*, 290 F. Supp. 3d 948 (N.D. Cal. 2018), *aff'd* 932 F.3d 1264 (9th Cir. 2019); receiving preliminary injunction preventing electric utilities from collecting surcharges imposed by Ohio House Bill 6 on the basis that Cincinnati and Columbus were likely to succeed on their allegations that the bill was the product of a bribery scheme involving the former speaker of the Ohio House of Representatives in *Cincinnati & Columbus v. First Energy Corp.*, No. 20-CV-7005 (Franklin Cty., Ohio Ct. of Common Pleas 2020); winning reversal of summary judgment in Telephone Consumer Protection Act (TCPA) case on the basis that the defendant could be held liable for ratifying the actions of its callers, even though it did not place the calls itself in *Henderson v. United Student Aid Funds, Inc.*, 918 F.3d 1068 (9th Cir. 2019); and winning reversal of district court's dismissal in first-of-its-kind ruling that so-called "free to play" casino apps are illegal gambling, which allows consumers to recover their losses under Washington law. *See Kater v. Churchill Downs, Inc.*, 886 F.3d 784 (9th Cir. 2018)
- ▶ Alex received his J.D. from the Northwestern University School of Law, where he graduated from the two-year accelerated J.D. program. While in law school, Alex was Media Editor of the Northwestern University Law Review. He also worked as a member of the Bluhm Legal Clinic's Center on Wrongful Convictions. Alex maintains a relationship with the Center and focuses his public service work on seeking to overturn unjust criminal convictions in Cook County.
- ▶ Alex is admitted to the state bars of Illinois and Washington and is a member of both the Lesbian and Gay Bar Association of Chicago and QLaw, the LGBTQ+ Bar Association of Washington.
- ▶ Alex's past experiences include developing internal tools for an enterprise software company and working as a full-time cheesemonger. He received his A.B. in linguistics



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J. Eli Wade-Scott

Partner

Returned some of the highest per-person relief ever secured in a privacy case.

Eli's practice focuses on privacy- and tech-related class actions and enforcement actions brought by governments. Eli has been appointed to represent states and cities to handle high-profile litigation.

- ▶ Eli is frequently appointed to represent states and cities to handle high-profile litigation, including by the District of Columbia against JUUL, Inc. in litigation arising from the youth vaping epidemic, by the State of New Mexico to prosecute Google's violations of the Children's Online Privacy Protection Act, and as a Special Assistant State's Attorney for Illinois and the District of Columbia in litigation against Facebook arising from the Cambridge Analytica scandal.
- ▶ Eli is class counsel in nearly a dozen cash settlements on behalf of consumers, collectively worth more than \$50 million, including a \$25 million all-cash, non-reversionary settlement for employees in action arising under the Illinois Biometric Information Privacy Act ("BIPA"). *Kusinski v. ADP LLC*, No. 2017-CH-12364 (Cir. Ct. Cook Cty.).
- ▶ Lead counsel in a novel putative class action against ADT over security flaws in its home security system that allowed a technician to surreptitiously spy on families—including children—in their most intimate moments at home.
- ▶ Lead outside attorney for the ACLU and other public interest organizations in a lawsuit against Clearview seeking to enjoin Clearview's mass collection of facial recognition templates. Clearview raised a host of novel, existential arguments for privacy rights at the motion to dismiss stage, which was rejected in a thorough opinion and the case is ongoing. See *American Civil Liberties Union v. Clearview AI, Inc.*, No. 20 CH 4353, 2021 WL 4164452, at *1 (Ill.Cir.Ct. Aug. 27, 2021).
- ▶ Before joining Edelson PC, Eli served as a law clerk to the Honorable Rebecca Pallmeyer of the Northern District of Illinois. Eli has also worked as a Skadden Fellow at Legal Aid Chicago, Cook County's federally-funded legal aid provider. There, Eli represented dozens of low-income tenants in affirmative litigation against their landlords to remedy dangerous housing conditions.
- ▶ Eli received his J.D. magna cum laude from Harvard Law School, where he was an Executive Editor on the Harvard Law and Policy Review and a research assistant to Professor Vicki C. Jackson.



Ben Thomassen

Counsel

Appointed as class counsel in several high profile cases including, *Harris v. comScore, Inc.*, No. 11-cv-5807 (N.D. Ill.)

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Ben regularly litigates complex issues—often ones of first impression—in trial and appellate courts, has been appointed as class counsel for numerous certified federal classes, and has played key roles in industry-changing cases that have secured millions of dollars of relief for consumers. Substantively, Ben's work focuses on issues concerning data privacy/security, technology, and consumer fraud.

- ▶ Ben's work at the firm has achieved significant results for classes of consumers. He has been appointed as class counsel in several high profile cases, including, *Harris v. comScore, Inc.*, No. 11-cv-5807 (N.D. Ill.) (estimated to be the largest privacy class action certified on adversarial basis and resulted in \$14 million settlement). Ben has also played critical and leading roles in developing, briefing, and arguing novel legal theories on behalf of his clients, including by delivering the winning oral argument to the Eleventh Circuit in the seminal case of *Resnick, et al. v. AvMed, Inc.*, No. 10-cv-24513 (S.D. Fla.) (appointed class counsel in industry-changing data breach case, which obtained a landmark appellate decision endorsing common law unjust enrichment theory, irrespective of whether identity theft occurred) and recently obtaining certification of a class of magazine subscribers in *Coulter-Owens v. Time, Inc.*, No. 12-cv-14390 (E.D. Mich.) (achieved adversarial certification in a privacy case brought by a class of magazine subscribers against a magazine publisher under Michigan's Preservation of Personal Privacy Act). His cases have resulted in millions of dollars to consumers.
- ▶ Ben graduated magna cum laude from Chicago-Kent College of Law, where he also earned a certificate in Litigation and Alternative Dispute Resolution and was named Order of the Coif. He also served as Vice President of Chicago-Kent's Moot Court Honor Society and earned seven CALI awards for receiving the highest grade in Appellate Advocacy, Business Organizations, Conflict of Laws, Family Law, Personal Income Tax, Property, and Torts. In 2017, Ben was selected as an Illinois Emerging Lawyer by Leading Lawyers.
- ▶ Before settling into his legal career, Ben worked in and around the Chicago and Washington, D.C. areas in a number of capacities, including stints as a website designer/developer, a regular contributor to a monthly Capitol Hill newspaper, and a film projectionist and media technician (with many years' experience) for commercial theatres, museums, and educational institutions. Ben received a Master of Arts degree from the University of Chicago and his Bachelor of Arts degree, summa cum laude, from St. Mary's College of Maryland.



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Arthur Turner II

Of Counsel

Sponsored legislation to increase economic development and help give loans to small businesses.

Art's practice focuses on consumer and privacy-related class actions and mass tort litigation. Art represents small businesses in insurance-related actions, including dozens of businesses whose business interruption insurance claims were denied by various insurers in the wake of the COVID-19 crisis.

- ▶ After college, Art served as a community organizer and mentor to youth in North Lawndale. He worked as a tax credit analyst and underwriter for the Illinois Housing Development Authority. In 2010, he was elected to serve as the state representative in the 9th House District.
- ▶ As a legislator, Art sponsored legislation to increase economic development and help give loans to small businesses; particularly in areas in need of the greatest economic growth. Art advocated for stronger personal privacy measures to protect consumers and their personal information online. Art's legislative agenda also focused on providing affordable housing for Illinois residents, and access to quality health care for all.
- ▶ Art joined the House Leadership team in 2013 as an Assistant Majority leader. He became Deputy Majority Leader in 2017. Art served as a member of various committees including Executive, Revenue & Finance, Public Utilities, Cybersecurity, Data Analytics & IT, and chairman of the Judiciary – Criminal Law Committee.
- ▶ Art has been recognized for his legislative efforts by a wide variety of advocates and organizations, including being named an Edgar Fellow in 2012.
- ▶ Art graduated with a degree in political science from Morehouse College and received his J.D. from Southern Illinois University School of Law.



Theo Benjamin

Associate

Led the litigation and settlement of a variety of class action cases alleging claims under federal, state, and local laws.

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Theo's practice focuses on consumer, privacy, and tech-related class actions, and mass tort litigation.

- ▶ Theo is currently litigating several government enforcement actions on behalf of the District of Columbia, including Facebook for its role in the Cambridge Analytica scandal and JUUL Labs for its e-cigarette marketing practices. Theo likewise serves as one of the lead associates responsible for Edelson's discovery efforts in the Facebook and JUUL litigation, where he is responsible for leveraging case assessment techniques, including the identification, review, and collection of complex electronic discovery and building trial outlines to discern the specific needs of a case.
- ▶ Theo is a member of Edelson's COVID-19 Legal Task Force and is currently litigating insurance class actions on behalf of businesses nationwide alleging wrongful denial of claims for business interruption insurance coverage resulting from losses sustained due to the ongoing COVID-19 pandemic.
- ▶ Theo received his J.D. from Northwestern Pritzker School of Law, where he served as a Comment Editor for Northwestern's Journal of Criminal Law & Criminology and founded Northwestern's chapter of the International Refugee Assistance Project where he helped provide legal aid, representation, and policy research to refugees and asylum seekers undergoing the U.S. resettlement process.



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P. Solange Hilfinger-Pardo

Associate

Served as an Executive Editor of the Northwestern Journal of International Law and Business.

Solange's practice focuses on fighting racial and social injustice, government and corporate misconduct, and consumer protection.

- ▶ Before joining Edelson PC, Solange worked as a Deputy Public Defender for Contra Costa County Public Defender's Office, where she litigated 15 criminal jury trials as solo chair, including pretrial and evidentiary motions practices, ran over 40 motions to suppress, all of which included evidentiary hearings and cross-examining witnesses, and managed a caseload of over 100 misdemeanor cases, including negotiations, discovery litigation, and interlocutory appeals.
- ▶ From 2019-2020, Solange served as a Trial Fellow for the Public Defender Service (PDS) for the District of Columbia. During this time, Solange regularly advocated on behalf of clients in court, conducted same-day probable cause hearings, and negotiated with prosecutors. She engaged in aggressive pre-trial litigation, including winning a motion to reconsider a DNA warrant, and completed PDS's eight-week trial training program.
- ▶ From 2017-2020, Solange worked as a Staff Attorney for the Consumer Financial Protection Bureau in Washington, D.C. She served as lead attorney on three major investigations, including opening a new case, and assisted other investigations. Additionally, Solange conducted depositions, wrote and edited motions, planned litigation strategy, and negotiated with opposing counsel on settlements, discovery, and case management.
- ▶ During her time at the Consumer Financial Protection Bureau, Solange received the Director's Mission Achievement Award and Exceptional Accomplishment Award.
- ▶ Solange received her J.D. from Yale Law School.



Michael Ovca

Associate

Litigating a half-dozen Telephone Consumer Protection Act cases.

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Michael focuses on consumer, privacy-related and technology-related class actions.

- ▶ Michael's recent consumer class action work involves bringing claims on behalf of students suing for-profit colleges that used allegedly-fraudulent advertising to lead them to enroll. Michael's environmental practice involves representing individuals who were exposed to ethylene oxide ("EtO") emitted by medical equipment sterilization and chemical manufacturing plants, as well as those exposed to dangerous "forever" chemicals through tainted groundwater that accumulate in the body, ultimately causing cancer. Michael is also litigating a half-dozen Telephone Consumer Protection Act cases brought by recipients of text messages sent by entertainment venues from around the country. In terms of governmental representation, Michael has worked on cases brought by the City of Chicago against Uber; by various cities and towns in Illinois against opiate manufacturers, distributors, and prescribers; and a village seeking to prevent the closure of its hospital.
- ▶ Michael received his J.D. cum laude from Northwestern University, where he was an associate editor of the Journal of Criminal Law and Criminology, and a member of several award-winning trial and moot court teams.
- ▶ Prior to law school, Michael graduated summa cum laude with a degree in political science from the University of Illinois.



Emily Penkowski

Associate

Cum laude from Northwestern University
Pritzker School of Law

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Emily's practice focuses on privacy- and tech-related class actions.

- ▶ Emily received her J.D. cum laude from Northwestern University Pritzker School of Law, where she served as an Associate Editor of Northwestern University Law Review and a Problem Writer for the 2020 Julius Miner Moot Court Board. Emily participated in the Bluhm Legal Clinic's Supreme Court Clinic, where she worked on cases before the Supreme Court including *Ritzen Group, Inc. v. Jackson Masonry, LLC*, 140 S. Ct. 582, 584 (2020). She placed on the Dean's List every semester and served on the student executive boards for the Moot Court Society and the Collaboration for Justice, a justice system reform-oriented student group.
- ▶ Emily spent her law school summers at the Maryland Office of the Attorney General and the U.S. Attorney's Office for the Western District of Washington. In the Western District of Washington, Emily assisted in prosecuting cryptocurrency money laundering, cybercrime, and complex frauds. In Maryland, she wrote criminal appeals briefs for the State in the Maryland Court of Special Appeals.
- ▶ Before entering law school, Emily worked as an intelligence analyst for the National Security Agency, in the Office of Counterintelligence & Cyber (previously the NSA/CSS Threat Operations Center) and the Office of Counterterrorism. She analyzed significant, technical, complex, and short-suspense intelligence in support of law enforcement, military, computer network defense, diplomatic, and other intelligence efforts, while serving as a "reporting expert" for over three hundred analysts on an agency-wide project. She also briefed NSA and military leadership on cyber and counterintelligence threats to the U.S. government and military.
- ▶ As a digital network analyst, Emily increased intelligence coverage on a counterterrorism target through social network analysis, including eigenvector and cluster analysis, used metric databases to manage and prioritize intelligence collection, and worked with collectors to streamline data flows and eliminate duplicative sources of information.
- ▶ Emily received her Bachelor of Science in International Studies, specializing in Security and Intelligence, at Ohio State. She also received minors in Computer and Information Science and Mandarin Chinese. She began learning Mandarin in high school. During college, Emily interned at the National Security Agency, in the Office of Counterproliferation, and at Huntington National Bank, on its Anti-Money Laundering and Bank Secrecy Act team.



Albert J. Plawinski

Associate

Works on the development of environmental mass tort and mass action cases.

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Albert identifies and evaluates potential cases and works with the firm's computer forensic engineers to investigate privacy violations by consumer products and IoT devices. Albert also works on the development of the environmental mass tort and mass action cases, including preparing lawsuits on behalf of (1) victims of the California Camp Fire—the largest and most devastating fire in California's history; (2) individuals exposed to toxic chemicals in their drinking water; and (3) individuals exposed to carcinogenic ethylene oxide.

- ▶ Albert received his J.D. from the Chicago-Kent College of Law. While in law school, Albert served as the Web Editor of the Chicago-Kent Journal of Intellectual Property. Albert was also a research assistant for Professor Hank Perritt for whom he researched various legal issues relating to the emerging consumer drone market—e.g., data collection by drone manufacturers and federal preemption obstacles for states and municipalities seeking to legislate the use of drones. Additionally, Albert earned a CALI award for receiving the highest course grade in Litigation Technology.
- ▶ Prior to law school, Albert graduated with Highest Distinctions with a degree in Political Science from the University of Illinois at Urbana-Champaign.



Angela Reilly

Associate

Represented adolescents accused of crimes, and advocated for reform of the juvenile justice system.

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Angela focuses on consumer class actions and government actions.

- ▶ Angela received her J.D. from the University of Chicago Law School, where she dedicated her time to providing criminal and civil legal services to indigent clients. Angela was involved with the school's clinical program, specifically the Criminal and Juvenile Justice Project. Further, Angela interned at Access Living of Metropolitan Chicago, where she helped clients enforce their rights under the Americans with Disabilities Act, and the Fair Housing Act.
- ▶ Angela also conducted research for Professor Genevieve Lakier on a variety of First Amendment issues, and externed for the Honorable Sophia H. Hall in the Chancery Division of the Circuit Court of Cook County.
- ▶ Angela received Pro Bono Honors from the University of Chicago Law School, which is awarded to graduating students who complete 250 or more pro bono hours; Angela completed 500 hours.
- ▶ Before law school, Angela worked on multiple research projects that ultimately inspired her legal career. During that time, she published multiple papers in peer-reviewed psychology journals.
- ▶ Angela graduated from the University of Notre Dame, where she earned her B.A. in psychology. She completed a thesis titled, "Schadenfreude as a Moral Emotion: Moral Identity and the Experience of Pleasure at the Misfortune of Rivals".



Zoë Seaman-Grant

Associate

Editor of the Michigan Journal of Gender & Law at the University of Michigan Law School.

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Zoë's practice focuses on environmental and mass tort actions.

- ▶ Zoë received her J.D. from University of Michigan. During her time at Michigan, Zoë served as a board member for Sexual Assault & Harassment Legal Advocacy Services (SAHLAS), an organization that offered support to University of Michigan students filing sexual misconduct complaints under Title IX.
- ▶ Zoë interned with the New York Attorney General's Torts Department and Davis Polk & Wardwell. While in school, she worked as a Faculty Research Assistant at the University of Michigan Law Library.
- ▶ Before law school, Zoë served as an AmeriCorps member with Reading Partners DC, a nonprofit organization providing literacy support to public school students in Washington, DC.
- ▶ Zoë graduated from Bates College, where she earned her B.A. in Women's and Gender Studies. She completed an honors thesis titled "Constructing Womanhood and the Female Cyborg: A Feminist Reading of Ex Machina and Westworld."



Brandt Silver-Korn

Associate

Represents over 1,000 victims who suffered losses in the 2018 Camp Fire.

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Brandt's practice focuses on class and mass actions and large-scale governmental suits. His current clients include families who lost their homes and businesses in the Camp Fire, communities that have been severely impacted by the opioid epidemic, and consumers who have suffered gambling losses to illegal internet casinos.

- ▶ Brandt represents over 1,000 victims, from residents to business owners, who suffered the devastating loss of their homes, property, and loved ones in the 2018 Camp Fire. The lawsuit alleges that the fire was caused by PG&E's equipment, resulting from PG&E's failure to maintain their electrical infrastructure in Butte County. The case resulted in a historic \$13.5 billion settlement.
- ▶ Brandt represents consumers in seven class action lawsuits alleging that various online "social casinos" violate state gambling laws. Brandt has taken a leading role both in discovery and in briefing in these cases, and recently provided live testimony to the Washington State Legislature.
- ▶ Brandt serves as counsel for the State of Idaho in the State's opioid litigation, where he is part of the team spearheading lawsuits against the nation's leading manufacturers and distributors of opioid products.
- ▶ Brandt received his J.D. from Stanford Law School, where he was awarded the Gerald Gunther Prize for Outstanding Performance in Criminal Law, and the John Hart Ely Prize for Outstanding Performance in Mental Health Law. While in law school, Brandt was also the leading author of several simulations for the Gould Negotiation and Mediation Program.
- ▶ Prior to law school, Brandt graduated summa cum laude from Middlebury College with a degree in English and American Literatures.



Schuyler Ufkes

Associate

Currently litigating consumer class actions on behalf of employees under the Illinois Biometric Information Privacy Act

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Schuyler focuses on consumer and privacy-related class actions.

- ▶ Schuyler is currently litigating nearly a dozen consumer class actions on behalf of employees under the Illinois Biometric Information Privacy Act ("BIPA") for their employers' failure to comply with the Act's notice and consent requirements before collecting, storing, and in some instances disclosing their biometric data. Schuyler is also litigating several Telephone Consumer Protection Act cases brought by recipients harassing debt-collection calls as well as spam text messages.
- ▶ Schuyler received his J.D. magna cum laude, and Order of the Coif, from the Chicago-Kent College of Law. While in law school, Schuyler served as an Executive Articles Editor for the Chicago-Kent Law Review and was a member of the Moot Court Honor Society. Schuyler earned five CALI awards for receiving the highest grade in Legal Writing II, Legal Writing III, Pretrial Litigation, Supreme Court Review, and Professional Responsibility.
- ▶ Prior to law school, Schuyler graduated with High Honors from the University of Illinois Urbana-Champaign earning a degree in Consumer Economics and Finance.



Shawn Davis

Director of Digital Forensics

Experience testifying in federal court, briefing members of U.S. Congress on Capitol Hill.

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Shawn leads a technical team in investigating claims involving privacy violations and tech-related abuse. His team's investigations have included claims arising out of the fraudulent development, marketing, and sale of computer software, unlawful tracking of consumers through digital devices, unlawful collection, storage, and dissemination of consumer data, large-scale data breaches, receipt of unsolicited communications, and other deceptive marketing practices.

- ▶ Shawn has experience testifying in federal court, briefing members of U.S. Congress on Capitol Hill, and is routinely asked to testify before legislative bodies on critical areas of cybersecurity and privacy, including those impacting the security of our country's voting system, issues surrounding children's privacy (with a special emphasis on surreptitious geotracking), and other ways data collectors and aggregators exploit and manipulate people's private lives. Shawn has taught courses on cybersecurity and forensics at the undergraduate and graduate levels and has provided training and presentations to other technology professionals as well as members of law enforcement, including the FBI.
- ▶ Shawn's investigative work has forced major companies (from national hotel chains to medical groups to magazine publishers) to fix previously unrecognized security vulnerabilities. His work has also uncovered numerous issues of companies surreptitiously tracking consumers, which has led to groundbreaking lawsuits
- ▶ Prior to joining Edelson PC, Shawn worked for Motorola Solutions in the Security and Federal Operations Centers as an Information Protection Specialist. Shawn's responsibilities included network and computer forensic analysis, malware analysis, threat mitigation, and incident handling for various commercial and government entities.
- ▶ Shawn is an Adjunct Industry Associate Professor for the School of Applied Technology at the Illinois Institute of Technology (IIT) where he has been teaching since December of 2013. Additionally, Shawn is a faculty member of the IIT Center for Cyber Security and Forensics Education which is a collaborative space between business, government, academia, and security professionals. Shawn's contributions aided in IIT's designation as a National Center of Academic Excellence in Information Assurance by the National Security Agency.
- ▶ Shawn graduated with high honors from the Illinois Institute of Technology with a Masters of Information Technology Management with a specialization in Computer and Network Security. During graduate school, Shawn was inducted into Gamma Nu Eta, the National Information Technology Honor Society.

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CHARLENE FIGUEROA and JERMAINE
BURTON, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

KRONOS INCORPORATED,

Defendant.

Case No. 1:19-cv-01306

Honorable Gary M. Feinerman

**DECLARATION OF RYAN F. STEPHAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR AND MEMORANDUM OF LAW
FOR ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARDS**

Under penalties as provided by law under 28 U.S.C. § 1746, I, Ryan F. Stephan, under oath, declare, state, and certify that the statements set forth in this instrument are true and correct:

1. I submit this declaration in support of Plaintiffs' Motion for and Memorandum of Law for Attorneys' Fees, Expenses, and Incentive Awards. I make these statements based on personal knowledge and if called to testify, I could and would competently testify consistently with all matters set forth herein.

2. I am a member of good standing of the Illinois State Bar and a founder and principal of Stephan Zouras, LLP. I am one of the lawyers primarily responsible for prosecuting Plaintiffs' claims on behalf of the putative Class. I was admitted to practice law in the State of Illinois in 2000.

3. I have been admitted to the Trial Bar of the of the United States District Court for the Northern District of Illinois, and have been admitted or admitted *pro hac vice* to various federal and state courts throughout the United States for the purpose of prosecuting class and collective

actions, including the Supreme Court of the United States, the District of Colorado, the Central District of Illinois, the Southern and Eastern Districts of New York, the Superior Court for the State of California, the District of Massachusetts, the Eastern District of Missouri, the District of Maryland, the Southern District of Ohio, the Northern, Middle and Southern Districts of Florida, the District of New Jersey, the District of Minnesota, the First Judicial District of Pennsylvania, the Middle District of Pennsylvania, the Western District of Washington, the Southern and Northern Districts of Iowa and the Western District of North Carolina.

4. Since approximately 2002, my practice has been largely involved in representing employees in cases arising under federal and state wage and hour laws, including the Fair Labor Standards Act (“FLSA”) and comparable state wage and hour laws across the United States. The majority of these cases proceeded as collective actions under § 216(b) of the FLSA and/or set forth class action claims under state wage laws.

5. Since early 2017, my firm and I have also concentrated on representing plaintiffs in cases arising under the Illinois Biometric Information Privacy Act (“BIPA”). In early 2017, my firm filed one of the first BIPA class actions in the employment context as well as the first-ever against a biometric timeclock vendor. *Doporczyk v. Roundy’s Supermarkets, Inc. and Kronos, Inc.*, 17-CH-08092 (Cook Cty. Cir. Ct. Jun. 09, 2017).

6. Federal and state courts have appointed me and Stephan Zouras, LLP as lead class counsel in over a hundred class actions, including over a dozen class actions under BIPA. Since 2017, my firm and I have been actively engaged, on a daily basis, with extensive court, discovery and motion practice in connection with our prosecution of over 160 class actions brought under BIPA. Stephan Zouras, LLP has secured favorable rulings for individuals at both the appellate and trial court levels in connection with novel issues and defenses asserted under BIPA, including: (1)

BIPA claims are not subject to arbitration as “wage and hour” claims, *Liu v. Four Seasons Hotel, Ltd.*, 2019 IL App (1st) 182645; (2) the Constitutionality of BIPA, *Bruhn v. New Albertson’s*, 2018-CH-01737 (Cir. Ct. Cook Cty. Jan. 30, 2020) (J. Loftus); (3) when BIPA claims accrue; specifically, that an aggrieved plaintiff’s claims accrue each time an entity collects or disseminates biometric data without securing prior informed consent and a release, *Cothron v. White Castle System, Inc.*, 2020 WL 4569694 (Aug. 7, 2020) (J. Tharp) (on appeal to the Illinois Supreme Court, No. 128004); (4) that claims under Sections 15(a) and (b) of BIPA are subject to a five-year statute of limitations, *Tims v. Black Horse Carriers, Inc.*, 2021 IL App (1st) 200563; (5) that Illinois courts have personal jurisdiction over non-resident defendants that manufacture biometric devices, *Fisher v. HP Property Management, LLC, et al.*, 2021 IL App (1st) 201372; and, most recently, (6) the inapplicability of BIPA’s so-called “HIPAA exemption” to hospital employees, *Mosby v. The Ingalls Memorial Hospital, et al.*, 2022 IL App (1st) 200822. Stephan Zouras, LLP, is also handling three BIPA matters currently pending before the Illinois Supreme Court: *Cothron v. White Castle Systems, Inc.*, Case No. 128004; *Tims v. Black Horse Carriers, Inc.*, Case No. 127801; and *Walton v. Roosevelt University*, Case No. 128338.

7. As a result of our extensive investigation, motion, discovery, and appellate practice in BIPA actions, including depositions of defendants and their representatives, our firm is well-versed and highly experienced on biometric technology, including how biometric information is collected, maintained and disseminated, particularly as it relates to the requirements of BIPA. My firm has retained consultants to assist with our investigation and understanding of biometric technology and the defenses asserted by defendants, including experts in the biometric field to review source code, evaluate network and device configurations, analyze network traffic, and test various hardware and software to determine functionality as well as uncover potential security and

privacy issues. Stephan Zouras, LLP actively tracks and analyzes all BIPA filings, rulings and settlements in federal and state court.

8. The accomplishments of Stephan Zouras, LLP are set forth in our firm's Resume, a true and correct copy is attached to this Declaration as Exhibit A. As described therein, Stephan Zouras, LLP, has extensive experience in successfully representing plaintiffs as lead counsel in hundreds of complex class and collective actions nationwide. Since founding our firm in 2007, I along with my partner Jim Zouras, have secured a significant number of seven and eight-figure jury verdicts and settlements on behalf of aggrieved employees and victims of corporate negligence and abuse. Both of us have been named an Illinois class action "Super Lawyer" in every consecutive year since 2009, and our partners also are consistently named "Super Lawyers."

9. In addition to James and me, Stephan Zouras, LLP currently employs eight attorneys, seven of whom, along with extensive support staff, are actively involved in the firm's dedicated BIPA practice.

10. Stephan Zouras, LLP's efforts have been without compensation, and their entitlement to payment has been wholly contingent upon the result achieved.

11. Throughout the pendency of this action, Stephan Zouras, LLP has had the financial resources necessary to prosecute this case and has stood ready and remains able and willing to advance necessary expenses and devote significant attorney time from our roster of highly-qualified attorneys and staff to all aspects of this case. The firm has aggressively pursued BIPA claims in this case despite many legal issues under BIPA being matters of first impression. Stephan Zouras, LLP has and will continue to vigorously represent the proposed Settlement Class throughout the case's pendency.

12. Stephan Zouras, LLP entered into a retainer agreement with Plaintiff Charlene Figueroa allowing Class Counsel to apply for a reasonable percentage of the recovery as a contingency fee payment, plus actual out of pocket expenses.

13. During this litigation, we conducted an extensive investigation into Plaintiffs' claims prior to filing suit. Thereafter, Plaintiffs and Defendant engaged in extensive motion practice, including Defendant's motion to dismiss, motion to strike class allegations, and a number of involved discovery motions. The Parties also engaged in extensive written and oral discovery. Defendant produced thousands of pages of documents and ESI, which Stephan Zouras, LLP reviewed. Both Plaintiffs sat for their full-day depositions, and Plaintiffs deposed six current or former Kronos employees.

14. On August 31, 2021, the Parties engaged in a full-day mediation with Hon. James F. Holderman (Ret.) after several months of arms-length written and telephonic negotiations. After coming to an agreement in principle, the Parties continued to negotiate specific terms of the Settlement, including confirmatory discovery regarding the class size, the form of notice provided to Class Members, the scope of the release, and settlement benefits, which were memorialized in a binding Memorandum of Understanding on October 20, 2021, and later, in the Class Action Settlement Agreement ("Settlement Agreement"), fully executed in late January 2022.

15. The Settlement Class consists of 84,193 members. The current claims rate is over 20%, and the last day to submit a claim is December 6, 2022. Assuming a claims rate of 25 to 30%, each Settlement Class Member who submits an Approved Claim will receive a net payment of \$400 to \$480, after deductions for fees and costs.

16. The terms of the Settlement are contained in the Settlement Agreement. There are no undisclosed side agreements between the Named Plaintiffs and Defendant.

17. As of the date of this declaration, no Class Members objected to the Settlement.

18. The settlement of this action was the product of well-informed judgments about the adequacy of the resolution. The settlement was also the product of arm's-length, non-collusive negotiations. Class Counsel, who are well-versed, highly-experienced and intimately familiar with all aspects of BIPA litigation, are well-positioned to assess the strengths and weaknesses of the claims and defenses of this case, as well as the factual and legal issues, and to make an informed recommendation about the value of the claims, the time, costs and expense of protracted litigation, discovery, and appeals, and the adequacy of the settlement reached. The stage of litigation has advanced to a state that Class Counsel could fairly and fully evaluate the value of the Settlement. In my professional opinion, the Settlement is fair and reasonable in light of the risk, costs, and delay of further litigation.

19. Stephan Zouras, LLP's current billing rates and hours worked for purposes of the lodestar cross-check are as follows:

User	Rate	Time	Amount
Ryan F. Stephan	\$850.00	296.9	\$252,365.00
James B. Zouras	\$850.00	227.8	\$193,630.00
Andrew C. Ficzkowski	\$650.00	112.1	\$64,457.50
Catherine T. Mitchell	\$475.00	5.4	\$2,565.00
Haley R. Jenkins	\$450.00	586.5	\$263,925.00
Anna M. Ceragioli	\$375.00	54	\$20,250.00
Megan E. Shannon	\$350.00	26	\$9,100.00
Paige L. Smith	\$350.00	45.3	\$15,855.00
Legal Assistants	\$175.00 - 275.00	202.5	\$48,360.00
Law Clerks	\$225.00	203.4	\$45,765.00
Totals		1,759.9	\$916,272.50

These hourly rates are consistent with what have been accepted and approved in other contingent litigation and are comparable to rates charged by Class Counsel in similar cases in the Chicago metropolitan area. To date, Stephan Zouras, LLP has expended over 1,700 hours on this matter and incurred over \$900,000.00 in attorneys' fees. For purposes of this fee petition only,

Stephan Zouras, LLP has agreed to cap its lodestar at \$300,000.00. Stephan Zouras, LLP and Edelson PC have conferred and agreed this cap will have no effect on the allocation of attorneys' fees amongst the firms.

20. I am familiar with the market for legal services for attorneys in the Circuit Court of Cook County, Illinois and the United States District Court for the Northern District of Illinois with reasonably comparable skill, experience, and reputation. The rates used for purposes of the lodestar cross-check are consistent with these rates.

21. They are also consistent with the most recent court-awarded hourly rates awarded by the courts in the matters of *Brown v. MacNeil Automotive Prod., Ltd.*, No. 19-CH-503 (Cir. Ct. Cook Cnty. Sept. 26, 2022) (Horan, J.) (awarding Stephan Zouras, LLP's fees at the current rates in a BIPA action); *Johnson v. OM Joliet Wings, Inc.*, No. 20-CH-692 (Cir. Ct. Will Cnty. June 29, 2022) (Anderson, J.); *Meier v. Rohrman, et al.*, Case No. 14 CH 11513 (Cir. Ct. Cook Cty. May 31, 2022) (Demacopoulos, J.); *Boyd v. Lazer Spot, Inc.*, Case No. 1:19-cv-08173, dkt. 88 (N.D. Ill. May 24, 2022) (Valdez, J.); *Mitchell v. Bottled Blonde Chicago, LLC*, Case No. 20 C 6460, dkt. 51 (N.D. Ill. Apr. 11, 2022) (Guzmán, J.) (finding, after close review of billing records, that Stephan Zouras, LLP's fees "are properly supported and reasonable."); *Bedford v. Lifespace Communities, Inc.*, Case No. 1:20-cv-04574, dkt. 32 (N.D. Ill. May 12, 2021) (Shah, J.) (order granting attorneys' fees) and dkt. 33 (finding Stephan Zouras, LLP's fee "reasonable because it provides fair compensation for taking on the risk of litigation a potential class action, and the small stakes for any one class member means that it takes class counsel to marshal the resources and take on the risk in order to vindicate the interests codified by the biometric privacy statute").

22. I, along with my firm's legal staff, made a concerted effort to perform all work in a thorough and efficient manner.

23. It is my professional opinion that all work performed in the prosecution of this action, and the number of hours spent for legal services, is fair and reasonable considering the nature of the services performed and the results achieved.

24. Stephan Zouras, LLP's lodestar figures are based upon the firm's current billing rates for purposes of the lodestar cross-check, which do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in Class Counsel's rates.

25. As of the date of this declaration, Stephan Zouras, LLP has incurred \$18,197.19 in outstanding expenses in connection with the prosecution of this litigation, not inclusive of settlement administration costs.

26. The expenses incurred in this action are reflected on Stephan Zouras, LLP's books and records. These books and records are prepared from expense vouchers, check records, and other source materials and represent an accurate recordation of the expenses incurred. The expenses incurred were reasonable and necessary to prosecute the case, and not part of Stephan Zouras, LLP's overhead.

27. It is my professional opinion that the expenses incurred were reasonable and necessary in the successful prosecution of this action.

28. Plaintiff Charlene Figueroa played a crucial role in this litigation. Ms. Figueroa exposed herself to risks by attaching her name to this litigation. She also sacrificed her time to prosecute this lawsuit on behalf of her fellow Class Members. Ms. Figueroa reviewed and approved the Complaint, conferred and corresponded with Stephan Zouras, LLP on a regular basis, prepared and sat for a full-day deposition, provided invaluable information and assistance to Stephan Zouras, LLP, and reviewed and approved the Settlement Agreement. Without Ms. Figueroa's contributions, this matter could not have come to a successful conclusion.

Further declarant sayeth naught.

/s/ Ryan F. Stephan
Ryan F. Stephan
Stephan Zouras, LLP
100 N. Riverside Plaza, Suite 2150
Chicago, Illinois 60606

EXHIBIT A

FIRM RESUME



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**Fighting for the Rights
of People.** Driven by Justice.
Dedicated to **You.**



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FIRM PROFILE

STEPHAN ZOURAS, LLP is a nationwide law firm that has helped recover more than **\$500 million** for people in groundbreaking class and collective actions.



Stephan Zouras, LLP has “substantial class action experience [and] have secured multi-million-dollar class recoveries....”

Bhattacharya v. Capgemini North America, Inc., 324 F.R.D. 353, 363 (N.D. Ill. 2018) (Kennelly, J.)



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FIRM PROFILE

STEPHAN ZOURAS, LLP is a national law firm representing plaintiffs in complex class and individual litigation matters. Our diverse team of professionals are widely recognized for their vigorous advocacy, skill, integrity and experience litigating wage and hour and other employment disputes, consumer protection, privacy, cybersecurity, mass torts and catastrophic personal injury, products liability and other complex litigation.

Federal and state courts routinely appoint our attorneys as lead counsel in high-stakes, groundbreaking, rapidly-developing areas with far-reaching impact. We try cases to verdict. We help establish favorable precedent for employees and consumers on appeal. And outside the courtroom, our attorneys testify before legislative bodies and work on legislation designed to protect worker's rights.

Our Chicago-based firm is recognized for its leadership, its zealous, thorough and efficient prosecution of class actions, and for achieving outstanding results at both the trial and appellate levels throughout the United States.

We represent hard working people from all walks of life who deserve the protections our laws provide to prevent corporate abuse, injustice and greed.



STEPHANZOURAS, LLP

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OUR STORY

When Ryan and Jim founded **Stephan Zouras, LLP**, in 2007, they had a vision. They wanted to create a law firm that *empowers* individuals to band together to take on wealthy and powerful corporations who shirk the law and take advantage of employees and consumers.

Today, that vision is a REALITY.

EXPERIENCE

Not only are we passionate about what we do, we know what we are doing. Collectively, our firm has several decades of experience litigating in federal and state courts throughout the United States. We have established *groundbreaking* and precedent-setting court decisions, including securing a major decision for employees at the United States Supreme Court in 2022, and forced major corporations to change unlawful employment practices and make safer products.

DEDICATION

Because we love what we do, we don't cut corners. We will review your claim (at no cost), provide prompt feedback and determine next steps. If we choose to pursue your case, we will drive your case to the best desirable outcome, all while keeping you informed at every step of the way. We don't get paid unless we win. And if we can't help, we will try to find you someone who can.

REPUTATION

We are known throughout the legal community as among the most skilled and qualified practitioners in the field. But some of our proudest accolades come from our clients.



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PRINCIPAL ATTORNEYS

JAMES B. ZOURAS

is a founding partner of Stephan Zouras, LLP. Dedicating his entire professional career to combating corporate abuse and injustice, Jim has helped recover hundreds of millions in individual and class actions arising under the federal and state wage and hour laws, biometric privacy and other complex litigation, along with wrongful death and other catastrophic personal injury actions.

He has successfully tried over a dozen major jury trials and argued approximately 20 appeals as lead appellate counsel before federal and state appellate courts, including the Illinois Supreme Court. Jim is frequently invited as a speaker at national class action and trial seminars. In addition to his admission to numerous trial and appellate courts, Jim is a member of the bar of the Supreme Court of the United States.

Jim and his cases have been profiled by numerous media outlets including the Chicago Tribune, the Chicago Sun-Times, WVON Radio, Bloomberg BNA, Billboard Magazine, TMZ and CBS Consumer Watch.



PROFESSIONAL & COMMUNITY ACTIVITIES

- ESTABLISHED ENDOWED SCHOLARSHIP FUND AT UNIVERSITY OF ILLINOIS AT CHICAGO; 2021
- INVITED SPEAKER AT NATIONAL EMPLOYMENT LAWYERS ASSOCIATION (IL); 2021
- INVITED SPEAKER AT ILLINOIS INSTITUTE FOR CONTINUING LEGAL EDUCATION; 2018-2022
- INVITED SPEAKER AT ILLINOIS STATE BAR ASSOCIATION; 2018-2019
- INVITED SPEAKER AT ILLINOIS TRIAL LAWYERS ASSOCIATION; 2016
- INVITED SPEAKER AT THE CHICAGO BAR ASSOCIATION; 2008 AND 2016
- INVITED SPEAKER AT THE PRACTICING LAW INSTITUTE; 2012 AND 2015
- INVITED SPEAKER AT THE BRIDGEPORT CONTINUING EDUCATION WAGE AND HOUR SEMINAR; 2012 AND 2014
- EDITOR, ILLINOIS WAGE HOUR TREATISE; 2022
- CONTRIBUTING AUTHOR, AMERICAN BAR ASSOCIATION FEDERAL LABOR STANDARDS LEGISLATION SUBCOMMITTEE, MIDWINTER REPORT; 2016
- HELLENIC BAR ASSOCIATION OF ILLINOIS; 2001-PRESENT



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PRINCIPAL ATTORNEYS

-
- ILLINOIS SUPER LAWYER; 2009-PRESENT
 - ILLINOIS TRIAL LAWYERS ASSOCIATION; 1997-PRESENT
 - ILLINOIS TRIAL LAWYERS ASSOCIATION, BOARD OF MANAGERS; 2022-2023
 - ILLINOIS STATE BAR ASSOCIATION; 1997-PRESENT
 - NATIONAL EMPLOYMENT LAWYERS ASSOCIATION; 2007-PRESENT
 - PUBLIC JUSTICE FOUNDATION; 2018-PRESENT
 - CHICAGO FOOD PANTRY VOLUNTEER
 - SHIRLEY RYAN ABILITYLAB VOLUNTEER

EDUCATION

-
- DEPAUL UNIVERSITY COLLEGE OF LAW, J.D. WITH HONOR, ORDER OF THE COIF, [1995]
 - UNIVERSITY OF ILLINOIS CHICAGO, POLITICAL SCIENCE, WITH DISTINCTION [1992]



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PRINCIPAL ATTORNEYS



RYAN F. STEPHAN

is a founding principal of Stephan Zouras, LLP. Throughout his career, Ryan has been a passionate advocate for worker and consumer rights, and has helped hundreds of thousands of everyday people recover damages in unpaid overtime, privacy claims, employment disputes, business litigation, products liability and personal injury cases. Ryan has successfully tried cases to verdict including obtaining a \$9,000,000 verdict on behalf of 200 employees who were misclassified and denied overtime pay.

Ryan has also served as lead or co-lead counsel on hundreds of complex class and collective action cases involving privacy issues, wage and hour matters and consumer fraud claims, amongst others, and has helped recover over \$250 Million for hundreds of thousands of people. In these cases, Ryan has helped establish precedent in both privacy and wage and hour law, forced major corporations to change unlawful employment practices and helped recover hundreds of millions of dollars for his clients.

Ryan and his cases have been profiled by numerous media outlets including Good Morning America, Fortune, ESPN, Fox News, The Guardian, The New York Times, Think Progress, USA Today and Vice Sports.

PROFESSIONAL & COMMUNITY ACTIVITIES

- AMERICAN ASSOCIATION FOR JUSTICE; 2020-PRESENT
- AMERICAN BAR ASSOCIATION; 2007-PRESENT
- CHICAGO LIGHTS TUTOR; 2009-2010
- CHICAGO CARES TUTOR; 2008-2009
- FEED MY STARVING CHILDREN VOLUNTEER; 2014-2015
- ILLINOIS STATE BAR ASSOCIATION; 2000-PRESENT
- ILLINOIS TRIAL LAWYERS ASSOCIATION; 2021-PRESENT
- ILLINOIS TRIAL LAWYERS ASSOCIATION BOARD OF ADVOCATES; 2022-PRESENT
- PUBLIC JUSTICE FOUNDATION; 2018-PRESENT

EDUCATION

- CHICAGO KENT COLLEGE OF LAW, J.D., [2000]
- UNIVERSITY OF ILLINOIS URBANA CHAMPAIGN, B.A., POLITICAL SCIENCE, [1996]



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PRINCIPAL ATTORNEYS

Ryan and Jim are admitted to the Supreme Court of the United States, the United States Court of Appeals for the First, Third and Seventh Circuits, and the Trial Bar of the United States District Court for the Northern District of Illinois. Ryan and Jim are admitted to practice in the Northern, Central and Southern Districts of Illinois, the United States Bankruptcy Court for the Northern District of Illinois, and are generally admitted to practice in the District Court of Colorado, the Eastern District of Michigan and the Eastern District of Wisconsin.

In addition, they have been admitted pro hac vice in the United States District Courts for the District of Alaska, the District of Arizona, the District of Columbia, the Northern, Central and Southern Districts of California, the Superior Court for the State of California, the District Court of Columbia, the Northern, Middle and Southern Districts of Florida, the Northern District of Georgia, the Southern District of Indiana, the Northern and Southern Districts of Iowa, the Western District of Kentucky, the District Court of Maryland, the District Court of Massachusetts, the District Court of Minnesota, the Eastern and Western Districts of Missouri, the District Court of New Mexico, the Southern and Eastern Districts of New York, the District Court of New Jersey, the Eastern and Middle Districts of Pennsylvania, the First Judicial District of Pennsylvania, the Eastern, Middle and Western Districts of North Carolina, the Southern District of Ohio, the District Court of Oregon, the Eastern and Middle Districts of Pennsylvania, the Middle District of Tennessee, the Northern and Southern Districts of Texas, and the Western District of Washington.

In every consecutive year since 2009, Chicago Magazine's Super Lawyer Section selected both Jim and Ryan as two of the top attorneys in Illinois, a distinction given to no more than 5% of the lawyers in the state.



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PARTNERS



ANDREW C. FICZKO

A tireless fighter for working people, Andy has spent his entire professional career focusing on Employment Litigation and has represented thousands of employees in class, collective and individual actions nationwide and has recovered hundreds of thousands of dollars in unpaid minimum wages, overtime compensation, and other benefits.

Andy has been recognized by Chicago Magazine's Super Lawyers section as a Rising Star and Super Lawyer for eight consecutive years, a distinction given to no more than 5% of Illinois lawyer. Andy served as the second chair in two major federal jury trials to verdict on behalf of Plaintiffs in wage and hour matters and one state jury trial to verdict on behalf of Plaintiffs in a breach of contract matter.

Andy is admitted to the United States Supreme Court, the United States District Court for the Seventh Circuit, the United States Bankruptcy Court for the Northern District of Illinois, the Trial Bar of the United States District Court for the Northern District of Illinois, and is generally admitted to the District Court of Colorado. Andy has been admitted pro hac vice to the District of Alaska, the Central and Northern Districts of California, the District of Columbia, the Northern District of Georgia, the Southern District of Indiana, the Northern and Southern Districts of Iowa, the District of Massachusetts, the Western District of Missouri, the Southern District of New York, the Middle and Western Districts of North Carolina, the Southern District of Ohio, the Eastern and Middle Districts of Pennsylvania, the Northern and Southern Districts of Texas, and the Western District of Washington.

PROFESSIONAL & COMMUNITY ACTIVITIES

- CHICAGO BAR ASSOCIATION; 2009-PRESENT
- ILLINOIS STATE BAR ASSOCIATION; 2009-PRESENT
- ILLINOIS TRIAL LAWYERS ASSOCIATION; 2021-PRESENT
- NORTHERN DISTRICT OF ILLINOIS TRIAL BAR ASSOCIATION; 2010-PRESENT
- CHICAGO FOOD PANTRY VOLUNTEER; 2012

EDUCATION

- DRAKE UNIVERSITY LAW SCHOOL, J.D., [2009]
- LAFAYETTE COLLEGE, B.S., PSYCHOLOGY, [2002]



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PARTNERS



TERESA M. BECVAR

A steadfast advocate for individual rights, Teresa has helped thousands of clients hold corporations accountable in employment and consumer protection cases. Teresa has extensive experience in a wide range of employment cases, including wage and hour class and collective actions and employment discrimination.

Teresa is a 2013 graduate of Chicago-Kent College of Law, where she served as Editor of the Law Review. Since 2019, Teresa has served on the Advocacy Council Leadership Committee for Women Employed, an Illinois nonprofit that advocates for the advancement of working women through fair workplaces and education opportunities. Every year since 2016, Teresa has been recognized by Chicago Magazine's Super Lawyer section as a Rising Star, a distinction given to no more than 2.5% of Illinois lawyers.

Teresa is admitted to the Trial Bar of the United States District Court for the Northern District of Illinois, the Northern District of Illinois, the United States Court of Appeals for the Third and Seventh Circuits, and is generally admitted to the District Court of Colorado. She has been admitted pro hac vice to the District Court of Arizona, the Northern District of California, the Superior Court for the State of California, the Middle District of Florida, the District Court of New Mexico, the Eastern and Southern Districts of New York, the Western District of North Carolina, the Northern District of Ohio, the Eastern and Middle Districts of Pennsylvania, the Middle District of Tennessee, and the Western District of Washington.

PROFESSIONAL & COMMUNITY ACTIVITIES

- ABA/BNA AGE DISCRIMINATION IN EMPLOYMENT LAW SUPPLEMENT, CHAPTER EDITOR; 2016-PRESENT
- AMERICAN ASSOCIATION FOR JUSTICE; 2019-PRESENT
- CHICAGO BAR ASSOCIATION; 2013-PRESENT
- FEDERAL BAR ASSOCIATION; 2012-PRESENT
- ILLINOIS STATE BAR ASSOCIATION; 2013-PRESENT
- ILLINOIS TRIAL LAWYER ASSOCIATION; 2017-PRESENT
- PUBLIC JUSTICE FOUNDATION; 2021-PRESENT

EDUCATION

- CHICAGO-KENT COLLEGE OF LAW, J.D., CUM LAUDE, [2013]
- UNIVERSITY OF CHICAGO, B.A., CINEMA AND MEDIA STUDIES, [2002]



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PARTNERS



CATHERINE T. MITCHELL

is a staunch advocate for individual rights, representing people in a wide-range of legal disputes, including unpaid wages, employee misclassification, improper wage deduction, Employee Retirement Income Security Act (ERISA) violations, antitrust, and consumer fraud. Katie is also a member of the legal team pursuing claims on behalf of employees and consumers for violations of the Illinois Biometric Privacy Act (BIPA). Her broad knowledge in such areas helps clients understand their rights and recover damages when laws are violated.

Katie is admitted to practice in Illinois, the United States District Courts for the Central, Northern and Southern Districts of Illinois, and is generally admitted to the District Court of Colorado and the Eastern District of Wisconsin. She has been admitted pro hac vice to the District of Arizona, the Northern District of California, the Southern District of Iowa, the Middle District of Florida, the District Court of Minnesota, the Fourth Judicial District for the State of Minnesota, the Eastern and Western Districts of North Carolina, the District of New Mexico, the Eastern and Southern Districts of New York, the Eastern District of Pennsylvania, and the United States Court of Appeals for the Seventh Circuit.

PROFESSIONAL & COMMUNITY ACTIVITIES

- CHAPTER EDITOR, BUREAU OF NATIONAL AFFAIRS AGE DISCRIMINATION IN EMPLOYMENT ACT TREATISE, 2D ED.; 2016
- CHICAGO BAR ASSOCIATION; 2013-PRESENT
- ILLINOIS STATE BAR ASSOCIATION; 2015-PRESENT
- ILLINOIS TRIAL LAWYERS ASSOCIATION; 2021-PRESENT
- SAINT MARY'S COLLEGE CHICAGO EAST ALUMNAE CLUB MEMBER; 2012-PRESENT
- VICE CHAIR, YLS MOOT COURT COMPETITION COMMITTEE; 2016-2019
- WOMEN'S BAR ASSOCIATION OF ILLINOIS; 2015-PRESENT
- YOUNG LAWYERS SOCIETY OF THE CHICAGO BAR ASSOCIATION; 2014-PRESENT

EDUCATION

- THE JOHN MARSHALL LAW SCHOOL, J.D., [2015]
- SAINT MARY'S COLLEGE, B.A., POLITICAL SCIENCE & PSYCHOLOGY, [2012]



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PARTNERS



HALEY JENKINS

A spirited advocate, Haley represents clients in legal disputes involving unpaid wages, employee misclassification, whistleblower actions, and biometric privacy cases. Haley joined the Stephan Zouras team as a law clerk in 2015 while attending law school and continued working as an associate attorney after graduating cum laude from Chicago-Kent College of Law in 2016. Haley was elevated to partner in 2021.

As lead attorney in one of the first in-person jury trials for unpaid wages following the COVID-19 pandemic, Haley obtained a verdict and corresponding six-figure damages award on behalf of one of her clients. She is currently a member of the legal team advocating for clients' biometric privacy rights in cutting-edge cases against employers and biometric device manufacturers that unlawfully collect, store, use and disseminate employees' and consumers' biometrics data.

Haley and her cases have been profiled by numerous media outlets including the Chicago Tribune, Crain's Chicago, and FundFire. She has been published and recognized by the Chicago Bar Association Young Lawyer's Society's @theBar blog for her knowledge of the Illinois Biometric Information Privacy Act (BIPA).

Haley is admitted to the Trial Bar of the United States District Court for the Northern District of Illinois, the Central and Southern Districts of Illinois, the United States Court of Appeals for the Seventh Circuit, and is generally admitted to the District Court of Colorado. She has been admitted pro hac vice to the Eastern District of New York and the Middle and Eastern Districts of Pennsylvania.

PROFESSIONAL & COMMUNITY ACTIVITIES

- ILLINOIS STATE BAR ASSOCIATION; 2016-PRESENT
- ILLINOIS TRIAL LAWYERS ASSOCIATION; 2021-PRESENT
- NATIONAL EMPLOYMENT LAWYER'S ASSOCIATION; 2016-PRESENT
- WOMEN'S BAR ASSOCIATION OF ILLINOIS; 2016-PRESENT
- YOUNG LAWYERS SOCIETY OF THE CHICAGO BAR ASSOCIATION; 2014-PRESENT
- YOUNG LAWYERS DIVISION OF THE ILLINOIS TRIAL LAWYERS ASSOCIATION; 2014-PRESENT

EDUCATION

- CHICAGO-KENT COLLEGE OF LAW, J.D., CUM LAUDE, [2016]
- UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN, B.A., ENGLISH [2013]



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ASSOCIATES



ANNA M. CERAGIOLI

started her career at Stephan Zouras in 2017 when she worked as a law clerk. Anna is a skilled and dedicated advocate for individuals and groups of people who have been injured, deprived of earned wages or otherwise mistreated by employers. She has worked tirelessly on an array of individual and class actions lawsuits involving unpaid wages, employee misclassification, tip-pool violations, retaliation, biometric privacy violations, and RICO violations. As the assisting attorney in one of the first in-person jury trials for unpaid wages following the COVID-19 pandemic, Anna obtained a verdict and corresponding six-figure damages award on behalf of one of her clients. Anna achieved the first ruling in the state of Illinois awarding treble damages over and above liquidated damages for claims brought under the Illinois Minimum Wage Law and the Fair Labor Standards Act – a landmark ruling for employee rights.

Anna has been recognized by Chicago Magazine's Super Lawyer section as a Rising Star, a distinction given to no more than 2.5% of Illinois lawyers. She was one of only twelve graduating students inducted into the Chicago-Kent Bar & Gavel Society.

Anna is admitted to the Trial Bar of the United States District Court for the Northern District of Illinois, the Central and Southern Districts of Illinois, and the United States Court of Appeals for the Seventh Circuit. She has also been admitted pro hac vice to the Northern District of California, the Eastern District of New York, the Northern District of Ohio, the Eastern District of Pennsylvania and Court of Common Pleas for the State of Ohio.

PROFESSIONAL & COMMUNITY ACTIVITIES

- CHICAGO BAR ASSOCIATION YLS MOOT COURT COMMITTEE; 2019-2021
- CHICAGO BAR ASSOCIATION; 2018-PRESENT
- CHICAGO-KENT BAR AND GAVEL SOCIETY; 2018 INDUCTEE
- CHICAGO-KENT MOOT COURT HONOR SOCIETY, PRESIDENT AND MEMBER; 2016-2018
- CHICAGO-KENT JUSTINIAN SOCIETY, SECRETARY; 2016-2018
- ILLINOIS TRIAL LAWYERS ASSOCIATION; 2021-PRESENT
- NATIONAL EMPLOYMENT LAWYERS ASSOCIATION; 2022
- WOMEN'S BAR ASSOCIATION OF ILLINOIS; 2018-PRESENT

EDUCATION

- CHICAGO-KENT COLLEGE OF LAW, J.D., [2018]
- MARQUETTE UNIVERSITY, B.A., CUM LAUDE, ENGLISH [2013]



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ASSOCIATES



PAIGE L. SMITH

has worked as an Associate Attorney since 2021. Paige first joined the Stephan Zouras team as a law clerk in 2019, with a passion and dedication for vindicating Illinois citizens' rights under the Biometric Information Privacy Act (BIPA). Since joining the firm, Paige has assisted in a wide range of trailblazing individual and class actions in federal and state court, at the trial and appellate levels, involving biometric privacy violations and compliance, consumer breach of contract, improper wage deductions, unpaid wages, employee misclassification, employment discrimination, and retaliatory discharge claims.

Paige graduated cum laude from Chicago-Kent College of Law, where she was a member of the Dean's List and served as the Executive Notes & Comments Editor of the Chicago-Kent Law Review.

Paige is admitted to the Seventh Circuit Court of Appeals, and the Northern, Southern and Central Districts of Illinois. She has also been admitted pro hac vice in the Northern and Central District of California and the Eastern District of Pennsylvania.

PROFESSIONAL & COMMUNITY ACTIVITIES

- CHICAGO BAR ASSOCIATION; 2021-PRESENT
- WOMEN'S BAR ASSOCIATION OF ILLINOIS; 2021-PRESENT
- ILLINOIS STATE BAR ASSOCIATION; 2021-PRESENT
- ILLINOIS TRIAL LAWYERS ASSOCIATION; 2021-PRESENT

EDUCATION

- CHICAGO-KENT COLLEGE OF LAW, J.D., CUM LAUDE [2020]
- UNIVERSITY OF WISCONSIN-MADISON, B.A. POLITICAL SCIENCE WITH HONORS IN THE LIBERAL ARTS, [2016]



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ASSOCIATES



MOHAMMED RATHUR

joined the Stephan Zouras team in 2022 as an Associate Attorney, with a passion to advocate for individual rights. Prior to joining the firm, Mohammed served as a judicial law clerk to the Honorable Pamela McLean Meyerson in the Chancery Division of the Circuit Court of Cook County where he gained in-depth knowledge of the Illinois Biometric Information Privacy Act, complex class actions, insurance-coverage disputes, FOIA-actions, and employment disputes under administrative review.

He earned a Bachelor's Degree from Michigan State University and his law degree from the American University Washington College of Law. In law school, Mohammed served as a Student Attorney for the International Human Rights Law Clinic where he represented asylum seekers in federal immigration court. Additionally, Mohammed interned at the U.S. Department of Justice – Civil Rights Division and for United States District Court Judge George Caram Steeh III.

Mohammed is admitted to practice in Illinois and Washington, D.C., and the United States District Court for the Northern District of Illinois.

PROFESSIONAL & COMMUNITY ACTIVITIES

- SOUTH ASIAN BAR ASSOCIATION; 2016-PRESENT
- ILLINOIS STATE BAR ASSOCIATION; 2020-PRESENT
- MUSLIM BAR ASSOCIATION OF CHICAGO; 2022-PRESENT

EDUCATION

- AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW, J.D., [2019]
- MICHIGAN STATE UNIVERSITY, B.A., INTERNATIONAL RELATIONS [2016]



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OF COUNSEL

DAVID J. COHEN

is a highly skilled and successful class-action attorney who joined Stephan Zouras, LLP in 2016. Dave manages our Philadelphia office and has spent his entire career fighting to protect the rights of thousands of healthcare professionals, restaurant workers, transportation workers, IT professionals, shareholders, union members and consumers.

Before joining the private sector, Dave completed a unique clerkship with the Hon. Stephen E. Levin in the Philadelphia Court of Common Pleas, during which he helped to develop a respected and efficient system to resolve the Court's class action cases and contributed to several well-regarded works on class actions.

Dave earned a J.D. from the Temple University School of Law in 1994. While attending law school, Dave was awarded the Barristers Award for excellence in trial advocacy and worked as a teaching assistant for Hon. Legrome Davis (E.D. Pa.) as part of Temple's award-winning Integrated Trial Advocacy program.

Dave is a member of the Pennsylvania and New Jersey Bar Associations, and has been admitted to practice in many courts nationwide, including: the United States Courts of Appeals for the Third and Sixth Circuits and the District Courts of California, Florida, Illinois, Michigan, New Jersey, New York, Pennsylvania, Tennessee and the District of Columbia.



PROFESSIONAL & COMMUNITY ACTIVITIES

- ILLINOIS STATE BAR ASSOCIATION; 2017-PRESENT
- UNIVERSITY OF CHICAGO ALUMNI INTERVIEWER; 1994-PRESENT
- PENNSYLVANIA BAR ASSOCIATION MEMBER; 1995-PRESENT
- PHILADELPHIA BAR ASSOCIATION MEMBER; 1995-PRESENT
- UNION LEAGUE OF PHILADELPHIA MEMBER; 2001-PRESENT
- STREET TAILS ANIMAL RESCUE FOSTER CARE SPONSOR; 2014-PRESENT
- UNIVERSITY OF CHICAGO "WISR" ALUMNI MENTORING NETWORK; 2017-PRESENT
- PHILADELPHIA BAR ASSOCIATION LEGAL-LINE VOLUNTEER; 2015-2020
- FOUNDATION FOR FIRST RESPONDERS AND FIREFIGHTERS SPONSOR; 1994-2020
- AMERICAN BAR ASSOCIATION MEMBER; 1994-2015
- HEAD HOUSE CONSERVANCY BOARD MEMBER; 2008-2015



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OF COUNSEL

- AIDS SERVICES IN ASIAN COMMUNITIES (ASAIC) SPONSOR; 1994-2014
- FRIENDS OF INGLIS HOUSE VOLUNTEER; 2001-2014
- OLD CITY CIVIC ASSOCIATION BOARD MEMBER, EXECUTIVE COMMITTEE MEMBER AND SECRETARY; 2002-2014
- TEMPLE UNIVERSITY BEASLEY SCHOOL OF LAW MOOT COURT HONOR SOCIETY JUDGE; 2002-2011

EDUCATION

- TEMPLE UNIVERSITY SCHOOL OF LAW, J.D. [1994]
- UNIVERSITY OF CHICAGO, B.A. CUM LAUDE [1991]



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Representative Trials, Verdicts and Judgments

<u>CASE</u>	<u>COURT</u>	<u>JUDGMENT</u>
Meadows v. NCR Corporation	Northern District of Illinois No. 16-cv-06221	5/21/2021 - Jury Verdict (Plaintiff) 7/09/2021 - Trial Court Judgment \$225,000
Retaliation Arbitrations	American Arbitration Association Redacted for Confidentiality	2/2019 & 9/2020 - Arbitration Judgment - \$400,0000
Ray v. DISH Network	American Arbitration Association No. 01-15-0003-4651	3/17/2019 – Arbitration Judgment \$3.25 mil
Franco v. Ideal Mortgage Bankers d/b/a Lend America	Eastern District of New York No. 07-cv-3956	12/14/2017 – Trial Court Judgment \$15.2 mil
Frisari v. DISH Network	American Arbitration Association No. 18-160-001431-12	8/25/2016 - Arbitration Judgment \$2.5 mil
Huskey v . Ethicon, Inc.	Southern District of West Virginia No. 2:12-cv-05201	9/10/2014 - Jury Verdict (Plaintiff) \$3.27 mil
Lee v. THR & Associates, Inc.	Central District of Illinois No. 12-cv-3078	5/22/2014 - Trial Court Judgment \$12.2 mil
Vilches v. The Travelers Companies, Inc.	American Arbitration Association No. 11-160-000355-11	12/12/2012 - Arbitration Judgment
Kyriakoulis v. DuPage Health Center	Northern District of Illinois No. 10-cv-7902	11/16/2012 - Jury Verdict (Plaintiff)
Smith v. Safety-Kleen Systems, Inc.	Northern District of Illinois No. 10-cv-6574	7/11/2012 - Jury Verdict (Plaintiff)



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CASE

Wong v. Wice Logistics

Daniels v. Premium Capital Funding

COURT

Circuit Court of Cook County, IL
No. 08-L-13380

Eastern District of New York
No. 08-cv-4736

JUDGMENT

1/30/2012 - Jury Verdict (Plaintiff)

10/18/2011 - Jury Verdict (Plaintiff)
\$9 mil



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Representative Resolved Class and Collective Actions

Courts nationwide have appointed the firm as lead or co-lead counsel in numerous class and collective actions in which they have collectively secured over one hundred million dollars in verdicts and settlements including;

<u>CASE</u>	<u>COURT</u>	<u>SETTLEMENT</u>
Gniecki v. Columbia Sussex Management, LLC	Circuit Court of Cook County, IL No. 21-CH-00677	10/06/2022 - Final Approval \$500,000
Brown v. Weathertech	Circuit Court of Cook County, IL No. 19-CH-00503	9/26/2022 - Final Approval \$1.375 mil
Johnson v. Verizon Wireless	Northern District of Illinois No. 21-cv-00187	9/12/2022 - Final Approval
Bruhn v. Jewel-Osco	Circuit Court of Cook County, IL No. 18-CH-01737	9/08/2022 - Final Approval \$1.575 mil
Meier v. Robert Rohrman, et al.	Circuit Court of Cook County, IL No. 14-CH-11513	5/31/2022 - Final Approval \$855,000
Robertson v. Hostmark Hospitality Group, Inc., et al.	Circuit Court of Cook County, IL No. 18-CH-05194	4/14/2022 - Final Approval \$503,000
Parsons v. Personnel Staffing Group	Circuit Court of Cook County, IL No. 20-CH-473	3/22/2022 - Final Approval \$4.68 mil
Mosby v. The Ingalls Memorial Hospital, et al.	Circuit Court of Cook County, IL No. 18-CH-05031	3/14/2022 - Final Approval \$2.42 mil
Bledsoe v. LHC Group, Inc. and; George v. LHC Group, Inc.	District Court of Arizona No. cv-18-02863, and; No. cv-21-01402	2/08/2022 - Final Approval



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<u>CASE</u>	<u>COURT</u>	<u>SETTLEMENT</u>
Krzyzanowski v. Brunch Café	Northern District of Illinois No. 19-cv-07427	2/02/2022 - Final Approval
Toor v. CoreCentric Solutions, Inc.	Circuit Court of DuPage County, IL No. 2019-CH-000989	1/25/2022 - Final Approval
Peatry v. Bimbo Bakeries USA, Inc.	Northern District of Illinois No. 19-cv-02942	1/12/2022 - Final Approval
Ripper v. Area Disposal Service, Inc.	Circuit Court of Peoria County, IL No. 2020-CH-00124	11/16/2021 - Final Approval \$577,000
O'Sullivan v. All Star Management, Inc.	Circuit Court of Cook County, IL No. 19-CH-11575	9/02/2021 - Final Approval \$577,000
Sanchez v. Visual Pak	Circuit Court of Cook County, IL No. 18-CH-02651	8/10/2021 - Final Approval \$3.5 mil
Ramos v. BOX Acquisitions, LLC	Circuit Court of Cook County, IL No. 20-CH-03887	8/05/2021 - Final Approval \$1.38 mil
Civcon Services, Inc. v. Accesso Services, LLC	Northern District of Illinois No. 20-cv-01821	7/08/2021 - Final Approval \$500,000
Van Jacobs v. New World Van Lines, Inc.	Circuit Court of Cook County, IL No. 19-CH-02619	7/07/2021 - Final Approval
Liu v. Four Seasons Hotels, Ltd.	Circuit Court of Cook County, IL No. 17-CH-14949	6/30/2021 - Final Approval \$575,900
Bedford v. Lifespace Communities, Inc.	Northern District of Illinois No. 20-cv-04574	5/12/2021 - Final Approval \$987,850



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CASE

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SETTLEMENT

Heard v. THC - Northshore, Inc.	Circuit Court of Cook County, IL No. 17-CH-16918	5/05/2021 - Final Approval \$2.25mil
Thome v. Novatime Technology, Inc.	Northern District of Illinois No. 19-cv-06256	3/08/2021 - Final Approval \$14.1 mil
Kusinski v. ADP, LLC	Circuit Court of Cook County, IL No. 17-CH-12364	2/10/2021 - Final Approval \$25 mil
Trayes v. Mid-Con Hospitality Group, LLC	Circuit Court of Cook County, IL No. 19-CH-11117	2/03/2021 - Final Approval \$616,500
Collier v. Pete's Fresh Market	Circuit Court of Cook County, IL No. 19-CH-05125	12/03/2020 - Final Approval \$4.2 mil
Bryant v. Loews Chicago Hotel, Inc.	Northern District of Illinois No. 19-cv-03195	10/30/2020 - Final Approval \$1 mil
Bigger v. Facebook, Inc.	Northern District of Illinois No. 17-cv-7753	10/22/2020 - Final Approval \$1.6 mil
Johns v. Club Fitness of Alton, LLC	Circuit Court of Madison County, IL No. 18-L-000080	10/13/2020 - Final Approval \$750,000
Bryski v. Nemera Buffalo Grove, LLC	Circuit Court of Cook County, IL No. 18-CH-07264	10/05/2020 - Final Approval
Thomas v. Kik Custom Products, Inc.	Circuit Court of Cook County, IL No. 19-CH-02471	9/30/2020 - Final Approval \$1 mil
Gauzza v. Prospect Medical Holdings, Inc.	Eastern District of Pennsylvania No. 20-cv-03599	9/15/2020 - Final Approval \$1.9 mil
Bradford v. Farmington Foods, Inc.	Circuit Court of Cook County, IL No. 19-CH-12888	8/17/2020 - Final Approval



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Trottier v. Summit Staffing	Circuit Court of Cook County, IL No. 19-CH-02731	8/04/2020 - Final Approval \$1mil
Jackson v. A. Finkl & Sons, Co.	Circuit Court of Cook County, IL No. 2018-CH-07424	7/21/2020 - Final Approval
Thome v. Flexicorps. Inc.	Circuit Court of Cook County, IL No. 18-CH-01751	7/02/2020 - Final Approval \$1 mil
Goings v. Applied Acoustics	Circuit Court of Cook County, IL No. 17-CH-14954	6/02/2020 - Final Approval
Jones v. Santa Rosa Consulting, Inc.	Southern District of New York No. 18-cv-11005	5/26/2020 - Final Approval
Jones v. Encore Health Resources, LLC	Southern District of Texas No. 19-cv-03298	2/19/2020 - Final Approval
Potoski v. Wyoming Valley Health Care System	Middle District of Pennsylvania No. 11-cv-00582	1/14/2020 - Final Approval
Stewart v. First Transit, Inc.	Eastern District of Pennsylvania No. 18-cv-03768	12/30/2019 - Final Approval \$1 mil
Jordan v. Meridian Bank	Eastern District of Pennsylvania No. 17-cv-05251	12/19/2019 - Final Approval \$1 mil
George v. Schulte Hospitality Group, Inc.	Circuit Court of Cook County, IL No. 18-CH-04413	12/16/2019 - Final Approval \$1 mil
Edmond v. DPI Specialty Foods, Inc.	Circuit Court of Cook County, IL No. 18-CH-09573	11/18/2019 - Final Approval \$500,000
Watts v. Chicago Lakeshore Hospital	Circuit Court of Cook County, IL No. 17-CH-12756	11/13/2019 - Final Approval \$858,000



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Bey v. Walker HealthCare and; Pierce v. Encore Health Resources	Southern District of Texas No. 19-cv-00060 No. 18-cv-04736	9/19/2019 - Final Approval \$2.4 mil
Kuck v. Planet Home Lending, LLC	Eastern District of New York No. 17-cv-04769	9/13/2019 - Final Approval
Dixon v. The Washington & Jane Smith Home	Northern District of Illinois No. 17-cv-08033	8/20/2019 - Final Approval \$1.35 mil
Jones v. Chicago Bridge & Iron Company	Western District of North Carolina No. 17-cv-00424	8/06/2019 - Final Approval
Sharrieff v. Raymond Management Company	Circuit Court of Cook County, IL No. 18-CH-01496	8/01/2019 - Final Approval
Ostrander v. Customer Engineering Services, LLC	District Court of Colorado No. 15-cv-01476	3/25/2019 - Final Judgment
Davis v. Vanguard Home Care, LLC	Northern District of Illinois No. 16-cv-07277	3/22/19 – Final Approval
Goh v. NCR Corporation	American Arbitration Association No. 01-15-0004-0067	2/25/19 – Final Approval
Moseman v. U.S. Bank National Association	Western District of North Carolina No. 17-cv-00481	1/07/19 – Final Approval
Ivy v. Adventist Midwest Health	Northern District of Illinois No. 16-cv-7606	11/14/18 – Final Approval
Bhattacharya v. Capgemini	Northern District of Illinois No. 16-cv-07950	11/13/18 - Final Approval \$990,000



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Carver v. Presence Health Network	Northern District of Illinois No. 15-cv-02905	7/10/18 – Final Approval \$20mil
Stapleton v. Advocate Health Care	Northern District of Illinois No. 14-cv-01873	6/27/18 – Final Approval
Brown v. Health Resource Solutions, Inc.	Northern District of Illinois No. 16-cv-10667	4/20/18 – Final Approval \$900,000
Eggleston v. USCC Services, LLC	Northern District of Illinois No. 16-cv-06775	2/16/18 – Final Approval \$1.25mil
Caison v. Sogeti USA, LLC	Northern District of Illinois No. 17-cv-2786	2/12/18 – Final Approval
Kaminski v. Bank of America, N.A.	Northern District of Illinois No. 16-cv-10844	2/15/18 – Final Approval \$850,000
Byrne v. Centegra Health System	Northern District of Illinois No. 17-cv-00018	1/29/18 – Final Approval
Donoghue v. Verizon Communications, Inc.	Eastern District of Pennsylvania No. 16-cv-4742	11/16/17 – Final Approval \$800,000
Tompkins v. Farmers Insurance Exchange	Eastern District of Pennsylvania No. 14-cv-3737	9/27/17 – Final Approval \$775,000
In re Sears Holdings Corporation Stockholder and Derivative Litigation	Court of Chancery of the State of Delaware, No. 11081-VCL	5/9/17 – Final Approval \$40mil
Oaks v. Sears	Northern District of Illinois No. 1:15-cv-11318	4/12/17 – Final Approval
Hauser v. Alexian Brothers Home Health	Northern District of Illinois No. 15-cv-6462	4/06/17 – Final Approval \$1mil



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Leiner v. Johnson & Johnson	Northern District of Illinois No. 15-cv-5876	1/31/17 – Final Approval \$5mil
Reed v. Friendly's Ice Cream, LLC	Middle District of Pennsylvania No. 15-cv-00298	1/31/17 – Final Approval \$3.5 mil
McPhearson v. 33 Management	Circuit Court of Cook County, IL No. 15-CH-17302	11/3/16 – Final Approval
Cook v. Bank of America	Northern District of Illinois No. 15-cv-07718	8/2/16 – Final Approval \$3.25 mil
Lukas v. Advocate Health Care	Northern District of Illinois No. 14-cv-2740	6/29/16 – Final Approval \$4.75mil
Kurgan v. Chiro One Wellness Centers, LLC	Northern District of Illinois No. 10-cv-1899	4/27/16 – Final Approval
Heba v. Comcast	First Judicial District of Pennsylvania Court of Common Pleas, No. 12-471	4/06/16 – Final Approval
Johnson v. Casey's General Stores, Inc.	Western District of Missouri No. 15-cv-3086	3/03/16 – Final Approval \$500,000
Fields v. Bancsource, Inc.	Northern District of Illinois No. 14-cv-7202	2/03/16 – Final Approval
Elder v. Comcast Corporation	Northern District of Illinois No. 12-cv-1157	1/11/16 – Final Approval \$700,000
Posada v. Continental Home Loans, Inc.	Eastern District of New York 15-cv-4203	1/13/16 - Final Approval
Struett v. Susquehanna Bank	Eastern District of Pennsylvania No. 15-cv-176	10/27/15 – Final Approval



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Faust v. Comcast Corporation	District Court of Maryland No. 10-cv-2336	10/11/15 - Final Approval
Butler v. DirectSat USA, LLC	District Court of Maryland No. 10-cv-02747	9/03/15 - Final Approval
Sosnicki v. Continental Home Loans, Inc.	Eastern District of New York No. 12-cv-1130	7/30/15 - Final Approval
Bordell v. Geisinger Medical Center	Northumberland Court of Common Pleas, No. 12-cv-1688	4/8/15 – Final Approval
Harvey v. AB Electrolux	Northern District of Iowa No. 11-cv-3036	3/23/15 – Final Approval
Price v. NCR Corporation	American Arbitration Association No. 51-610-908-12	3/18/15 – Final Approval \$2.95 mil
Frebes v. Mask Restaurants, LLC	Northern District of Illinois No. 13-cv-3473	1/15/15 – Final Approval
Jones v. Judge Technical Services Inc.	Eastern District of Pennsylvania No. 11-cv-6910	12/15/14 – Final Approval \$1.22 mil
Howard v. Securitas Security Services USA, Inc., and; Hawkins v. Securitas Security Services USA, Inc.	Northern District of Illinois No. 08-cv-2746 and; No. 09-cv-3633	5/7/14 – Final Approval
Thomas v. Matrix Corporation Services	Northern District of Illinois No. 10-cv-5093	2/12/14 – Final Approval
Sexton v. Franklin First Financial	Eastern District of New York No. 08-cv-04950	9/30/13 – Final Approval



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<u>CASE</u>	<u>COURT</u>	<u>SETTLEMENT</u>
Outlaw v. Secure Health, L.P.	Eastern District of Pennsylvania No. 11-cv-602	9/24/13 – Final Approval
Robinson v. RCN Telecom Services, Inc.	Eastern District of Pennsylvania No. 10-cv-6841	8/5/13 – Final Approval
Holland v. Securitas Security Services USA, Inc.	Superior Court of California, County of Los Angeles, No. BC 394708	7/26/13- Final Approval
Ord v. First National Bank of Pennsylvania	Western District of Pennsylvania No. 12-cv-766	6/21/13 – Final Approval \$3mil
Holley v. Erickson Living Management, LLC	Eastern District of Pennsylvania No. 11-cv-2444	6/13/13 – Final Approval
Hansen v. Per Mar Security Services	Southern District of Iowa No. 09-cv-459	5/15/13 - Final Approval
Pomphrett v. American Home Bank	Eastern District of Pennsylvania No. 12-cv-2511	3/14/13 – Final Approval \$2.4 mil
Glatts v. Crozer-Keystone Health System	Philadelphia Court of Common Pleas, No. 0904-1314	2/06/13 – Final Approval \$1.2 mil
Chambers v. Front Range Environmental, LLC	Northern District of Illinois No. 12-cv-891	1/23/13 - Final Approval
Searson v. Concord Mortgage Corporation	Eastern District of New York No. 07-cv-3909	11/19/12 - Final Approval
Ellenbecker v. North Star Cable Construction, Inc.	Northern District of Illinois No. 09-cv-7293	11/14/12 - Final Approval
Williams v. Securitas Security Services USA, Inc.	Eastern District of Pennsylvania No. 10-cv-7181	11/08/12 - Final Approval



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<u>CASE</u>	<u>COURT</u>	<u>SETTLEMENT</u>
Molyneux v. Securitas Security Services USA, Inc.	Southern District of Iowa No. 10-cv-588	11/05/12 - Final Approval
Kernats v. Comcast Corporation	Northern District of Illinois No. 09-cv-3368	5/28/12 - Final Approval
Petersen v. Marsh USA, Inc.	Northern District of Illinois No. 10-cv-1506	9/21/11 - Final Approval
Thompson v. World Alliance Financial Corp.	Eastern District of New York No. 08-cv-4951	8/05/11 - Final Approval
Harris v. Cheddar's Casual Cafe, Inc.	American Arbitration Association No. 51 460 00557 10	6/1/11 - Final Approval
Turner v. Mercy Health System	Philadelphia Court of Common Pleas, No. 0801-3670	4/20/11 – Final Approval \$2.75 mil
Cedeno v. Home Mortgage Desk, Corp.	Eastern District of New York No. 08-cv-1168	6/15/10 - Final Approval
Perkins v. Specialty Construction Brands, Inc.	Northern District of Illinois No. 09-cv-1678	11/15/09 - Final Approval
Wineland v. Casey's General Stores, Inc.	Southern District of Iowa No. 08-cv-00020	10/22/09 - Final Approval
Jones v. Casey's General Stores, Inc.	Southern District of Iowa No. 07-cv-400	10/22/09 - Final Approval
Stuart v. College Park	Circuit Court of Cook County, IL No. 05-CH-09699	12/11/07 - Final Approval
Huebner v. Graham C Stores	Circuit Court of Cook County, IL No. 06-CH-09695	11/15/07 - Final Approval



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CASE

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SETTLEMENT

Perez v. RadioShack Corporation

Northern District of Illinois
No. 02-cv-7884

9/14/07 - Final Approval
\$9 mil

Reinsmith v. Castlepoint Mortgage

District Court of Massachusetts
No. 05-cv-01168

4/3/07 - Final Approval

Kutcher v. B&A Associates

Circuit Court of Cook County, IL
No. 03-CH-07610

11/20/06 - Final Approval

Ciesla v. Lucent Technologies, Inc.

Northern District of Illinois
No. 05-cv-1641

7/31/06 - Final Approval

Casale v. Provident Bank

District Court of New Jersey
No. 04-cv-2009

7/25/05 - Final Approval

Corbin v. Barry Realty

Circuit Court of Cook County, IL
No. 02-CH-16003

3/22/05 - Final Approval



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Biometric Information Privacy Class Action Lawsuits

Our firm is at the forefront of BIPA litigation to protect the biometric data and privacy of employees and consumers. We have brought numerous class action lawsuits against employers and other retail businesses who have collected biometric data without consent and without instituting the proper safeguards including;

CASE

COURT

Ala v. U.S. Acrylic, LLC	Circuit Court of Lake County, Illinois, No. 2022-CH-0000069
Alderman v. The Kroger Co.	Circuit Court of Williamson County, Illinois, No. 2021-L-21
Alquero v. Grand Victoria Riverboat Casino	Circuit Court of Cook County, Illinois, No. 2019-CH-09603
Andere v. Amita Health Adventist Medical Center Bolingbrook	Circuit Court of Will County, Illinois, No. 2021-L-000893
Anthony v. Towneplace Suites	Circuit Court of Cook County, Illinois, No. 2021-CH-05389
Arnold v. Roundy's Supermarkets, Inc.	Circuit Court of Cook County, Illinois, No. 2020-CH-05622
Arroyo v. OTO Development, LLC	Circuit Court of Cook County, Illinois, No. 2020-CH-07170
Ayala v. American Louver Company	Circuit Court of Cook County, Illinois, No. 2019-CH-04163
Blunt v. G2K Logistics, LLC	Circuit Court of Cook County, Illinois, No. 2022-CH-01637
Bowens v. SMASHotels	Circuit Court of Cook County, Illinois, No. 2022-CH-08312
Boyd v. Lazer Spot, Inc.	Northern District of Illinois, No. 2021-cv-08173
Brammer v. Ava Inc.	Circuit Court of Cook County, Illinois, No. 2019-CH-07379
Bray v. Lathem Time Co.	Northern District of Georgia, 2022-cv-01748



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CASE

Buford v. GDI Services, Inc.

Burt v. Anixter Inc.

Cameron v. Polar Tech Industries, Inc.

Campos v. City View Multicare Center, LLC

Campos v. Midwest Time Recorder, Inc.

Cervantes v. Grant Park Packing Co., Inc.

Chatman v. Crate and Barrel

Clow v. Sygma Network Inc.

Coleman v. Greenwood Hospitality
Management, LLC

Cosenza v. DiNico's Pizza

Cothron v. White Castle

Crowden v. Silver Cross Hospitals & Medical
Centers

Currie v. McDonald's

Davis v. Wirco, Inc.

Doporcyk v. Mariano's

Dowell v. Springfield Memorial Hospital, et al.

COURT

Circuit Court of Cook County, Illinois, No. 2020-CH-05007

Circuit Court of Cook County, Illinois, No. 2019-CH-04569

Circuit Court of DeKalb County, Illinois, No. 2019-CH-000013

Circuit Court of Cook County, Illinois, No. 2019-CH-07082

Circuit Court of Cook County, Illinois, No. 2019-CH-07229

Circuit Court of Cook County, Illinois, No. 2022-CH-07020

Circuit Court of Cook County, Illinois, No. 2018-CH-09277

Circuit Court of Vermilion County, Illinois, No. 2022-LA-000004

Northern District of Illinois, No. 2021-cv-00806

Circuit Court of Cook County, Illinois, No. 2020-CH-00614

Northern District of Illinois, No. 2019-cv-00382

Circuit Court of Will County, Illinois, No. 2022-CH-0063

Circuit Court of Lake County, Illinois, 2020-CH-0467

Central District of Illinois, No. 2021-cv-02279

Circuit Court of Cook County, Illinois, No. 2017-CH-08092

Circuit Court of Sangamon County, Illinois, No. 2022-LA-134



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CASE

Duarte v. Vanee Foods Company
Ebert v. Eclipse Advantage, LLC
Ebert v. Total Staffing Solutions, Inc.
Fields v. Abra Auto Body & Glass
Figueroa v. Kronos, Inc.
Figueroa v. Tony's Fresh Market
Finley v. Clark Manor
Fisher v. HP Property Management, LLC
Francois v. South Shore Hospital, Corp.
Francois v. Swipeclock, LLC
Fuentes v. Focal Point Exports, LTD
Fulton v. SCR Medical Transport, Inc.
Garriott v. Food Movers Two Limited Partnership
George v. Bricton 191 Associates, LLC
Goings v. UGN, Inc.
Gorgas v. Amazon.com, Inc. et al.

COURT

Circuit Court of Cook County, Illinois, No. 2021-CH-01318
Circuit Court of Grundy County, Illinois, No. 2020-L-53
Circuit Court of Cook County, Illinois, No. 2021-CH-04338
Circuit Court of Cook County, Illinois, No. 2017-CH-12271
Northern District of Illinois, No. 2019-cv-01306
Circuit Court of Cook County, Illinois, No. 2018-CH-15728
Circuit Court of Cook County, Illinois, No. 2020-CH-07265
Circuit Court of Cook County, Illinois, No. 2019-CH-14082
Circuit Court of Cook County, Illinois, No. 2021-CH-02564
Circuit Court of Cook County, Illinois, No. 2022-CH-01041
Circuit Court of Cook County, Illinois, No. 2019-CH-03890
Circuit Court of Cook County, Illinois, No. 2020-CH-00927
Circuit Court of Cook County, Illinois, No. 2020-CH-07030
Circuit Court of Cook County, Illinois, No. 2019-CH-04014
Circuit Court of Cook County, Illinois, No. 2017-CH-14954
Northern District of Illinois, No. 2022-cv-05159



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CASE

Heard v. Becton, Dickinson & Company

Heard v. Omnicell, Inc.

Heard v. St. Bernard Hospital

Heard v. Weiss Memorial Hospital
Foundation

Hogan v. Amazon.com, Inc.

Howe v. Speedway, LLC

Ibarra v. Prospera, LLC

Ingram v. LSL Healthcare

Johns v. Paycor, Inc.

Johnson v. Gold Standard Baking, Inc.

Johnson v. Food 4 Less

Johnson v. NCR

Johnson v. Thermoflex

Kardos v. ABT Electronics, Inc.

Keene v. Plymouth Place, Inc.

Kelley v. Chicago Behavioral Hospital

COURT

Northern District of Illinois, No. 2019-cv-4158

Circuit Court of Cook County, Illinois, No. 2019-CH-06817

Circuit Court of Cook County, Illinois, No. 2017-CH-16828

Circuit Court of Cook County, Illinois, No. 2019-CH-06763

Northern District of Illinois, No. 2021-cv-3169

Northern District of Illinois, No. 2019-cv-01374

Northern District of Illinois, No. 2020-cv-07015

Circuit Court of Cook County, Illinois, No. 2021-CH-00220

Northern District of Illinois, No. 2020-cv-00264

Circuit Court of Cook County, Illinois, No. 2018-CH-09011

Northern District of Illinois, No. 2022-cv-02409

Circuit Court of Cook County, Illinois, No. 2022-CH-04265

Circuit Court of Cook County, Illinois, No. 2020-CH-00000479

Circuit Court of Cook County, Illinois, No. 2019-CH-01235

Circuit Court of Cook County, Illinois, No. 2019-CH-01953

Circuit Court of Cook County, Illinois, No. 2020-CH-03302



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CASE

King v. Garfield Park Hospital, LLC

Krause v. Caputo's New Farm Produce

Landa v. Menasha Packaging Co., LLC

Landa v. MJ Holding Company, LLC

Lawrence v. McLane/Midwest, Inc.

Lopez v. Metraflex

Loving v. Belhaven Nursing & Rehabilitation Center, LLC

Lyons v. Harri (US), LLC

Marquez v. North Riverside Golf Club

Mazya v. Northwestern Lake Forest Hospital

McAdams v. Design Toscano, Inc.

McGraw v. Lakeshore Beverage

Measaw v. Heritage Operations Group, LLC

Meegan v. NFI Industries, Inc.

Mendenhall v. Burger King

Michaels v. Continental Nursing and Rehabilitation Center, LLC

COURT

Circuit Court of Cook County, Illinois, No. 2020-CH-00056

Circuit Court of Cook County, Illinois, No. 2018-Ch-11660

Circuit Court of Cook County, Illinois, No. 2020-CH-05251

Circuit Court of Cook County, Illinois, No. 2020-CH-05247

Circuit Court of Vermilion County, Illinois, No. 2021-L-000061

Circuit Court of Cook County, Illinois, No. 2020-CH-05354

Circuit Court of Cook County, Illinois, No. 2020-CH-04176

Circuit Court of Cook County, Illinois, No. 2022-CH-03207

Circuit Court of Cook County, Illinois, No. 2020-CH-05895

Circuit Court of Cook County, Illinois, No. 2018-CH-07161

Circuit Court of Cook County, Illinois, No. 2022-CH-05387

Circuit Court of Cook County, Illinois, No. 2020-CH-00343

Circuit Court of Cook County, Illinois, No. 2019-CH-08321

Northern District of Illinois, No. 2020-cv-00465

Circuit Court of Cook County, Illinois, No. 2019-CH-10636

Circuit Court of Cook County, Illinois, No. 2022-CH-02591



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CASE

Michaels v. Infinity Healthcare
Management of Illinois, LLC

Mitchell v. Bottled Blonde Chicago, LLC

Mitchell v. Electrolux Home Products, et al.

Molina v. Mercyhealth System, Corp.

Morgan v. Ruler Foods, Inc.

Morris v. Nextep Systems, Inc.

Morris v. Wow Bao, LLC

Mosby v. The Ingalls Memorial Hospital

Nordstrom v. Dial Senior Management,
Inc.

Nosal v. Rich Products Corporation

Peaks-Smith v. Saint Anthony Hospital

Peoples v. Wheaton Village Nursing and
Rehabilitation Center, LLC

Pruitt v. Par-A-Dice Hotel Casino

Purnell v. Pure's Food Specialties, LLC

Quentere v. G.H. Cretors

Quentere v. Staffing Network, LLC

COURT

Circuit Court Cook County, Illinois, No. 2021-CH-05859

Northern District of Illinois, No. 2020-cv-06460

Circuit Court of Cook County, Illinois, No. 2022-CH-08926

Circuit Court of Winnebago County, Illinois, No. 2020-L-0000286

Southern District of Illinois, No. 2020-cv-01270

Northern District of Illinois, No. 2021-cv-2404

Circuit Court of Cook County, Illinois, No. 2017-CH-12029

Circuit Court of Cook County, Illinois, No. 2018-CH-05031

Northern District of Illinois, No. 2019-cv-07183

Northern District of Illinois, No. 2020-cv-4972

Circuit Court of Cook County, Illinois, No. 2018-CH-07077

Circuit Court of DuPage County, Illinois, No. 2021-L-001234

Central District of Illinois, No. 2020-cv-01084

Circuit Court of Lake County, Illinois, No. 2021-CH-00991

Northern District of Illinois, No. 2020-cv-07306

Circuit Court of Lake County, Illinois, No. 2020-CH-00000654



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CASE

Quentere v. Tablecraft Product Company
Ramsey Daley's Medical Transportation, Inc.
Redd v. Amazon, Inc.
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Sanchez v. Elite Labor Services
Sanchez v. Tide Cleaners
Seaton v. Atos Healthcare Services, LLC
Severinsen v. Menard, Inc.
Shird v. Snipes
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COURT

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Northern District of Illinois, No. 2020-cv-06485
Circuit Court of Cook County, Illinois, No. 2022-CH-08721
Circuit Court of Cook County, Illinois, No. 2022-CH-04364
Circuit Court of Cook County, Illinois, No. 2021-CH-02304
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Circuit Court of Cook County, Illinois, No. 2020-CH-02640
Circuit Court of Cook County, Illinois, No. 2021-CH-00611
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Circuit Court of Cook County, Illinois, No. 2022-CH-05329
Circuit Court of Cook County, Illinois, No. 2020-CH-03664
Northern District of Illinois, No. 2020-cv-04699
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Circuit Court of Cook County, Illinois, No. 2021-CH-03259
Circuit Court of Cook County, Illinois, No. 2021-CH-03481
Circuit Court of Cook County, Illinois, No. 2019-CH-03522



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CASE

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Treadwell v. Power Solutions International, Inc.	Northern District of Illinois, No. 2018-cv-08212
Trinidad v. Bridgeview Advisors, LLC	Circuit Court of Cook County, Illinois, No. 2020-CH-06600
Trio v. Turing Video, Inc.	Circuit Court of Cook County, Illinois, No. 2021-CH-03264
Trottier v. Attendance Demand, Inc.	Circuit Court of Cook County, Illinois, No. 2019-CH-13230
Valenzuela v. Reliable Staffing Services, Inc.	Circuit Court of Cook County, Illinois, No. 2020-CH-06632
Walker v. Pet Supplies Plus	Circuit Court of Cook County, Illinois, No. 2021-CH-03851
Walton v. Roosevelt University	Circuit Court of Cook County, Illinois, No. 2019-CH-04176
Webster v. South Holland Home, LLC	Circuit Court of Cook County, Illinois, No. 2019-CH-12365
Webster v. Triad Senior Living, Inc.	Circuit Court of Cook County, Illinois, No. 2019-CH-10787
Webster v. Windsor Estates Nursing & Rehab Centre, LLC	Circuit Court of Cook County, Illinois, No. 2019-CH-11441
Wheeler v. EMCO Chemical Distributors, Inc.	Circuit Court of Cook County, Illinois, No. 2021-CH-05597
Wheeler v. Ridgeview Rehab & Nursing Center, LLC	Circuit Court of Cook County, Illinois, No. 2019-CH-14577
Williams v. Wing Stop	Circuit Court of Cook County, Illinois, No. 2022-CH-00326
Wilson v. Magna Exteriors Belvidere	Circuit Court of Boone County, Illinois, No. 2020-L-0039
Young v. International Precision Components Corp.	Circuit Court of Lake County, Illinois, No. 2020-CH-00000521
Young v. Taylor Farms Illinois, Inc.	Circuit Court of Cook County, Illinois, No. 2020-CH-05284

EXHIBIT 5

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

JUDGE DAVID B. ATKINS

FELIPE BERNAL, individually
and on behalf of others similarly
situated,

Plaintiff,

v.

ADP, LLC,

Defendant.

AUG 23 2019

Circuit Court-1879

No. 2017-CH-12364

Calendar 16

Judge David B. Atkins

MEMORANDUM OPINION AND ORDER

THIS CASE COMING TO BE HEARD on Defendant ADP, LLC's Motion to Dismiss Plaintiff's Complaint Pursuant to 735 ILCS 5/2-615, the court, having considered the briefs submitted and being fully advised in the premises,

HEREBY FINDS AND ORDERS:

Background

Plaintiff, Felipe Bernal, as an employee of Rokit Ranch Productions, Inc. ("Rokit"), was required to use biometric scanning technology to "clock-in" and "clock-out." The biometric technology was provided and serviced by Defendant ADP, LLC. Plaintiff alleges the use of his biometric identifying information during his employment with Rokit was improperly acquired, possessed, and disseminated in violation of sections 740 ILCS 14/15 (a)-(d) of the Biometric Information Privacy Act ("BIPA"). Plaintiff originally brought suit against Rokit for said violations, but he subsequently amended his Complaint to drop all allegations against Rokit and instead claim that Defendant violated BIPA. Defendant now seeks to dismiss all counts.

Standard of Review

A 2-615 motion to dismiss challenges the complaint's legal sufficiency based on facial defects.¹ The court assumes all well-pleaded facts and their reasonable inferences in the complaint as true, viewing the allegations in the light most favorable to the plaintiff.² As Illinois is a fact-pleading jurisdiction, "a plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action."³ Mere conclusions of law and unsupported conclusory factual allegations are insufficient to survive a 2-615 motion to dismiss.⁴ A 2-615 motion to dismiss does not raise affirmative factual defenses.⁵ "A

¹ *Beacham v. Walker*, 231 Ill. 2d 51, 57 (2008).

² *Alpha School Bus Co. v. Wagner*, 391 Ill. App. 3d 722, 735 (2009).

³ *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 355, (2004).

⁴ *Alpha School Bus*, 391 Ill. App. 3d at 736.

motion to dismiss should be granted only if the plaintiff can prove no set of facts to support the cause of action asserted.”⁶

Discussion

Count I of Plaintiff's Complaint alleges violations of four separate clauses within BIPA. The Court addresses each alleged violation separately.⁷

Applicability of § 15(b).

Plaintiff asserts that Defendant violated § 15(b), which imposes certain preconditions that private entities must comply with before they can “collect, capture, purchase, receive through trade, or otherwise obtain” an individual's biometric information. Defendant presents a compelling argument that § 15(b) should not apply to an entity like ADP, pointing out that language included by the legislature differs from the language included in the other subsections and suggests that the legislature intended for possession alone to not be enough to make an entity subject to § 15(b). Indeed, § 15(b)'s requirement that the private entity whose actions the subsection is meant to regulate must receive a “written release” from the subject of the biometric identifier or biometric information or their legally-authorized representative does suggest that the legislature did not intend for the subsection to apply to a third party entity as Defendant seems to be here.⁸ Here, Defendant is not Plaintiff's employer. While Plaintiff correctly contends that BIPA can be applied outside of an employment situation, there is nothing to suggest that BIPA was intended to apply to situations wherein the parties are without any direct relationship.⁹ Moreover, from the facts as they are alleged, the Court can infer that this case fits squarely within an employment context. All of Plaintiff's claims stem from Rockit's requirement that employees participate in biometric scanning technology. That Rockit obtained the technology from Defendant does not remove Plaintiff's case from existing within the context of his employment by Rockit. As Defendant notes, to read BIPA as requiring that a third party provider of the biometric timeclock technology, without any direct relationship with its customers' employees, obtain written releases

⁵ *Borowiec v. Gateway 2000, Inc.*, 209 Ill. 2d 376, 382 (2004).

⁶ *Kaiser v. Fleming*, 315 Ill. App. 3d 921, 925, (2000).

⁷ In his response to Defendant's motion to dismiss, Plaintiff represents that he “voluntarily dismisses his negligence claim (Count II) against Defendant,” thus rendering as moot Defendant's motion to dismiss Count II.

⁸ As Defendant notes in its motion, the BIPA's definition of “written release” clearly limits its applicability, in the context of employment, to the relationship that exists between employer and employee. 740 ILCS 14/10.

⁹ In *Rosenbach v. Six Flags Entm't Corp.*, 2019 IL 123186 (2019), the Supreme Court noted that the purpose of § 15(b) is to vest “in individuals and customers the right to control their biometric information without requiring notice before collection and giving them the power to say no by withholding consent.” 2019 IL 123186 at ¶34. Given the Supreme Court's interpretation of § 15(b)'s purpose, there is little reason to believe that its applicability should extend beyond the point at which an individual has the right to withhold consent. Here, Plaintiff's right to withhold consent can be exercised by refusing Rockit's authority to collect his biometric information.

from said employees would be unquestionably not only inconvenient but arguably absurd.¹⁰

Yet, based on the pleadings, as written, the Court's decision must ultimately turn on the insufficiency of Plaintiff's Complaint as to § 15(b). Plaintiff has failed to allege facts sufficient enough for the Court to properly assess Defendant's actual involvement, relative to the biometric scanning technology, beyond the fact that Defendant supplied Rockit with the technology. In order for the Court to determine whether or not § 15(b) is applicable here, Plaintiff's Complaint must include factual allegations of what Defendant's role relative to Plaintiff's biometric information is. Most of Plaintiff's claims that are relevant to § 15(b) are aimed at what the technology Defendant provides to Rockit allegedly does. In so far that Plaintiff's claims allege particular action on Defendant's part, the allegations are conclusive in nature.¹¹ Therefore, Defendant's motion to dismiss, as to the portion of Count I alleging a violation of § 15(b) of BIPA is GRANTED.

Whether § 15(a) is Moot.

Plaintiff alleges a breach of § 15(a), which requires private entities in possession of biometric information to:

“develop a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers ... when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of the individual's last interaction with the private entity, whichever occurs first. Absent a valid warrant or subpoena issued by a court of competent jurisdiction, a private entity in possession of biometric information must comply with its established retention scheduled and destruction guidelines.”

The language in § 15(a) seems to make clear that a private entity is required to comply with its established retention schedule and destruction guidelines whenever in possession of biometric information. The subsection seems to stipulate that the schedule and guidelines must be written and made available to the public. Therefore, if a private entity is in possession of biometric information, but lacks an established retention schedule and destruction guidelines, it stands to reason that said private entity could be found to be in violation of § 15(a).

Notwithstanding the requirement that a private entity in possession of biometric information have an established retention schedule and destruction guidelines, there is no explicit requirement that the schedule or guidelines exist “prior to” possession of the

¹⁰ “It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers.” *People v. Hanna*, 207 Ill. 2d 486, 498 (2003) (citing *Croissant v. Joliet Park Dist.*, 141 Ill. 3d 449, 455 (1990) (“Statutes are to be construed in a manner that avoids absurd or unjust results”)).

¹¹ See Plaintiff's Complaint at ¶ 3 (“Defendant ADP is capturing, storing, using, and/or disseminating the biometrics of Plaintiff ...”)

biometrics information. Yet, regarding § 15(a), Plaintiff alleges that “[p]rior to taking Plaintiff’s biometrics, Defendant did not make publicly available any written policy as to a biometric retention schedule and guidelines for permanently destroying the collected biometrics.” While this may be true, such an allegation does not exclude the possibility that Defendant made available to the public an established schedule and guidelines when, and not before, it was in possession of Plaintiff’s biometric information. Plaintiff’s Complaint, as written, does not sufficiently allege an actual violation of § 15(a), and thus, fails to state a claim. Defendant’s motion to dismiss, as to the portion of Count I asserting a violation of § 15(a) of BIPA is GRANTED.

Whether Plaintiff has Sufficiently Alleged a Violation of § 15(c).

Plaintiff alleges an infraction of § 15(c), which prohibits private entities from selling, leasing, trading, or otherwise profiting from an individual’s biometric information.¹² Here, Plaintiff contends that the allegations in his Complaint, “when combined with reasonable inferences that can be drawn therefrom, establish that Defendant obtains and stores the biometric information captured by its devices, which it in turn sells, leases, or otherwise makes commercially available to Plaintiff’s employer for the purposes of biometric timekeeping.”¹³ The court disagrees. Paragraphs 11 and 26 of Plaintiff’s Complaint allege that Defendant disseminates biometric information to “third parties, including vendors for timekeeping, data storage, and payroll purposes.” Plaintiff’s Complaint does not contain any allegation that Defendant sold, leased, traded, or otherwise profited from anyone’s biometric information. Thus, since Plaintiff’s Complaint only alleges facts sufficient to demonstrate that Defendant passes biometric data to third party partners for purposes other than profit, Defendant’s motion to dismiss as to the portion of Count I asserting a violation of § 15(c) is GRANTED.

Whether Plaintiff has Sufficiently Alleged a Violation of § 15(d).

Defendant provides a compelling argument regarding whether § 15(d) is even applicable in this case. Namely, that Plaintiff’s implication of Defendant’s allowing biometric information to pass to data storage vendors and payroll services does not qualify as instances of “disclosure” or “dissemination” under BIPA, but rather should be considered a form of mere transmission. However, to the extent that Defendant’s argument seems to suggest an affirmative factual defense, it would be inappropriate for the Court to entertain this line of argument on a Section 2-615 motion to dismiss.

Turning to the Complaint as pled, Plaintiff asserts a violation of § 15(d), which establishes certain preconditions with which private entities must comply before they “disclose, redisclose, or otherwise disseminate a person’s or a customer’s biometric ... information.” Only twice in Plaintiff’s Complaint does he allege any such disclosure; each instance consists of a single statement that Defendant’s technology “allows for and resulted in” the dissemination of Plaintiff’s biometric information to third parties,

¹² See 740 ILCS 14/15(c).

¹³ See Plaintiff’s response to Defendant’s motion to dismiss at pg. 8.

including vendors for timekeeping, data storage, and payroll purposes.”¹⁴ These allegations fall short of sufficient factual pleading, because they are void of any facts to support Plaintiff’s allegation that Defendant has violated § 15(d). Suggesting that the technology Defendant created allows for the dissemination of biometric information is not an allegation of the Defendant’s disseminating biometric information. Thus, Defendant’s motion to dismiss, as to the portion of Count I asserting a violation of § 15(d) is GRANTED.

WHEREFORE the Court enters an order as follows:

- a. Defendant ADP, LLC’s motion to dismiss Plaintiff Felipe Bernal’s Complaint is GRANTED, and Count I is dismissed *without prejudice*.
- b. Plaintiff has until September 20, 2019 to file an amended complaint, with facts consistent with this Order.
- c. This matter is set for further status to October 24, 2019 at 10:30 a.m. in courtroom 2102.

JUDGE DAVID B. ATKINS
ENTERED:

AUG 23 2019

Circuit Court-1879

Judge David B. Atkins

The Court.

¹⁴ See Plaintiff’s response to Defendant’s motion to dismiss at ¶¶11, 26.