EXHIBIT A

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

RACHEL LABARRE, individually and on behalf of all others similarly situated, *Plaintiff*, v. CERIDIAN HCM, INC., a Delaware corporation, *Defendant*,	Case No. 2019 CH 06489 Calendar 2 Judge Raymond W. Mitchell

PLAINTIFF'S MOTION FOR AND MEMORANDUM IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Supreme Court Cases

State Supreme Court Cases

State Appellate Court Cases

State Circuit Court Cases

United States Appellate Court Cases

United States District Court Cases

Miscellaneous Authority

I. INTRODUCTION

The Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1 *et seq.*, requires entities that collect protected biometric data—like fingerprints—to (1) inform people that their data is being collected, who is collecting it, and why it is being collected, and (2) receive written consent regarding the collection. Numerous class actions have been filed under BIPA against employers for collecting employees' biometric data through finger-scanning timeclocks. This case, too, is a BIPA suit, and one brought by Illinois workers. But it differs from most BIPA actions in that it is not brought against an employer; instead, it is against the provider of the biometric timekeeping technology itself, Ceridian HCM, Inc. Plaintiff Rachel LaBarre alleges that Ceridian provided its cloud-based, finger-scanning Dayforce timeclock system to employers throughout the state (including her former employer) to facilitate tracking employees' working hours using their fingerprints. Unbeknownst to Plaintiff (and thousands of other Illinois workers), she alleges, when employees used Ceridian's Dayforce system at work, Ceridian itself collected and stored their fingerprint information on its servers, without complying with BIPA.

Following multiple motions to dismiss, written discovery, months of negotiation, and a full-day mediation before the Honorable James F. Holderman (Ret.) of JAMS in Chicago, the parties have reached a class-wide settlement that, if approved, will provide outstanding monetary and prospective relief to the Settlement Class.[1] Specifically, Ceridian has agreed to pay $3,493,074.00 into a non-reversionary Settlement Fund for the benefit of approximately 14,142 Settlement Class members who, like Plaintiff, scanned their finger on a Ceridian Dayforce system timeclock in Illinois. Each Class Member who files a valid Claim Form will be entitled to

[1] Capitalized terms used in this motion are those used in the Class Action Settlement Agreement (the "Settlement" or "Agreement"), attached hereto as Exhibit 1.

a *pro rata* share of the Settlement Fund, which, assuming a claims rate of 10–20%, will amount to payments of approximately $790 to $1,580 after costs and any fees are deducted. In addition, Ceridian has agreed (1) to maintain its publicly-available retention and deletion policy for biometric data on its website; (2) to destroy biometric data—including biometric data of Class Members—pursuant to that policy; and (3) to require its customers to obtain written releases—including through on-screen consent deployed on the timeclocks by default—before those customers' employees use Ceridian timeclocks to scan their fingers. In exchange for this monetary and prospective relief, Class Members will release their BIPA claims against Ceridian and its affiliates. Importantly, however, Class Members will retain any separate BIPA claims they have against their employers who may have also violated BIPA by collecting the same biometric data.

The relief provided by this Settlement is exceptional under any metric. Like other leading BIPA class action settlements, this one creates a non-reversionary common fund, which the class shares *pro rata*. This settlement, however, provides high per-person monetary relief. *Cf.*, *e.g.*, *Prelipceanu v. Jumio Corp.*, 2018-CH-15883 (Cir. Ct. Cook Cnty. July 21, 2020) ($7 million fund for approximately 260,000 class members); *Miracle-Pond v. Shutterfly*, 2019-CH-07050 (Cir. Ct. Cook Cnty. Sept. 9, 2021) ($6.75 million fund for potentially millions of class members); *Rosenbach v. Six Flags Ent. Corp.*, 2016-CH-00013 (Cir. Ct. Lake Cnty. Oct. 29, 2021) ($36 million fund for approximately 1,110,000 class members, capping class member payments at $200 or $60 depending on date of finger scan).

Given the relief proposed by the Settlement Agreement, this Court should not hesitate to find that the settlement is well within the range of possible approval. Accordingly, Plaintiff respectfully requests that the Court grant her motion for preliminary approval in its entirety,

certify the proposed Settlement Class, appoint Plaintiff as Class Representative and her attorneys as Class Counsel, direct that the proposed Notice be disseminated to the Settlement Class, and set a date for a Final Approval Hearing.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Illinois's Biometric Information Privacy Act

A brief history and overview of BIPA gives context to the reasonableness of the proposed settlement. In the early 2000s, a company called Pay By Touch began installing fingerprint-based checkout terminals at grocery stores, gas stations, and school cafeterias. (First Amended Complaint ("FAC"), attached hereto as Exhibit 2, ¶¶ 11–12.) The premise was simple: swipe your credit card and let the machine scan your index finger, and the next time you buy groceries or gas, you won't need to bring your wallet—you'll just need to provide your fingerprint. By the end of 2007, however, Pay By Touch had filed for bankruptcy. (*Id.* ¶ 12.) When Pay By Touch's parent company, Solidus, started shopping its database of Illinois consumers' fingerprints as an asset to its creditors, a public outcry erupted.[2] Though the bankruptcy court eventually ordered Pay By Touch to destroy its database of fingerprints (and their ties to credit card numbers), the Illinois legislature took note of the dangers posed by the irresponsible collection and storage of biometric data without notice, consent, or other protections. *See* 95th Ill. Gen. Assemb., House Proceedings, May 30, 2008, at 249 (statements of Representative Ryg).

Recognizing the "very serious need" to protect Illinoisans' biometric data—which includes not just fingerprints, but retina scans, voiceprints, and scans of hand or face geometry—

[2] *See, e.g.*, Meg Marco, *Creepy Fingerprint Pay Processing Company Shuts Down*, CONSUMERIST, available at https://goo.gl/rKJ8oP (last accessed Apr. 21, 2022); Matt Marshall, *Pay By Touch In Trouble, Founder Filing For Bankruptcy*, VENTUREBEAT, available at http://goo.gl/xT8HZW (last accessed Apr. 21, 2022).

the legislature unanimously passed BIPA in 2008 to provide individuals recourse when companies fail to protect their biometric data. *Id.* 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 requires companies handling biometric data to develop and comply with a written policy establishing a retention schedule and guidelines for permanently destroying biometric information, which shall occur after the initial purpose for collecting the information has been satisfied or within three years of the individual's last interaction with the company, whichever comes first. 740 ILCS 14/15(a). To enforce the statute, BIPA provides a 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. 740 ILCS 14/20.

B. Plaintiff's Allegations and Defendant's Dayforce System

As part of a cloud-based time and attendance system called Dayforce, Ceridian sells timeclocks with a biometric fingerprint scanner to its employer-customers. (FAC ¶¶ 1, 21.) When employees first begin work at a company that uses Ceridian's Dayforce system, they are required to scan their fingerprint into the system as means of authentication and to subsequently scan their fingerprint with the timeclock each time they "punch" into or out of work. (*Id.* ¶¶ 2,

21, 23.) Ceridian sells its Dayforce system to employers throughout Illinois, including Plaintiff Rachel LaBarre's former employer, Standard Market. (*Id.* ¶ 1.)

Ms. LaBarre alleges that when an employee scans their fingerprint on a Ceridian timeclock, the timeclock automatically sends the employee's biometric fingerprint data to Ceridian's servers to be collected and stored in Ceridian's fingerprint database. (*Id.* ¶ 22.) Ms. LaBarre further alleges that Ceridian failed to inform employees like her that it was collecting their biometric information, failed to obtain written releases from them before doing so, failed to inform them of the specific purpose and length of time for which their biometric information was being collected and stored, and failed to establish a publicly-available written policy setting forth a retention schedule and guidelines for permanently destroying no-longer-needed biometric information. (*Id.* ¶¶ 50–53.)

C. Litigation, Negotiation, and Settlement

In 2019, Ms. LaBarre filed this lawsuit as a putative class action against Ceridian for its alleged violations of BIPA. In response, Ceridian moved to dismiss the complaint pursuant to 735 ILCS 5/2-619.1 and to strike her class allegations. After briefing and oral argument, Judge Jacobius granted Ceridian's motion to dismiss (pursuant to Section 2-615 only), and granted Plaintiff leave to amend; he denied Ceridian's motion to strike the class allegations. (*See* Aug. 25, 2020, Memo. Op. & Order, attached hereto as Exhibit 3.)

Plaintiff amended her complaint, to which Ceridian again responded with a motion to dismiss. After another round of briefing and oral argument Judge Jacobius denied the motion in its entirety. (Mar. 4, 2021, Memo. Op. & Order, attached hereto as Exhibit 4.) Defendant subsequently answered the amended complaint, denying all material allegations and raising twenty-two affirmative defenses. (Def.'s Ans., attached hereto as Exhibit 5.)

With respect to discovery, Ceridian moved to bifurcate discovery between class certification and merits issues, which Plaintiff opposed and the parties fully briefed. Following oral argument, Judge Jacobius continued Defendant's motion and directed it to file a supplemental submission providing certain information to aid in ruling on the motion to bifurcate, such as the number of Ceridian customers who deployed the timeclocks at issue in Illinois and, of those customers, how many obtained a consent form to collect biometric data that identified Ceridian. (July 6, 2021, Order, attached hereto as Exhibit 6.) Defendant provided the information as required. After another hearing on Defendant's motion to bifurcate discovery, Judge Jacobius again continued the motion but ordered the parties to commence limited written discovery into any BIPA-related consent forms obtained or disclosures made by Ceridian or its customers. (Aug. 9, 2021, Order, attached hereto as Exhibit 7.)

While this discovery was proceeding—and with Defendant's motion to bifurcate still pending—the parties began to explore the potential for class-wide resolution. After exchanging several demands and counteroffers, the parties agreed that a formal mediation would be productive. (Declaration of Schuyler Ufkes ("Ufkes Decl."), attached hereto as Exhibit 8, at ¶ 2.) On February 3, 2022, the parties participated in a full-day, formal mediation session with the Honorable James F. Holderman (Ret.) of JAMS in Chicago. (*Id.*) The parties negotiated throughout the day and ultimately reached an agreement on the material terms of a class-wide settlement at the end of the mediation session. (*Id.*) That agreement was memorialized in a Memorandum of Understanding, after which Ceridian provided confirmatory discovery demonstrating that the proposed Settlement Class contains 14,142 members. (*See* Agreement, Recitals, ¶ L.) Over the next several months the agreed-upon terms were finalized into the Settlement presented here.

III. TERMS OF THE SETTLEMENT AGREEMENT

The terms of the Settlement are set forth in the Class Action Settlement Agreement, and are briefly summarized here:

A. Class Definition

The Settlement Class includes all individuals who scanned their fingers in Illinois on a timeclock issued, leased, or sold by Ceridian, and for whom any alleged biometric data relating to that scan was shared with or stored by Ceridian, between May 28, 2014, and the date of preliminary approval of the settlement. (Agreement § 1.26.) In addition to the usual exclusions,[3] the Settlement Class excludes individuals who executed Defendant's on-screen consent prior to any use of Ceridian finger scanners and individuals who were settlement class members in any of five other BIPA cases brought against five employers who deployed the Ceridian timeclocks.[4]

B. Settlement Payments

The settlement provides that Defendant will create a non-reversionary Settlement Fund in the amount of $3,493,074.00 for the benefit of the Settlement Class. (*Id.* § 1.28.) Each Settlement Class Member filing an approved claim will receive a *pro rata* share of the Settlement Fund after payment of settlement administration expenses, any incentive award to Plaintiff, and any

[3] 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 settlement class, and (4) the legal representatives, successors, or assigns of any such excluded persons. (Agreement § 1.26.)

[4] Those cases are *Edmond v. DPI Specialty Foods, Inc.*, 2018-CH-09573 (Cir. Ct. Cook Cnty.); *Gonzalez v. Richelieu Foods, Inc.*, No. 20-cv-04354 (N.D. Ill.); *Terry v. Griffith Foods Group, Inc.*, 2019-CH-12910 (Cir. Ct. Cook Cnty.); *Quarles v. Pret a Manger (USA) Ltd.*, No. 20-cv-7179 (N.D. Ill.), and *Struck & Jones v. Woodman's Food Market*, 2021-CH-053 (19th Jud. Cir., Lake Cnty.). (Agreement § 1.26.)

attorneys' fee award. (*Id.* §§ 1.29, 2.1(a).) Assuming a robust 10–20% claims rate, class members with approved claims are expected to receive $790 to $1,580 each. Class members have the option of having their settlement payment transmitted to them via Venmo, Zelle, Paypal, or check. (*Id.* § 2.1(g).) Any uncashed checks or electronic payments unable to be processed within 180 days of issuance will, subject to Court approval, be distributed to the Illinois Bar Foundation or some other *cy pres* recipient selected by the Court pursuant to 735 ILCS 5/2-807(b). (*Id.* § 2.1(j).)

C. Prospective Relief

Defendant has agreed to maintain a publicly-available written policy on its website,[5] establishing a retention schedule and guidelines for permanently destroying any biometric data. (*Id.* § 2.2(a).) Defendant has further agreed to destroy biometric data in its possession pursuant to that policy—including biometric data of Settlement Class members in its possession no longer needed by its customers—and to maintain a process by which its customers are required to obtain written releases before individuals can use Ceridian timeclocks to scan their fingers, including via on-screen consent deployed by default on the clocks. (*Id.* § 2.2.)

D. Payment of Settlement Notice and Administrative Costs

Defendant has agreed to pay from the Settlement Fund all notice and administrative expenses. (*Id.* § 1.24.)

E. Payment of Attorneys' Fees, Costs, and Incentive Award

Defendant has agreed that proposed Class Counsel is entitled to reasonable attorneys' fees in an amount to be determined by the Court by petition. (*Id.* § 8.1). Proposed Class Counsel has agreed, with no consideration from Defendant, to limit its request for fees to 35% of the

[5] *See Ceridian's Biometric Statement*, available at https://tinyurl.com/4ajtaydj.

Settlement Fund. (*Id.*) Defendant has also agreed to pay Plaintiff an incentive award in the amount of $5,000 from the Settlement Fund, subject to Court approval, in recognition of her efforts as class representative. (*Id.* § 8.2.) Plaintiff will move for these payments via a separate request after preliminary approval and before the Objection/Exclusion Deadline.

F. Release of Liability

In exchange for the relief described above, Defendant and its related companies will be released from any and all claims related to its alleged collection, possession, capture, purchase, receipt through trade, obtaining, sale, profit from, disclosure, redisclosure, dissemination, storage, transmittal, and/or protection from disclosure of biometric information from its timeclocks. (*Id.* § 1.22. 3.1.) Importantly, the release does not include Defendant's customers—i.e., employers of Class Members who used Ceridian timeclocks—and Class Members retain any separate BIPA claims they have against their employers who may have also violated BIPA by collecting the same biometric data. (*Id.* § 1.22.)

IV. THE PROPOSED CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

Before the Court can grant preliminary approval of the proposed settlement, it must certify the proposed settlement class. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). The proposed settlement class must satisfy the requirements enumerated in 735 ILCS 5/2-801 by showing that (1) the class is so numerous that joinder of all members is impracticable, (2) common questions of law and fact predominate over any questions affecting only individual interests of the class members, (3) the representative parties fairly and adequately protect the interests of the class, and (4) class treatment is an appropriate method for the fair and efficient adjudication of the controversy. *Cruz v. Unilock Chicago, Inc.*, 383 Ill. App. 3d 752, 760–61 (2d Dist. 2008) (citing 735 ILCS 5/2-801). Section 2-801 is modeled on Federal Rule of

Civil Procedure 23, and federal cases interpreting that rule are persuasive authority in Illinois. *Id.* at 761 (citing *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 125 (2005)). When determining whether a class should be certified, courts accept the allegations in the operative complaint as true. *Ramirez v. Midway Moving & Storage, Inc.*, 378 Ill. App. 3d 51, 53 (1st Dist. 2007). As explained below, the Settlement Class here satisfies each requirement of Section 2-801 for certification for settlement purposes.

A. The Proposed Settlement Class is Sufficiently Numerous.

The first requirement of Section 2-801—numerosity—is not a high bar. While there is "no bright line [and] no magic number," a class containing more than forty people is typically sufficient. *Wood River Area Dev. Corp. v. Germania Fed. Sav. & Loan Ass'n*, 198 Ill. App. 3d 445, 450 (5th Dist. 1990). Here, the proposed Settlement Class readily satisfies the numerosity requirement as it includes over 14,000 members. *See Cruz*, 383 Ill. App. 3d at 771 (finding class of nearly 200 individuals sufficiently numerous).

B. Common Issues of Law and Fact Predominate.

The second requirement of Section 2-801 asks whether "questions of fact or law common to the class … predominate over any questions affecting only individual members." 735 ILCS 5/2-801(2). To fulfill this requirement, a plaintiff must demonstrate that "successful adjudication of the purported class representative[']s individual claims will establish a right of recovery in other class members." *Ramirez*, 378 Ill. App. 3d at 54 (quoting *Hall v. Sprint Spectrum, L.P.*, 376 Ill. App. 3d 822, 830–32 (5th Dist. 2007)). Common questions typically predominate when defendants have engaged in standardized conduct toward members of the proposed class. *See Miner v. Gillette Co.*, 87 Ill. 2d 7, 19 (1981); *McCarthy v. LaSalle Nat'l Bank & Tr. Co.*, 230 Ill. App. 3d 628, 634 (1st Dist. 1992).

Here, common issues of law and fact clearly predominate. Plaintiff's and the proposed Settlement Class's claims are based upon the same common contention and course of conduct by Defendant. Each class member was employed in Illinois by a company using Defendant's Dayforce system, a biometric time tracking system that uses fingerprints as a means of identification. (FAC ¶ 23.) When an employee first begins work at a company that uses the Ceridian Dayforce system, they are required to have their fingerprints scanned in order to enroll them in Ceridian's fingerprint database, and the employees then use their fingerprint to "punch" into or out of work. (*Id.* ¶¶ 21, 23.) Plaintiff alleges that each time an employee scans their fingerprint on one of Defendant's time clocks, the time clock automatically sends the employee's biometric fingerprint data to Defendant's servers to be collected and stored in its fingerprint database. (*Id.* ¶ 22.)

Because Ceridian's alleged method of collection and storage of fingerprint data was the same as to all Class Members, whether Ceridian violated BIPA as alleged in this suit raises several issues of law and fact common to the proposed Settlement Class that predominate over any individualized issues. These issues—many of which were recognized by Judge Jacobius in his order denying Ceridian's motion to dismiss the First Amended Complaint—include: (1) whether Ceridian's time clocks automatically sent employees' fingerprint data to its servers; (2) whether the fingerprint data collected by Ceridian constitutes "biometric identifiers" or "biometric information" as defined by BIPA, 740 ILCS 14/10; (3) whether Ceridian had a publicly-available policy establishing a retention schedule and guidelines for permanently destroying biometric data as required by BIPA, 740 ILCS 14/15(a); (4) whether Ceridian complied with that policy (if one existed); (5) whether Ceridian properly informed Plaintiff and members of the proposed Settlement Class of its purpose in collecting, using, and storing their

biometric data as required by BIPA, 740 ILCS 14/15(b); (6) whether Ceridian obtained a written release to collect, use, and store Plaintiff's and Class Members' biometric data as required by BIPA, *id.*; (7) whether Ceridian's collection and storage of fingerprint data can be deemed to have occurred "primarily and substantially" in Illinois so as to avoid extraterritorial application of BIPA, *Avery*, 216 Ill. 2d at 187; and (8) whether Ceridian's alleged violations of BIPA were committed negligently or recklessly, *see* 740 ILCS 14/20 (providing different damage amounts for negligent and reckless violations). Because these questions arise out of Ceridian's uniform course of conduct as to all members of the proposed Settlement Class, all will have common, class-wide answers. These common questions predominate over any individual questions, satisfying the second requirement of Section 2-801.

C. The Adequacy Requirement Is Satisfied.

The third requirement of Section 2-801—adequacy—requires the class representative to demonstrate that she will "fairly and adequately protect the interest[s] of the class." 735 ILCS 5/2-801(3). This requirement ensures that the entire class "will receive proper and efficient protection of their interests in the proceedings." *Ramirez v. Smart Corp.*, 371 Ill. App. 3d 797, 810 (3d Dist. 2007) *overruled on other grounds by McIntosh v. Walgreens Boots All. Inc.*, 2019 IL 123626. To adequately represent a class, a proposed class representative must (1) be a member of the class and (2) establish that she is not seeking relief that is potentially antagonistic to the absent class members. *Id.* Attorneys seeking to represent the proposed class must also be adequate, which requires a finding that they are "qualified, experienced and generally able to conduct the proposed litigation." *Steinberg v. Chicago Med. Sch.*, 69 Ill. 2d 320, 339 (1977).

Here, both Plaintiff and proposed Class Counsel have and will continue to adequately represent the Settlement Class. Plaintiff LaBarre, like every other member of the proposed

Settlement Class, alleges that Ceridian collected her fingerprint data without notice or informed written consent. (FAC ¶¶ 21–25, 28–35.) Because Plaintiff suffered the same alleged injury as every other member of the proposed class, her interests in redressing Defendant's alleged violations of BIPA are identical to the interests of all other members of the proposed Settlement Class. Therefore, she does not have any interests antagonistic to those of the proposed class, and her interests are entirely representative of and consistent with the interests of the class.

Likewise, proposed Class Counsel have extensive experience litigating class actions of similar size, scope, and complexity to the instant action. Edelson PC is a national leader in high stakes' plaintiffs' work ranging from class and mass actions to public client investigations and prosecutions. (*See* Firm Resume of Edelson PC, attached as Exhibit 8-A to Ufkes Decl.); *see also In re Facebook Privacy Litig.*, No. 5:10-cv-02389, dkt. 69 (N.D. Cal. Dec. 10, 2010) (recognizing the firm as a "pioneer[] in the electronic privacy class action field"). The firm filed the first-ever class action under BIPA against Facebook, *Licata v. Facebook, Inc.*, No. 2015-CH-05427 (Cir. Ct. Cook Cnty. Apr. 1, 2015), secured the first-ever adversarially-certified BIPA class action in that case and successfully defended the ruling in the Ninth Circuit, *Patel v. Facebook, Inc.*, 932 F.3d 1264, 1277 (9th Cir. 2019), and obtained final approval of a settlement agreement with Facebook to resolve the case for $650 million. *In re Facebook Biometric Info. Priv. Litig.*, 522 F. Supp. 3d 617, 621 (N.D. Cal. 2021) ("Overall, the settlement is a major win for consumers in the hotly contested area of digital privacy."). The firm is also responsible for the first-ever BIPA settlement, *Sekura v. L.A. Tan Enters., Inc.*, 2015-CH-16694 (Cir. Ct. Cook Cnty. Dec. 1, 2016), and has secured many favorable appellate decisions for BIPA plaintiffs. *See, e.g.*, *Rottner v. Palm Beach Tan, Inc.*, 2019 IL App (1st) 180691-U (BIPA plaintiffs may recover liquidated damages without proof of actual damages); *Sekura v. Krishna Schaumburg Tan, Inc.*,

2018 IL App (1st) 180175 (BIPA plaintiffs not required to prove additional harm beyond violation of the act); *McDonald v. Symphony Bronzeville Park LLC*, 2022 IL 126511 (exclusivity provisions of the Workers' Compensation Act do not bar BIPA claims by employees against employers).

Proposed Class Counsel Fish Potter Bolaños, P.C. is a deeply experienced employment class action firm. (*See* Declaration of David Fish ("Fish Decl."), attached hereto as Exhibit 9, at ¶ 3.) David Fish is a leader in employment law, having served on bar association councils, as well as routinely presented and published on employment law issues facing plaintiffs. (*Id.* ¶¶ 4–6.) Fish Potter Bolaños, P.C. has regularly litigated and settled labor-related lawsuits, including a host of class actions focused on protecting the rights of thousands of Illinois employees. (*Id.* ¶ 3); *see also, e.g.*, *Pietrzycki v. Heights Tower Serv., Inc.*, 197 F. Supp. 3d 1007, 1019 (N.D. Ill. 2016) (appointing David Fish class counsel after noting his "litigation experience in labor/employment cases as well as class actions," as well as his and his firm's diligence). Their work has been, and will continue to be, directly beneficial to the claims of Plaintiff and the Settlement Class through the pendency of this action.

Simply put, both Plaintiff and her counsel will fairly and adequately protect the interests of the class.

D. The Appropriateness Requirement Is Satisfied.

The final requirement of Section 2-801 is that a "class action is an appropriate method for the fair and efficient adjudication of the controversy." 735 ILCS 5/2-801(4). In making this determination, courts consider "whether a class action can best secure economies of time, effort, and expense or accomplish the other ends of equity and justice that class actions seek to obtain." *Ramirez*, 378 Ill. App. 3d at 56 (internal citation omitted). Importantly, "[w]here the first three

requirements for class certification have been satisfied, the fourth requirement may be considered fulfilled as well." *Id.*

Here, a class action is the most appropriate way to fairly and efficiently resolve the claims at issue, as it would allow the Court to swiftly evaluate common issues regarding Ceridian's alleged fingerprint collecting practices, generating a uniform result that will apply to all similarly situated persons. *See, e.g.*, *Cruz*, 383 Ill. App. 3d at 780 (certifying class to "aid judicial efficiency and administration" and to "prevent inconsistent results"). The class action device is particularly appropriate here because it allows members of the proposed class to aggregate relatively modest individual claims. By comparison, the cost of litigating BIPA claims on an individual basis—including the cost of discovery, motion practice, and trial—would be prohibitively expensive. *See P.J.'s Concrete Pumping Serv., Inc. v. Nextel W. Corp.*, 345 Ill. App. 3d 992, 1004 (2d Dist. 2004) (class action appropriate where defendants "cause small damages to large groups"); *In re Rhone-Poulenc Rorer Inc.*, 51 F.3d 1293, 1299 (7th Cir. 1995) ("[T]he rationale for the [class action] procedure is most compelling [when] individual suits are infeasible because the claim of each class member is tiny relative to the expense of litigation.").

Like the first three requirements of Section 2-801, the final requirement is satisfied here, and the proposed Settlement Class should therefore be certified for settlement purposes.

V. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL

Proposed class action settlements are reviewed in a well-established two-step process. 4 NEWBERG ON CLASS ACTIONS § 13:10 (5th ed. 2011). This settlement is currently in the first step, which is a preliminary, pre-notification hearing where the Court assesses whether the proposed settlement falls "within the range of possible approval" and determines whether to notify the class members of the proposed settlement and to proceed with a final fairness hearing.

Id. (quoting *Manual for Complex Litigation* (Third) § 30.41 (1995)); *see also Steinberg v. Sys. Software Assocs., Inc.*, 306 Ill. App. 3d 157, 169 (1st Dist. 1999). At the preliminary approval stage, the Court need only conduct an initial evaluation of the fairness of the proposed settlement based on the written submissions and oral presentations from the settling parties and may withhold stricter review until the final fairness hearing, after class members have had an opportunity to object to the settlement or exclude themselves. *See Manual for Complex Litigation* (Fourth) § 21.632 (2004); *see also, e.g., Rosen v. Ingersoll-Rand Co.*, 372 Ill. App. 3d 440, 442-44 (1st Dist. 2007). If the Court finds that a proposed settlement falls "within the range of possible approval," it grants preliminary approval to the agreement, notice is sent to the class, and the case proceeds to step two in the review process—the final fairness hearing. 4 NEWBERG ON CLASS ACTIONS § 13:10 (5th ed. 2011) (quoting *Manual for Complex Litigation* (Third) § 30.41 (1995)).

While the "[r]eview of class action settlements necessarily proceeds on a case-by-case basis," courts typically consider the following guiding factors when determining whether a settlement is fair, reasonable, and adequate: (1) the strength of the case compared to the relief offered in settlement; (2) the defendant's ability to pay; (3) the complexity, length, and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of class members to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed. *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 493 (1st Dist. 1992) (citing *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 971-72 (1st Dist. 1991)). Here, each relevant factor

supports approval of the settlement, and thus the Court can appropriately find it is well within the range of possible approval.[6]

A. The Strength of Plaintiff's Case Compared to the Relief Afforded Under the Settlement Supports Granting Preliminary Approval.

"The strength of plaintiff's case on the merits balanced against the settlement amount is the most important factor in determining whether a settlement should be approved." *Steinberg*, 306 Ill. App. 3d at 170. Here, while Plaintiff is confident she would have ultimately certified a class for litigation and prevailed on the merits, there were not-insignificant obstacles to doing so. Given the risks, the excellent monetary and prospective relief obtained is remarkable, and this factor weighs strongly in favor of preliminary approval.

1. The Relief Afforded by the Settlement Is Exceptional.

The strength of the settlement relief speaks for itself. If approved, it will create a non-reversionary cash fund of $3,493,074.00 to be distributed to up to 14,142 Class Members who file claims, resulting in estimated individual cash payments (depending on claims rates, approved fees, and costs) of between $790 and $1,580 each.

This monetary relief dwarfs the amounts recovered in many other statutory privacy class actions, which have all too often produced no relief to the class or only *cy pres* relief. *See, e.g.*, *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

[6] The fourth and sixth factors—the amount of opposition to the settlement and the reaction of settlement class members—are not relevant at the preliminary approval stage, as the Court will not have the information necessary to assess them until notice of the settlement has been disseminated and class members have had an opportunity to respond. Those factors can be considered at the final approval stage. In addition, the second factor—defendant's ability to pay—is not relevant here, as there are no concerns regarding Ceridian's solvency. *See Korshak*, 206 Ill. App. 3d at 973 (finding ability to pay factor not relevant).

state attorney general, a settlement providing only *cy pres* relief for violations of Electronic Communications Privacy Act, where $10,000 in statutory damages were available per claim); *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). Some BIPA settlements, too, have depressed the amount defendants have to pay with credit monitoring, caps on the amount claiming class members can recover, and reversion of unclaimed funds. *E.g.*, *Carroll v. Crème de la Crème, Inc.*, 2017-CH-01624 (Cir. Ct. Cook Cnty. June 6, 2018) (credit monitoring only); *Marshall v. Lifetime Fitness, Inc.*, 2017-CH-14262 (Cir. Ct. Cook Cnty. July 30, 2019) ($270 per-claimant cap and reversion); *Zhirovetskiy v. Zayo Grp., LLC*, 2017-CH-09323 (Cir. Ct. Cook Cnty. Apr. 8, 2019) (fund of $990,000 for 2,200 class members, which capped payments at $400 and reverted up to $490,000 of unclaimed funds back to defendant).

On the other hand, leading BIPA settlements—like this one—create a substantial fund to be split among the class with no reversion to defendants. *See, e.g.*, *Rottner v. Palm Beach Tan, Inc.*, 2015-CH-16695 (Cir. Ct. Cook Cnty. Feb. 25, 2022) (preliminarily approving $10,300,000 non-reversionary settlement estimated to provide $700 to $1,400 per claimant). And here, the per-person relief provided by the settlement—estimated to be $790 to $1,580—far exceeds most of its predecessors. *See Prelipceanu*, 2018-CH-15883 ($7 million fund for approximately 260,000 class members); *Miracle-Pond*, 2019-CH-07050 ($6.75 million fund for potentially millions of class members)[7]; *Rosenbach*, ($36 million fund for approximately 1,110,000 class

[7] The settlement papers submitted in *Miracle-Pond* represented that there were approximately 954,000 class members, but that number only counted Shutterfly *users* in Illinois; it did not include the vast number of *non-users* who appeared in users' photographs uploaded to Shutterfly and who were included in the settlement class definition.

members, capping class member payments at $200 or $60 depending on date of finger scan). In fact, among all BIPA settlements with timeclock vendors to date, this settlement's nearly $3.5 million fund for 14,142 class members provides the highest per-person relief. *See Thome v. NOVAtime Tech., Inc.*, No. 19-cv-6256, dkt. 90 (N.D. Ill. Mar. 8, 2021) ($4.1 million fund for 62,000 class members); *Kusinski v. ADP LLC*, 2017-CH-12364 (Cir. Ct. Cook Cnty. Feb. 10, 2021) ($25 million fund for approximately 320,000 class members); *Figueroa, et al. v. Kronos Inc.*, No. 19-cv-01306, dkt. 358 (N.D. Ill. Feb. 18, 2022) (preliminarily approving $15,276,227 fund for approximately 171,643 class members); *Neals v. ParTech, Inc.*, No. 19-cv-05660, dkt. 127 (N.D. Ill. Mar. 3, 2022) (preliminarily approving $790,000 fund for 3,560 class members); *see also Bryant v. Compass Group USA, Inc.*, No. 19-cv-06622, dkt. 90 (N.D. Ill. Nov. 2, 2021) (preliminarily approving $6.8 million settlement for 66,159 class members, which releases both the vendor of the biometric technology and all of its customers). In short, the monetary relief offered by the settlement is extraordinary.

In addition, the non-monetary benefits created by the settlement—Ceridian's agreement to maintain its publicly-available retention and deletion policy on its website, to destroy biometric data pursuant to that policy, and to maintain a process by which its customers obtain written releases before their employees use Ceridian timeclocks to scan their fingers—also support approval. This prospective relief aligns perfectly with both the goals of BIPA and those of this lawsuit, as it will ensure that past, current, and future employees of companies using Ceridian timeclocks are protected as the legislature intended.

2. Continued Litigation Was Not Without Risk.

Balanced against the substantial relief afforded by the settlement are the risks Plaintiff faced by continuing litigation. These risks were not insignificant.

First, continued litigation would have likely involved an opposition by Ceridian to class certification. Although Plaintiff believes this case is amenable to class certification for the reasons discussed above and that she would ultimately prevail on the issue, an adversarial class certification process is not without risk. *See, e.g.*, *Hudson v. Libre Tech., Inc.*, No. 3:18-cv-1371, 2020 WL 2467060, at *6 (S.D. Cal. May 13, 2020) ("Proceeding in this litigation in the absence of settlement poses various risks such as failing to certify a class[.]").

Second, Ceridian (like nearly all BIPA defendants) was likely to argue that the fingerprint scans captured by its timeclocks were not actually "biometric identifiers" or "biometric information" as defined by BIPA, but some other category of finger scan information outside of BIPA's purview. Though Plaintiff puts little stock in this argument, it would still need to be defeated at summary judgment or trial and remains an issue ungoverned by precedent.

Third, and perhaps most significantly, Plaintiff would have had to establish that her claims were not barred by the general prohibition on the extraterritorial application of state statutes. *See Avery*, 216 Ill. 2d at 184. Ceridian, a Delaware corporation with its principal place of business in Minnesota, argued that its alleged misconduct did not take place primarily and substantially in Illinois. Though Judge Jacobius rejected that argument at the motion to dismiss stage, he explained that the inquiry is ultimately a fact-intensive one and noted that "any alleged wrongdoing or damages purportedly caused by Ceridian must be tied to Ceridian's conduct in or related to Illinois." (Ex. 4, Mar. 4, 2021, Memo. Op. & Order) In order to prevail at summary judgment or trial, Plaintiff would have needed to overcome this not-insignificant hurdle. *But see In re Facebook Biometric Info. Priv. Litig.*, No. 3:15-CV-03747-JD, 2018 WL 2197546, at *4 (N.D. Cal. May 14, 2018) ("Facebook's facial recognition program cannot be understood to have

occurred wholly outside Illinois, and the same rather metaphysical arguments about where BIPA was violated fare no better").

Fourth, the applicable statute of limitations for BIPA claims is still in the balance, as just recently the Illinois Supreme Court granted a petition for leave to appeal in *Tims v. Black Horse Carriers, Inc.*, 2021 IL App (1st) 200563, to finally resolve whether a one- or five-year limitations period applies to the various claims under § 15 of BIPA. If the high court holds that a one-year period applies to claims under §§ 15(a) and (b)—instead of a five-year period—the vast majority of the class's BIPA claims would be time barred absent settlement. (*See* Agreement § 1.26 (settling a five-year class period).)

Finally, attempts to gut BIPA in the legislature have been relentless. Over the past year, at least eight such bills have been introduced to amend or repeal BIPA[8], and 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, e.g., Perlin v. Time Inc.*, 237 F. Supp. 3d 623, 629-30 (E.D. Mich. 2017) (evaluating whether legislative amendment to state statute had retroactive effect on pending class action). Though past attempts to narrow or eliminate BIPA through the legislature have failed (in part due to the efforts of proposed Class Counsel), there is no guarantee that opponents of BIPA will not at some point succeed in amending the statute in a way that could negatively impact this suit were litigation to continue.

Though Plaintiff believes that all these obstacles are manageable and that her claims are strong, continued litigation is not without risk. When balanced against these risks, the immediate

[8] *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).

monetary and prospective relief offered by the settlement are compelling. Consequently, this "most important" factor weighs strongly in favor of preliminarily approving the settlement.

B. The Settlement is Reasonable Considering the Complexity, Length, and Expense of Further Litigation.

The next relevant factor in assessing whether this Court should grant approval asks whether the settlement is fair and reasonable given how lengthy, complex, and expensive further litigation is likely to be. *See Korshak*, 206 Ill. App. 3d at 972; *GMAC Mortg.*, 236 Ill. App. 3d at 498 ("One of the principal purposes of an early settlement is to avoid costly and lengthy discovery."). This settlement warrants approval because it provides immediate relief to the Settlement Class while avoiding potentially years of complex litigation and appeals.

Continued litigation would consume significant resources, including the time and costs associated with additional discovery, securing expert testimony on complex biometric and data storage issues, briefing and arguing class certification and summary judgment, proceeding to trial, and resolving any appeals. And "this drawn-out, complex, and costly litigation process … would provide Class Members with either no in-court recovery or some recovery many years from now[.]" *In re AT & T Sales Tax Litig.*, 789 F. Supp. 2d 935, 964 (N.D. Ill. 2011). "As courts recognize, a dollar obtained in settlement today is worth more than a dollar obtained after a trial and appeals years later." *Goldsmith v. Tech. Sols. Co.*, No. 92 C 4374, 1995 WL 17009594, at *4 (N.D. Ill. Oct. 10, 1995). Because the proposed settlement offers immediate—and substantial—monetary relief to the Settlement Class while avoiding the need for protracted litigation, preliminary approval is appropriate. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) ("Settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation.").

C. The Settlement was Reached without Collusion and as a Result of Arm's-Length Negotiations Between the Parties.

The next preliminary approval factor looks to whether the parties colluded in negotiating the settlement. *See Korshak,* 206 Ill. App. 3d at 972. Here, the answer is definitively no. The parties have been contentiously litigating this case for several years, including contested motion practice and discovery. In November 2021, after exchanging several demands and counteroffers, the parties agreed that a formal mediation would be productive, and on February 3, 2022, they participated in a full-day mediation session with the Honorable James F. Holderman (Ret.) of JAMS in Chicago. (Ufkes Decl. ¶ 2.) At that mediation, and with the assistance of Judge Holderman, the parties reached agreement on the material terms of a settlement and executed a Memorandum of Understanding. (*Id.*) Over the next several months, the terms of that understanding were fully hammered out into the Settlement presented here. (*Id.*)

The arm's-length nature of these negotiations is further confirmed by the settlement itself. It is non-reversionary, provides significant cash payments to Class Members, and contains no provisions that might suggest fraud or collusion such as "clear sailing" or kicker clauses regarding attorneys' fees. *See Snyder v. Ocwen Loan Servicing, LLC,* No. 14 C 8461, 2019 WL 2103379, at *4 (N.D. Ill. May 14, 2019) (approving settlement where "there is no provision for reversion of unclaimed amounts, no clear sailing clause regarding attorneys' fees, and none of the other types of settlement terms that sometimes suggest something other than an arm's length negotiation."). The Court should not hesitate to find that this factor weighs strongly in favor of settlement approval. *See Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 50 (finding there was no collusion where the record showed nothing but "good-faith, arm's-length negotiation").

D. Proposed Class Counsel Firmly Believes that this Settlement is in the Best Interests of the Settlement Class.

The Court should also consider whether counsel believes that the settlement is fair to the Settlement Class. *See Korshak*, 206 Ill. App. 3d at 972. Here, proposed Class Counsel are well versed in the law and facts of this litigation and are recognized leaders in consumer and privacy class actions generally and in BIPA cases specifically. For the reasons discussed above, and based on their extensive experience in the area, proposed Class Counsel genuinely believe that the instant Settlement is fair, reasonable, adequate, and deserving of preliminary approval. *See GMAC Mortg.*, 236 Ill. App. 3d at 497 (finding this factor weighed in favor of settlement approval where counsel had extensive class action experience).

E. The Stage of Litigation and Amount of Discovery Completed Ensures the Settlement is Fair, Reasonable, and Adequate.

The final factor looks to the amount of discovery completed and the state of proceedings before the parties entered into the settlement. *See Korshak*, 206 Ill. App. 3d at 972. Here, Plaintiff had survived a motion to dismiss and a motion to strike class allegations, and the case had proceeded into discovery. Prior to agreeing to the settlement, the parties had exchanged formal and informal discovery on any BIPA-related consent forms obtained or disclosures made by Defendant, any retention schedules or guidelines of Defendant for destroying biometric information, and the number of individuals using Defendant's Dayforce system timeclocks in Illinois. This discovery—along with the prior motion practice—ensured that the parties had adequate information to assess the strength of the case and engage in settlement discussions. *See Am. Int'l Grp., Inc., v. ACE INA Holdings, Inc.*, No. 07 C 2898, 2011 WL 3290302, at *8 (N.D. Ill. July 26, 2011) (the standard "is not whether it is conceivable that more discovery could

possibly be conducted" but whether the court and parties have enough information "to evaluate the merits of this case").

Consequently, this factor—along with the other relevant factors discussed above—weighs strongly in favor of preliminary approval.

VI. THE PROPOSED NOTICE TO THE SETTLEMENT CLASS SHOULD BE APPROVED

Finally, once a court has found that an action may proceed as a class action, it has discretion to "order such notice that it deems necessary to protect the interests of the class and the parties." 735 ILCS 5/2-803; *see also Client Follow-Up Co. v. Hynes*, 105 Ill. App. 3d 619, 625 (1st Dist. 1982). Although the statute gives this Court broad discretion with respect to notice, it must still consider the requirements of due process. *Hynes*, 105 Ill. App. 3d at 625; *Carrao v. Health Care Serv. Corp.*, 118 Ill. App. 3d 417, 429 (1st Dist. 1983). "[D]ue process requires notice to be the best practicable, reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Shaun Fauley, Sabon*, 2016 IL App (2d) 150236, ¶ 36 (internal quotations omitted). "In addition, the notice should describe the action and the plaintiffs' rights in it." *Id.* (internal quotations omitted).

Here, the Settlement Agreement contemplates a fulsome, multi-part notice plan, which starts with compilation of the Class List. To compile the Class List, Ceridian has already sought consent from its customers to disclose to the Settlement Administrator the names and contact information (mailing addresses and personal email addresses) of Settlement Class members in Ceridian's databases. (Agreement § 4.1(a).) To the extent any customer refuses to provide such consent to Ceridian, Plaintiff will issue a discovery request to Ceridian seeking the necessary contact information and will move the Court for an order compelling Ceridian to provide it. (*Id.*

§ 4.1(b).) To the extent Ceridian cannot be compelled to provide the contact information, Ceridian will provide Plaintiff the name and business address of each refusing customer so that Plaintiff may subpoena such customers for any missing class member contact information. (*Id.* § 4.1(c).) Finally, Plaintiff will provide all contact information she receives from the customers to Ceridian for review and to confirm whether such individuals are Settlement Class members, and Ceridian will then relay the Settlement Class member contact information to the Settlement Administrator.[9] (*Id.* § 4.1(d).)

Once the Class List has been compiled, the Settlement Administrator will update the mailing addresses of Settlement Class members using the National Change of Address database and other available resources. (*Id.* § 4.2(a).) The Settlement Administrator will then send direct notice of the settlement via First Class Mail to all physical addresses on the Class List and via email to all email addresses on the Class List. (*Id.* § 4.2(b).) Reminder emails will be sent to Settlement Class members 30 days, 7 days, and—if the claims rate has not yet reached 10%—2 days prior to the Claims Deadline. (*Id.* § 4.2(c).) Finally, the Settlement Administrator will develop, host, administer, and maintain a Settlement Website—CeridianBIPASettlement.com—which will provide access to relevant documents as well as the ability to submit claim forms

[9] Compiling the class list will inevitably take some time—it will be completed quickly if the Court grants Plaintiff's forthcoming motion to compel Ceridian, and it will take much longer if Plaintiff must subpoena Ceridian's customers and respond to their likely motions to quash. In any event, the Settlement Administrator cannot send out Notice until the class list is complete. Because any future case deadlines—including the Objection/Exclusion Deadline, the Claims Deadline, and the date of the Final Approval Hearing—will cascade from the Notice Date, and because a concrete Notice Date cannot be set at this time, Plaintiff suggests that if the Court is inclined to grant preliminary approval, that it wait until after the class list is compiled to enter a Preliminary Approval Order. That way, all future case deadlines will be set forth in one Preliminary Approval Order. Plaintiff is happy to come back for a status hearing once the class list is complete and at that time present a proposed Preliminary Approval Order with all future case dates and deadlines filled in.

online. (*Id.* §§ 1.30, 4.2(d).) Among other things, the Notice to be included in correspondence with Settlement Class members and available on the Settlement Website describes the litigation and Settlement Class members' rights and options. (*Id.*, Exs. B, C, D.) All of the Notice correspondence and Settlement Website content is written in plain, easy-to-read language, designed to be easily understood by Class Members. (*Id.*)

Because the proposed Notice Plan effectuates direct notice to all reasonably-identified Settlement Class members and fully apprises them of their rights, it comports with the requirements of Section 5/2-801 and due process. *See, e.g.*, *Shaun Fauley, Sabon*, 2016 IL App (2d) 150236, ¶ 37; *Currie v. Wisc. Cent., Ltd.*, 2011 IL App (1st) 103095, ¶¶ 53–55. Consequently, the Court should approve the proposed Notice Plan.

VII. CONCLUSION

For the foregoing reasons, Plaintiff Rachel LaBarre respectfully requests that this Court enter an order (1) certifying the Settlement Class for settlement purposes, (2) naming Plaintiff Rachel LaBarre as Class Representative, (3) appointing Jay Edelson, J. Eli Wade-Scott, and Schuyler Ufkes of Edelson PC and David Fish of Fish Potter Bolaños, P.C. as Class Counsel, (4) granting preliminary approval of the Settlement, (5) approving the proposed Notice Plan, (6) ordering issuance of Notice, and (7) providing such other and further relief as the Court deems reasonable and just.

Respectfully submitted,

RACHEL LABARRE, individually and on behalf of all others similarly situated,

Dated: April 22, 2022

/s/ Schuyler Ufkes
One of Plaintiff's Attorneys

Jay Edelson
jedelson@edelson.com

J. Eli Wade-Scott
ewadescott@edelson.com
Schuyler Ufkes
sufkes@edelson.com
EDELSON PC
350 North LaSalle Street, 14th Floor
Chicago, Illinois 60654
Tel: 312.589.6370
Fax: 312.589.6378
Firm ID: 62075

David Fish
dfish@fishlawfirm.com
FISH POTTER BOLAÑOS, P.C.
200 East Fifth Avenue, Suite 123
Naperville, Illinois 60563
Tel: 630.355.7590
Fax: 630.778.0400
Firm ID: 44086

CERTIFICATE OF SERVICE

I, Schuyler Ufkes, an attorney, hereby certify that I served the above and foregoing ***Plaintiff's Motion and Memorandum in Support of Preliminary Approval of Class Action Settlement*** on all counsel of record by causing true and accurate copies of such paper to be filed through the Court's electronic filing system on April 22, 2022.

/s/ Schuyler Ufkes

EXHIBIT 1

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

RACHEL LABARRE, individually and on behalf of all others similarly situated, *Plaintiff*, v. CERIDIAN HCM, INC., a Delaware corporation, *Defendant*.	Case No.: 19-CH-06489 Calendar 2 Judge Raymond W. Mitchell

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement ("Settlement Agreement") is entered into by and among Plaintiff Rachel LaBarre ("LaBarre" or "Plaintiff"), for herself individually and on behalf of the Settlement Class, and Defendant Ceridian HCM, Inc. ("Ceridian" or "Defendant") (Plaintiff and Ceridian are referred to individually as "Party" and collectively referred to 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 terms and conditions hereof, and subject to the approval of the Court.

RECITALS

A. On May 28, 2019, Plaintiff Rachel LaBarre filed a putative class action complaint against Defendant Ceridian HCM, Inc. in the Circuit Court of Cook County, Illinois, alleging violations of the Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA"). Plaintiff claimed that Ceridian allegedly collected and stored her biometric data without authorization through the use of a biometric timeclock it provided to her employer.

B. On October 7, 2019, Defendant moved to dismiss Plaintiff's complaint pursuant to 735 ILCS 5/2-619.1, and to strike her class allegations. Plaintiff responded to the motion on November 27, 2019, and Defendant replied in support on December 20, 2019. Plaintiff and Defendant both submitted supplemental authority in support of their positions.

C. After a hearing and oral argument, on August 25, 2020, the Court granted Defendant's motion pursuant to 735 ILCS 2-615 only, and granted Plaintiff leave to amend. The Court denied Defendant's motion pursuant to 735 ILCS 2-619—which argued that Plaintiff's claims were time-barred by a 1-year limitations period—finding instead that a 5-year limitations period applies to Plaintiff's BIPA claims. The Court further denied Defendant's motion to strike class allegations.

D. Plaintiff amended her complaint on September 22, 2020. Defendant again moved to dismiss the amended complaint pursuant to 735 ILCS 2-619.1. After the Parties fully briefed the motion and provided oral argument, the Court denied the motion in its entirety on March 4, 2021.

E. Defendant answered Plaintiff's amended complaint on April 1, 2021, denying all material allegations and raising twenty-two affirmative defenses. Plaintiff replied to Defendant's answer and affirmative defenses on April 21, 2021.

F. After the Court held a status conference on discovery, on May 18, 2020, Defendant filed a motion to bifurcate discovery, which Plaintiff opposed and the Parties fully briefed. Following oral argument, on July 6, 2021, the Court continued Defendant's motion and instead directed it to file a supplemental submission with Court, detailing the number of customers who deployed the timeclocks at issue in Illinois, and of those customers, how many obtained a consent form to collect biometric data that names Ceridian, among other information.

G. Defendant provided the requested information to the Court in a supplemental submission on July 28, 2021. After another hearing on Defendant's motion to bifurcate on August 9, 2021, the Court continued the motion again, and ordered the Parties to commence limited written discovery related to any BIPA-related consent forms obtained by or disclosures made by Defendant or its customers.

H. On August 14, 2021, Plaintiff served her first set of interrogatories and requests for production to Defendant seeking such information. The Parties then negotiated two protective orders, one of which was intended to keep Defendant's customers' identities confidential under certain circumstances. Both protective orders were entered by the Court on September 8, 2021.

I. Defendant responded to Plaintiff's written discovery requests on September 20, 2021, and began producing documents shortly thereafter.

J. During written discovery—and with Defendant's motion to bifurcate still pending—the Parties began to explore the potential for class-wide resolution. After exchanging several demands and counteroffers, the Parties agreed on November 18, 2021 that a formal mediation would be productive. To that end, the Parties jointly moved to stay all case deadlines pending their mediation, which the Court granted on December 2, 2021.

K. On February 3, 2022, the Parties participated in a full-day, formal mediation session with the Honorable James F. Holderman (Ret.) of JAMS in Chicago. The Parties' settlement negotiations lasted throughout the day, with the Parties ultimately reaching an agreement on the material terms of their class-wide settlement at the end of the mediation session. The Parties then memorialized that agreement by executing a binding Memorandum of Understanding that evening.

L. After executing the Memorandum of Understanding, Defendant provided confirmatory discovery demonstrating that the Settlement Class contains approximately fourteen thousand one-hundred forty-two (14,142) members.

M. Plaintiff and Class Counsel conducted a comprehensive examination of the law and facts relating to the allegations in the Action and Defendant's potential defenses. Plaintiff believes that the claims asserted in the Action have merit, that she would have ultimately succeeded in obtaining adversarial certification of the proposed Settlement Class, and that she would have prevailed on the merits at summary judgment or at trial. However, Plaintiff and Class Counsel recognize that Defendant has raised factual and legal defenses in the Action that presented a significant risk that Plaintiff 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. Plaintiff 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 Plaintiff and the Settlement Class, and one that will be provided to the Settlement Class without delay. Therefore, Plaintiff believes 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.

N. Defendant 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, Defendant 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. Defendant thus desires to resolve finally and completely the pending and potential claims of Plaintiff and the Settlement Class.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff, 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 *LaBarre v. Ceridian HCM, Inc.*, No. 19-CH-06489 (Cir. Ct. Cook Cty.).

1.2 "**Agreement**" or "**Settlement Agreement**" or "**Settlement**" means this Class Action Settlement Agreement and the attached Exhibits.

1.3 "**Approved Claim"** means a Claim Form submitted by a Settlement Class Member that is (a) 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) calendar days following the Notice Date, subject to Court approval. The Claims Deadline shall be clearly set forth in the Notice and the Claim Form.

1.5 "**Claim Form**" means the document substantially in the form attached hereto as Exhibits A and B, 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, (iii) current contact telephone number and/or email address, and (iv) a statement that they scanned their finger on a Ceridian-branded timeclock in the state of Illinois between May 28, 2014 and the date of the Preliminary Approval Order. The Claim Form will not require Settlement Class Members to verify, attest, or otherwise affirm that they did not consent to Ceridian's collection or storage of their biometric data. 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 through Venmo, Zelle, Paypal, or 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, J. Eli Wade-Scott, and Schuyler Ufkes of Edelson PC and David Fish of Fish Potter Bolaños, P.C.

1.7 **"Class List"** means the list of Contact Information for members of the Settlement Class that is provided to and compiled by the Settlement Administrator.

1.8 "**Class Representative**" or "**Plaintiff"** means the named Plaintiff in the Action, Rachel LaBarre.

1.9 "**Court**" means the Circuit Court of Cook County, Illinois, the Honorable Raymond W. Mitchell presiding, or any judge who shall succeed him as the Judge assigned to the Action.

1.10 "**Defendant**" or "**Ceridian**" means Ceridian HCM, Inc., a Delaware corporation.

1.11 "**Defendant's Counsel" or "Ceridian's Counsel**" means attorneys Molly K. McGinley and Kenn Brotman of K&L Gates LLP.

1.12 "**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.

1.13 **"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) calendar 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.

1.14 "**Fee Award**" means the amount of attorneys' fees and reimbursement of costs awarded to Class Counsel by the Court to be paid from the Settlement Fund.

1.15 "**Final Approval Hearing**" means the hearing before the Court where Plaintiff 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 Representative.

1.16 "**Final Approval Order**" means the final judgment and 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.

1.17 "**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 735 ILCS 5/2-801 *et seq.*, and is substantially in the form of Exhibits B, C and D attached hereto.

1.18 "**Notice Date**" means the date by which the Notice is disseminated to the Settlement Class, which shall be a date no later than (i) twenty-eight (28) calendar days after entry of the Preliminary Approval Order, or (ii) twenty-eight (28) calendar days after the final Class List is compiled as described in Section 4.1, whichever occurs later.

1.19 "**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 sixty (60) calendar 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.

1.20 "**Preliminary Approval Order**" means the Court's order preliminarily approving the Agreement, certifying the Settlement Class for settlement purposes, and approving the form, substance, and manner of the Notice.

1.21 "**Released Claims**" means any and all claims of every nature and description, known or unknown (including "Unknown Claims" as defined below), that have been or could have been asserted in the Action based on acts and/or omissions in connection with or arising out of the collection, possession, capture, purchase, receipt through trade, obtaining, sale, lease, trade, profit from, disclosure, redisclosure, dissemination, storage, transmittal, and/or protection from disclosure of alleged biometric information or biometric identifiers through the use of finger scanners, whether such conduct was alleged or unalleged, including any violation of the Biometric Information Privacy Act.

1.22 "**Released Parties**" means Ceridian and all of its present or former administrators, predecessors, successors, assigns, parents, subsidiaries, holding companies, investors, sister and affiliated companies, divisions, associates, affiliated and related entities, employers, employees, agents, representatives, consultants, independent contractors, directors, managing directors, officers, partners, principals, members, attorneys, vendors, accountants, fiduciaries, financial and other advisors, investment bankers, insurers, reinsurers, employee benefit plans, underwriters, shareholders, lenders, auditors, investment advisors, and any and all present and former companies, firms, trusts, corporations, officers and directors. Released Parties shall not include Defendant's customers (including, specifically, employers that used a Ceridian timeclock in Illinois).

1.23 "**Releasing Parties**" means Plaintiff and each Settlement Class Member and their respective present or past heirs, executors, estates, administrators, assigns and agents.

1.24 "**Settlement Administration Expenses**" means all 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, disbursing Settlement Payments by mail and electronic means, related tax expenses, fees of the escrow agent, and other such related expenses, with all such expenses to be paid from the Settlement Fund.

1.25 "**Settlement Administrator**" means Simpluris, Inc., subject to approval of the Court, which will provide the Notice, create and maintain the Settlement Website, receive and process Claim Forms and W-9 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.

1.26 "**Settlement Class**" means all individuals who scanned their fingers in Illinois on a timeclock issued, leased or sold by Ceridian, and for whom any alleged biometric data relating to that scan was shared with or stored by Ceridian, between May 28, 2014 and the date of the Preliminary Approval Order. Excluded from the Settlement Class are (1) persons who were settlement class members in *Edmond v. DPI Specialty Foods, Inc.*, 2018-CH-09573 (Cir. Ct. Cook Cty. Ill.), *Gonzalez v. Richelieu Foods, Inc.*, No. 20-cv-04354 (N.D. Ill.), *Terry v. Griffith Foods Group, Inc.*, Case No. 2019-CH-12910 (Cir. Ct. Cook Cty. Ill.), *Quarles v. Pret a Manger (USA) Limited*, 20-cv-7179 (N.D. Ill), and *Struck and Jones v. Woodman's Food Market*, 2021-CH-053 (19th Jud. Cir, Lake Cty. Ill.), (2) persons who executed Defendant's on-screen consent prior to any use of finger scanners provided by Defendant, (3) any Judge or Magistrate presiding

over this Action and members of their families, (4) Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, (5) persons who properly execute and file a timely request for exclusion from the Settlement Class, and (6) the legal representatives, successors or assigns of any such excluded persons. For purposes of Paragraph 2.1(b) herein, the Settlement Class is presumed to be individuals identified on the Class List.

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

1.28 "**Settlement Fund**" means the non-reversionary cash fund that shall be established by Defendant or its insurer in the amount of Three Million Four Hundred Ninety-Three Thousand Seventy-Four Dollars ($3,493,074.00). Within twenty-eight (28) calendar days of the entry of the Preliminary Approval Order, Defendant or its insurer(s) shall deposit One Hundred and Fifty Thousand Dollars ($150,000.00) into the Escrow Account for the purpose of funding Settlement Administration Expenses. Defendant or its insurer shall transmit the remaining balance of the Settlement Fund, Three Million Three Hundred Forty-Three Thousand Seventy-Four Dollars ($3,343,074.00), into the Escrow Account within twenty-eight (28) calendar days after the entry of the Final Approval Order or Alternative Approval Order. The Settlement Fund shall satisfy all monetary obligations of Defendant (or any other Released Party) under this Settlement Agreement, including the Settlement Payments, Settlement Administration Expenses, Fee Award, litigation costs, incentive award, taxes, and any other payments or other monetary obligations contemplated by this Agreement or the Settlement. 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 or its insurer into the Escrow Account, or any interest earned thereon, revert to Defendant or any other Released Party.

1.29 "**Settlement Payment**" means a *pro rata* portion of the Settlement Fund less any Fee Award, incentive award to the Class Representative, and Settlement Administration Expenses.

1.30 "**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 and relevant court filings, and the ability to submit Claim Forms online and will allow Class Members to elect to receive their Settlement Payment through Venmo, Zelle, Paypal, or check. The Settlement Website shall be live and active by the Notice Date, and the URL of the Settlement Website shall be www.CeridianBIPASettlement.com, or such other URL as the Parties may subsequently agree to.

1.31 "**Unknown Claims"** means claims that could have been raised in the Action and that Plaintiff, any member of the Settlement Class or any Releasing Party, do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties or the Released Claims or might affect his, her or its decision to agree, to object or not to object to the Settlement. Upon the Effective Date, Plaintiff, the Settlement Class Members, and the Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE

MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Upon the Effective Date, each of the Releasing Parties shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Plaintiff, the Settlement Class Members, and the Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Section.

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. Within fourteen (14) calendar days after the Claims Deadline, the Settlement Administrator shall process all Claim Forms submitted by Settlement Class Members and shall determine which claims are valid and initially approved and which claims are initially rejected.

c. Within fourteen (14) calendar days after the Claims Deadline, the Settlement Administrator will submit to Class Counsel and Defendant's Counsel a report listing all initially approved and initially rejected Claims.

d. Class Counsel and Defendant's Counsel shall have fourteen (14) calendar

days after the date they receive the report listing the initially approved and initially rejected claims to audit and challenge any initially approved or initially rejected claims. Class Counsel and Defendant's Counsel shall meet and confer in an effort to resolve any disputes or disagreements over any initially approved or rejected claims. The Settlement Administrator shall have the final authority for determining if Settlement Class Members' Claim Forms are complete, timely, and accepted as an Approved Claim.

e. Class Counsel agrees that they shall not disclose or use, directly or indirectly, any information pertaining to Class Members or their employers that is disclosed to them in Claim Forms hereunder for any purpose other than effectuating the Settlement.

f. Within twenty-eight (28) calendar 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.

g. Class Members will have the option of having their Settlement Payment transmitted to them through Venmo, Zelle, Paypal, or check. Class Members who do not choose a payment method via the Settlement Website will be sent a check via First Class U.S. Mail to their last known mailing address, as updated through the National Change of Address database if necessary by the Settlement Administrator.

h. 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 eighty (180) calendar days after the date of issuance.

i. 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.

j. To the extent that a check issued to Settlement Class Members is not cashed within one hundred and eighty (180) calendar days after the date of issuance or an electronic deposit is unable to be processed within one hundred and eighty (180) calendar days of the first attempt, such funds shall be distributed as *cy pres* to the Illinois Bar Foundation, or any other or additional *cy pres* recipient selected by the Court, pursuant to 735 ILCS 5/2-807(b), subject to approval of the Court.

k. In no event shall any amount paid by Defendant or its insurer into the Escrow Account revert to Defendant or the Released Parties.

2.2 **Prospective Relief.**

a. Defendant shall continue to maintain its online biometric policy, which is currently available at https://www.ceridian.com/privacy/biometric-notice, and keep it available to the public.

b. Defendant agrees that, on or before the Effective Date, Defendant shall ensure that a process is in place by which its customers that use a Ceridian-branded timeclock with a finger scanner in Illinois:

(i) are notified of the legal requirements to (a) obtain a written release, (b) establish a retention and destruction schedule that complies with BIPA and (c) comply with that policy;

(ii) obtain or continue to obtain a written release, either via on-screen consent deployed by default, or other lawful means, before

individuals can use Ceridian timeclocks to scan their finger, and such release shall inform those persons in writing (a) that their biometric data is being collected or stored by Ceridian, and (b) of the specific purposes and length of term for which their biometric data is being collected, stored, or used by Ceridian.

If Ceridian maintains its online biometric policy and establishes the process described in this Section 2.2., Ceridian shall not be in breach of this Agreement due to a Customer's failure to obtain a written release as described in Section 2.2(b)(ii).

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 (the "Release").

4. NOTICE TO THE CLASS

4.1 **The Class List.**

a. On or before March 7, 2022, Defendant shall reach out to its customers seeking consent to disclose to the Settlement Administrator the following information, to the extent available in the customer database hosted by Ceridian: the Settlement Class members' names, personal e-mail addresses, and mailing addresses (the "Contact Information").

b. If, by April 26, 2022, any Ceridian customer has failed to provide Ceridian consent to disclose any Contact Information to the Settlement Administrator (the

"Refusing Customers"), (i) Plaintiff will issue discovery to Ceridian to obtain such Contact Information, to which Ceridian will respond within seven (7) calendar days, and (ii) Ceridian represents that it has not identified a legal basis to oppose such discovery, and therefore will not oppose any motion seeking an order compelling Ceridian to produce such Contact Information to the Settlement Administrator (the "Motion to Compel").

c. If the Court denies any portion of Plaintiff's Motion to Compel, Ceridian shall provide Plaintiff the name and business address of each Refusing Customer within seven (7) calendar days of an order denying the Motion to Compel, so that Plaintiff may issue subpoenas to such Refusing Customers. Except as provided in this Paragraph 4.1(c), Ceridian shall not be required to provide Plaintiff the name or business address of any customer.

d. Plaintiff shall provide any Contact Information she receives from any Ceridian customer to Ceridian so that Ceridian may confirm whether such individuals fall within the Settlement Class. Ceridian shall have fourteen (14) calendar days to review the information provided by subpoenaed customers and shall then provide the Contact Information from any subpoenaed customers to the Settlement Administrator and Plaintiff with an explanation as to why any individual(s) identified by the subpoenaed customers are not Settlement Class members. To the extent that the Parties disagree as to whether an individual is a Settlement Class member, they shall meet and confer in good faith. Any disputes that cannot be resolved through the meet and confer process shall be submitted to the Court.

e. All Contact Information of Settlement Class members provided to the Settlement Administrator will be compiled by the Settlement Administrator to form the Class List. Within seven (7) calendar days after the Class List is compiled, the Settlement Administrator shall provide Class Counsel a report detailing the total number of unique names on the Class List, the number of unique names for whom an address is available on the Class List, the number of unique names for whom an email address and is available on the Class List, and the number of unique names for whom no address or email address is available on the Class List. The Settlement Administrator shall keep the Class List, and all Contact Information contained therein, strictly confidential. 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 and Paragraph 2.1(d) hereof.

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

a. *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 in Section 5.1.

b. *Direct Notice.* No later than the Notice Date, the Settlement Administrator shall (1) send Notice via First Class U.S. Mail substantially in the form of Exhibit B to each Settlement Class member's physical address in the Class List and (2) shall send Notice via e-mail substantially in the form of Exhibit C to all persons in the Settlement Class for whom an email address is available in the Class List.

c. *Reminder Notice*. Thirty (30) calendar days prior to the Claims Deadline and seven (7) calendar days prior to the Claims Deadline, the Settlement Administrator shall again send Notice via email along with an electronic link to the Claim Form, to all persons in the Settlement Class for whom a valid email address is available in the Settlement Class List. The reminder emails shall be substantially in the form of Exhibit C, with minor, non-material modifications to indicate that it is a reminder email rather than an initial notice. If the number of Claim Forms submitted by Settlement Class Members does not equal at least ten percent (10%) of the number of persons listed in the Class List, then the Settlement Administrator shall send a final reminder notice two (2) business days before the Claims Deadline substantially in the form of Exhibit C, with minor, non-material modifications to indicate that it is a final notice.

d. *Internet Notice.* Within fourteen (14) calendar days after the entry of the Preliminary Approval Order, the Settlement Administrator will develop, host, administer and maintain a Settlement Website containing the notice substantially in the form of Exhibit D.

4.3 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 eFileIL 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.

4.4 **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) the specific grounds for the objection, (d) all documents or writings that the Settlement Class Member desires the Court to consider, (e) 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 (f) 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). All written objections must be filed with the Court and postmarked, e-mailed, or delivered to Class Counsel and Defendant's Counsel no later than the Objection/Exclusion Deadline. 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, and shall be foreclosed from seeking any review of this Settlement Agreement, the Final Approval Order, or Alternative 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 or any other action or proceeding.

4.5 **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 *LaBarre v. Ceridian HCM, Inc.*, No. 2019-CH-06489 (Cir. Ct. Cook Cty.); (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 the Objection/Exclusion Deadline. 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 *LaBarre v. Ceridian HCM, Inc.*, 2019-CH-06489 (Cir. Ct. Cook Cty.)." 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 in compliance with this provision 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. 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. *Dissemination of Notices.* The Settlement Administrator shall disseminate the Notice as provided in Section 4 of this Settlement Agreement.

b. *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.

c. *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, except that Plaintiff and Class Counsel shall not have access to the Contact Information of the Settlement Class provided by Ceridian other than as authorized in this Agreement. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. Upon request, the Settlement Administrator shall provide 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 Class Counsel and Defendant's Counsel the Claim Forms received by the Settlement Administrator at any time upon reasonable notice. If the Settlement Administrator receives any questions from Class Members related to the Claim Forms, then the Settlement Administrator should act in good faith to respond to the question or inquiry. In no event shall the Settlement Administrator disclose the name of any class member's employer to 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 Settlement Payments, 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.

d. *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) calendar 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.

e. *Creation of Settlement Website.* The Settlement Administrator shall create the Settlement Website. The Settlement Website shall include a toll-free telephone phone number and mailing address through which persons in the Settlement Class may contact the Settlement Administrator or Class Counsel directly, and include the ability for Class Members to file claims and submit any required tax forms on-line.

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. To the extent that an individual who does not appear on the Class List submits a Claim Form, the Settlement Administrator will reject the claim, unless otherwise agreed by both parties. 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 receives such information more than 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. *Establishment of the Escrow Fund.* The Settlement Administrator shall establish the Escrow Fund, pursuant to the terms of Section 1.13, and maintain the

Escrow Fund as a qualified settlement fund throughout the implementation of the Class Settlement in accordance with the Court's Preliminary Approval Order and Final Approval Order.

h. *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) calendar days after the Effective Date.

i. *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 if necessary, and making any required "information returns" as that term is used in 26 U.S.C. § 1 *et seq.*

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 Plaintiff as Class Representative of the Settlement Class for settlement purposes only;

b. Appoint Class Counsel to represent the Settlement Class;

c. Certify the Settlement Class under 735 ILCS 5/2-801 *et seq*., for settlement purposes only;

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

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

f. Schedule a Final Approval Hearing to review any 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 Representative; 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 disseminated, 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 have released all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff 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 735 ILCS 5/2-801 *et seq.*, Due Process, and the rules of the Court;

f. find that the Class Representative 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; and

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

k. incorporate any other provisions, consistent with the material terms of this Settlement Agreement, that are requested by the Court and agreed upon by both Parties.

6.3 **Cooperation.** The Parties shall, in good faith, cooperate, assist and undertake all reasonably necessary 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

7.1 **Termination.** Subject to Section 9 below, the Class Representative, 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) calendar 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 appellate court or the Supreme Court; or (v) the date upon which an Alternative Approval Order is entered, as defined in Section 9.1 of this Agreement, is modified or reversed in any material respect by the appellate court or the Supreme Court.

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-five percent (35%) of the Settlement Fund. 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 Escrow Account and be distributed to Settlement Class Members as Settlement Payments. The Fee Award shall be payable within five (5) business days after entry of the Final Approval Order, if there are no objections to the Settlement Agreement, and if there have been such objections, 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 an account designated by Class Counsel after providing necessary information for electronic transfer.

8.2 Defendant agrees that the Class Representative shall be paid an incentive award in the amount of Five Thousand Dollars ($5,000.00) from the Settlement Fund, in addition to any Settlement Payment pursuant to this Settlement Agreement and in recognition of her 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 Escrow Account and be distributed to Settlement Class Members as Settlement Payments. Any incentive award shall be paid by the Settlement Administrator from the Escrow Account (in the form of a check to the Class Representative that is sent care of Class Counsel), within five (5) business days after entry of the Final Approval Order if there have been no objections to the Settlement Agreement and, if there have been such objections, 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 approving the Agreement;

c. The Court has entered a Final Approval Order finally approving the Agreement, or a judgment substantially consistent with this Settlement Agreement that has become final and unappealable, following Notice to the Settlement Class and a Final Approval Hearing; and

d. In the event that the Court enters an approval order and final judgment in a form other than that provided above ("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 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, shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination of the Agreement.

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 to the extent reasonably necessary 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 the signatory 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 Plaintiff 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. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiff or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.

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 truth of any fact alleged by Plaintiff, 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 Plaintiff 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 Released Parties in order to support a defense or counterclaim;

e. is, may be deemed, or shall be construed against Plaintiff 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 Plaintiff and the Settlement Class, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiff's 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 A–D 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 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.

10.12 Plaintiff represents and warrants that she is the sole and current owner of the claims being released in this Agreement and that any such claims have not been assigned or otherwise transferred to any other person or entity.

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 laws 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: Schuyler Ufkes, sufkes@edelson.com, EDELSON PC, 350 North LaSalle Street, 14th Floor, Chicago, Illinois 60654; Molly K. McGinley, Molly.McGinley@klgates.com, K&L GATES LLP, 70 West Madison Street, Suite 3100, Chicago, Illinois 60602.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

RACHEL LABARRE

Dated: 4/20/2022

By (signature): Rachel LaBarre

Name (printed): Rachel LaBarre

EDELSON PC

Dated: 4/20/2022

By (signature): J. Eli Wade-Scott

Name (printed): J. Eli Wade-Scott

Its (title): Partner

CERIDIAN HCM, INC.

Dated: _____

By (signature): _____

Name (printed): _____

Its (title): _____

K&L GATES LLP

Dated: _____

By (signature): _____

Name (printed): _____

Its (title): _____

RACHEL LABARRE

Dated: _____

By (signature): _____

Name (printed): _____

EDELSON PC

Dated: _____

By (signature): _____

Name (printed): _____

Its (title): _____

CERIDIAN HCM, INC.

Dated: April 19, 2022

By (signature): [signature]

Name (printed): William E. McDonald

Its (title): EVP, General Counsel, Corporate Secretary

K&L GATES LLP

Dated: April 20, 2022

By (signature): [signature]

Name (printed): Molly K. McGinley

Its (title): Partner

Exhibit A

CIRCUIT COURT OF COOK COUNTY, ILLINOIS

LaBarre v. Ceridian HCM., Inc., Case No. 19-CH-06489

ONLINE CLAIM FORM

***Instructions*:** You may be eligible for a payment as part of the Settlement for this case. 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, 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.

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

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]

Class Member Verification: By submitting this Claim Form, I declare that the following information is true and correct: I am an individual who scanned my finger on a Ceridian-branded timeclock in the State of Illinois between May 28, 2014 and [date of Preliminary Approval Order].

E- Signature: _____ Date: __ __/__ __/__ __

Para informacion en Espanol, visitar www.[tobedetermined].com.

Exhibit B

COURT AUTHORIZED NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

OUR RECORDS INDICATE YOU SCANNED YOUR FINGER ON A CERIDIAN-BRANDED TIMECLOCK IN THE STATE OF ILLINOIS AND ARE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

XXX

LaBarre v. Ceridian HCM, Inc.
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]

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. Once completed, detach this Claim Form from the Notice and mail the Claim Form only to the Settlement Administrator. 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. 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 now at 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.)

Class Member Verification: By submitting this Claim Form, I declare that the following information is true and correct:
I am an individual who scanned my finger on a Ceridian-branded timeclock in the State of Illinois between May 28, 2014 and [date of Preliminary Approval Order].

Signature: _____ Date: ___ ___/ ___ ___/ ___ ___

Print Name: _____

The Settlement Administrator will review your Claim Form. If accepted, you will be mailed a check for a *pro rata* share depending on the number of valid Claim Forms received. This process takes time, please be patient.

Questions, visit 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 Ceridian HCM, Inc and certain workers who scanned their finger on a Ceridian-branded timeclock in the State of Illinois The lawsuit claims that Ceridian violated an Illinois law called the Illinois Biometric Information Privacy Act when it collected individuals' biometric data when they used timeclocks provided by Ceridian, without complying with the law's requirements Ceridian denies Plaintiff's allegations, denies violation of any law and denies all liability 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 individuals who scanned their fingers in Illinois on a timeclock issued, leased or sold by Ceridian, and for whom any alleged biometric data relating to that scan was shared with or stored by Ceridian, between May 28, 2014 and [Preliminary Approval Order date] These systems are common among many employers of hourly workers Some exclusions apply, see www.[tobedetermined].com for details

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 $[xxx], but could be more or less depending on the number of valid claims submitted This amount is an equal share of the $3,493,074 fund that Ceridian 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 The online Claim Form allows you to choose to receive your payment via Venmo, PayPal, or Zelle (instead of a check) ***All Claim Forms must be postmarked or submitted online by [Claims Deadline].***

What are my 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 Ceridian or certain related companies and individuals in a future lawsuit about the claims addressed in the settlement If you exclude yourself, you won't get a payment but you'll keep your right to sue Ceridian on the issues the settlement concerns You must contact the Settlement Administrator by mail or e-mail to exclude yourself from the Settlement You can also object to the settlement if you disagree with any of its terms by writing to the Court See www [tobedetermined] com for instructions on how to object ***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 Fish Potter Bolaños, P C as "Class Counsel " They represent you and other Settlement Class Members The lawyers will request to be paid from the total amount that Ceridian agreed to pay to the class members 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 Rachel LaBarre—a class member like you—to represent the Settlement Class

When will the Court approve the settlement? The Court will hold a Final Approval Hearing on [date] at [time] before the Honorable Raymond W Mitchell in Room 2601 at the Richard J Daley Center, 50 West Washington Street, Chicago, Illinois 60602, or via remote means as instructed by the Court Instructions for participating remotely will be posted on the Settlement Website During the hearing, the Court will hear objections that were timely submitted in writing, determine if the settlement is fair, and consider Class Counsel's request for fees and expenses of up to 35% of the Settlement Fund and an incentive award of $5,000 for the class representative The request will be posted on the Settlement Website by [two weeks prior to Objection/Exclusion Deadline]

_____

_____

_____

NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES

LaBarre v. Ceridian Settlement
c/o Settlement Administrator
PO Box 0000
City, ST 00000-0000

XXX

Exhibit C

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

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
LaBarre v. Ceridian HCM, Inc., Case No. 19-CH-06489
(Circuit Court of Cook County, Illinois)

OUR RECORDS INDICATE YOU SCANNED YOUR FINGER ON A CERIDIAN-BRANDED TIMECLOCK IN THE STATE OF ILLINOIS AND ARE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

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

For more information, visit www.[tobedetermined].com.

This notice is to inform you that a proposed settlement has been reached in a class action lawsuit between Ceridian HCM, Inc. and certain workers who scanned their finger on a Ceridian-branded timeclock in the State of Illinois. The lawsuit claims that Ceridian violated an Illinois law called the Illinois Biometric Information Privacy Act when it collected individuals' biometric data when they used timeclocks provided by Ceridian, without complying with the law's requirements. Ceridian denies Plaintiff's allegations, denies violation of any law and denies all liability. 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 individuals who scanned their fingers in Illinois on a timeclock issued, leased or sold by Ceridian, and for whom any alleged biometric data relating to that scan was shared with or stored by Ceridian, between May 28, 2014 and [Preliminary Approval Order date]. Some exclusions apply, see www.[tobedetermined].com for details.

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 $[xxx], but could be more or less depending on the number of valid claims submitted. This amount is a equal share of the $3,493,074 settlement fund that Ceridian agreed to create after any Court-approved payment of notice and administration costs, attorneys' fees, and any incentive award have been paid.

How do I get my payment? Just complete and verify the short and simple Claim Form online here [Claim Form Link], or if you also received a notice of this Settlement in the mail, you can fill out the paper Claim Form attached to that notice and submit it by mail. By submitting online you can choose to receive your payment via Venmo, PayPal, Zelle, or a check. ***All Claim Forms must be submitted online or postmarked by [Claims Deadline].***

What are my 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 Ceridian or certain related companies and individuals in a future lawsuit about the claims

addressed in the settlement. If you exclude yourself, you won't get a payment but you'll keep your right to sue Ceridian on the issues the settlement concerns. You must contact the Settlement Administrator by mail or e-mail ([email address]) to exclude yourself from the Settlement. You can also object to the settlement if you disagree with any of its terms by writing to the Court. See www.[tobedetermined].com for instructions on how to object. ***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 Fish Potter Bolaños, P.C. as "Class Counsel." They represent you and other Settlement Class Members. The lawyers will request to be paid from the total amount that Ceridian agreed to pay to the class members. 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 Rachel LaBarre—a class member like you—to represent the Settlement Class.

When will the Court approve the settlement? The Court will hold a Final Approval Hearing on [date] at [time] before the Honorable Raymond W. Mitchell in Room 2601 at the Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602, or via remote means as instructed by the Court. Instructions for participating remotely will be posted on the Settlement Website. You must submit an objection in writing by [Objection/Exclusion Deadline] in order to be heard by the Court at the Final Approval Hearing. 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 35% of the Settlement Fund and an incentive award of $5,000 for the class representative. The request will be posted on the Settlement Website by [two weeks prior to Objection/Exclusion Deadline].

Exhibit D

CIRCUIT COURT OF COOK COUNTY, ILLINOIS
LaBarre v. Ceridian HCM., Inc., Case No. 19-CH-06489

IF YOU SCANNED YOUR FINGER ON A CERIDIAN-BRANDED TIMECLOCK WHILE IN THE STATE OF ILLINOIS BETWEEN MAY 28, 2014 AND [PRELIMINARY APPROVAL DATE], YOU MAY BE ENTITLED TO CLAIM A PAYMENT FROM A CLASS ACTION SETTLEMENT.

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

- A Settlement has been reached in a class action lawsuit between Ceridian HCM, Inc. ("Defendant" or "Ceridian") and certain workers who scanned their finger on a Ceridian-branded timeclock in the State of Illinois. The lawsuit claims that Ceridian violated an Illinois law called the Illinois Biometric Information Privacy Act ("BIPA") when it collected individuals' biometric data when they used a Ceridian-branded timeclock with a finger scanner without complying with the law's requirements. Ceridian denies Plaintiff's allegations, denies violation of any law and denies all liability. The Court has not decided who is right or wrong. The Settlement has been preliminarily approved by a state court in Chicago, Illinois.

- You may be included in the Settlement if you are an individual who scanned your finger in Illinois on a timeclock issued, leased or sold by Ceridian, and for whom any alleged biometric data relating to that scan was shared with or stored by Ceridian, between May 28, 2014 and [Preliminary Approval Order date], subject to certain exclusions detailed below (see FAQ 5). These systems are common among many employers of hourly workers. If you received a notice of this Settlement in the mail or by e-mail, our records indicate that you are a Settlement Class member and are included in the Settlement, and you may submit a Claim Form online or by mail to receive a cash payment.

- If the Court approves the Settlement, Class Members who submit valid Claim Forms will receive an equal, or *pro rata*, share of a $3,493,074 Settlement Fund that Ceridian has agreed to establish, after all notice and administration costs, incentive award, and attorneys' fees have been paid. Individual payments to Class Members who submit a valid Claim Form are estimated to be $[xxx] to $[xxx], but could be more or less depending on the number of valid claims submitted.

- Unless otherwise specified, all capitalized terms used in this Notice are those used in the Class Action Settlement Agreement, which can be found in the "Court Documents" section of the settlement website at www.[tobedetermined].com.

- 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. You must submit a complete and valid Claim Form online or by mail by [**Claims Deadline**].
DO NOTHING	You will receive no payment under the Settlement and give up your rights to sue Ceridian and 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 Ceridian 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 the Defendant. You have legal rights and options that you may act on before the Court decides whether to approve 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.

Judge Raymond W. Mitchell of the Circuit Court of Cook County, Illinois is overseeing this class action. The case is called *LaBarre v. Ceridian HCM, Inc.*, 19-CH-06489. The person who filed the lawsuit, Rachel LaBarre, is the Plaintiff. The company she sued, Ceridian HCM, Inc., is the Defendant.

2. What is a class action lawsuit?

A class action is a lawsuit in which an individual called a "Class Representative" brings a single lawsuit on behalf of other people who have similar legal claims. All of these people together are a "class" or "class members." Once a class is certified, a class action Settlement finally approved by

the Court 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*., prohibits private companies from capturing, obtaining, storing, and/or using the biometric identifiers and/or biometric information of another individual for any purpose, without first providing notice and getting consent in writing. Biometrics are things like your fingerprint, faceprint, or a scan of your iris. This lawsuit alleges that Ceridian violated BIPA by allegedly collecting certain employees' biometric data when they used finger-scan timeclocks provided by Ceridian in the state of Illinois, without giving notice or getting consent. Ceridian supplies these systems to employers for their hourly employees to use to clock in and out of work. Ceridian denies these allegations and denies that it 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.

4. Who is included in the Settlement Class?

You are a member of the Settlement Class if you scanned your finger in Illinois on a timeclock issued, leased, or sold by Ceridian, and if your alleged biometric data relating to that scan was shared with or stored by Ceridian, between May 28, 2014 and [the date of Preliminary Approval Order]. If you scanned your finger on a Ceridian-branded finger-scan timeclock in Illinois during that time-period, you may be a class member and may submit a [Claim Form link] for a cash payment, subject to certain exclusions (see FAQ 5 below). If you received a notice of this Settlement via email or in the mail, our 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 is an example of a Ceridian timeclock with a finger-scanner attached:

5. Who is not included in the Settlement Class?

Some employees are not included in the Settlement Class and are not covered by or able to participate in the Settlement. Excluded from the Settlement Class are: (1) persons who were settlement class members in *Edmond v. DPI Specialty Foods, Inc.*, 2018-CH-09573 (Cir. Ct. Cook Cty. Ill.), *Gonzalez v. Richelieu Foods, Inc.*, No. 20-cv-04354 (N.D. Ill.), *Terry v. Griffith Foods Group, Inc.*, Case No. 2019-CH-12910 (Cir. Ct. Cook Cty. Ill.), *Quarles v. Pret a Manger (USA) Limited*, 20-cv-7179 (N.D. Ill), and *Struck and Jones v. Woodman's Food Market*, 2021-CH-053 (19th Jud. Cir, Lake Cty. Ill.), (2) persons who executed Defendant's on-screen consent prior to any use of finger scanners provided by Defendant, (3) any Judge or Magistrate presiding over this action and members of their families, (4) Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, (5) persons who properly execute and file a timely request for exclusion from the Settlement Class, and (6) the legal representatives, successors or assigns of any such excluded persons.

THE SETTLEMENT BENEFITS

6. 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 around $[xxx] to $[xxx], but the exact amount is unknown at this time and could be more or less depending on the number of valid Claim Forms submitted. This is a *pro rata*, or equal, share of a $3,493,074 fund that Ceridian has agreed to create, after the payment of settlement expenses, attorneys' fees, and any incentive award for the Class Representative in the litigation approved by the Court.

Prospective Relief. Ceridian has posted on its website here a publicly-available retention and destruction schedule related to any biometric data in its possession. Under the Settlement, Ceridian has agreed to continue to maintain a publicly-available retention and destruction schedule and will ensure that a process is in place by which its customers that use a Ceridian-branded timeclock with a finger scanner in Illinois:

> (i) are notified of the legal requirements to (a) obtain a written release, (b) establish a retention and destruction schedule that complies with BIPA and (c) comply with that policy; and
>
> (ii) obtain or continue to obtain a written release, either via on-screen consent deployed by default, or other lawful means, before individuals can use Ceridian timeclocks to scan their finger, and such release shall inform those persons in writing (a) that their biometric data is being collected or stored by Ceridian, and (b) of the specific purposes and length of term for which their biometric data is being collected, stored, or used by Ceridian.

HOW TO GET SETTLEMENT BENEFITS

7. 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 the Settlement Website **here** [link to online Claim Form] 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.

The Claim Form requires you to provide the following information: (i) full name, (ii) current U.S. Mail address, (iii) current contact telephone number and email address, and (iv) a statement that you scanned your finger on a Ceridian-branded finger-scan timeclock in the State of Illinois between May 28, 2014 and [date of Preliminary Approval Order].

Depending on the number of valid Claim Forms submitted and the amount of the payment to each Class Member, 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 to online Form-W9] now on the Settlement Website; doing so now will ensure that you receive your full payment as soon as possible.

8. When will I get my payment?

The hearing to consider the fairness of the Settlement is scheduled for [**Final Approval Hearing Date**] at [**time**]. 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 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 90 days after they are issued and will be donated to the Illinois Bar Foundation, or such other not-for-profit organization(s) as the Court may order as *cy pres* recipient.

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in the case?

Yes, the Court has appointed lawyers Jay Edelson, J. Eli Wade-Scott, and Schuyler Ufkes of Edelson PC and David Fish of Fish Potter Bolaños, P.C as the attorneys to represent you and other Class Members. These attorneys are called "Class Counsel." In addition, the Court appointed Plaintiff Rachel LaBarre to serve as the Class Representative. She is a Class Member like you. Class Counsel can be reached by calling 1-866-354-3015.

10. 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.

11. How will the lawyers be paid?

Class Counsel will ask the Court for reimbursement of their expenses and attorneys' fees of up to 35% of the Settlement Fund, and will also request an incentive award of $5,000 for the Class Representative 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 incentive award to the Class Representative. The Court may award less than the amounts requested.

12. 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 Defendant or other Released Parties regarding any of the Released Claims. **Submitting a valid and timely Claim Form 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.[tobedetermined].com, or call (XXX) XXX-XXXX.

13. 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 Released Parties (as that term is defined in the Settlement Agreement) and are free to pursue whatever legal rights you may have by pursuing your own lawsuit against the Released Parties at your own risk and expense.

14. 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 *LaBarre v. Ceridian, HCM, Inc.*, 19-CH-06489 (Cir. Ct. Cook Cty. 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 [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 *LaBarre v. Cerdian, HCM, Inc.*, 19-CH-06489 (Cir. Ct. Cook Cty. Ill.)." You must mail or e-mail your exclusion request no later than [Objection/Exclusion Deadline] to:

LaBarre v. Ceridian HCM, Inc.
c/o Settlement Administrator
P.O. Box 0000
City, ST 00000-0000

-or-

[e-mail 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.

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

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

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

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

17. 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 *LaBarre v. Ceridian HCM, Inc.*, Case No. 19-CH-06489 (Cir. Ct. Cook Cty. 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 Circuit Court of Cook County, Illinois - Chancery Division
Richard J. Daley Center, 8th Floor
50 West Washington Street
Chicago, Illinois 60602

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) the specific grounds for your objection, (d) all documents or writings that you wish the Court to consider, (e) 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 (f) a statement indicating whether you intend to appear at the Final Approval Hearing. You must submit an objection in writing by the [Objection/Exclusion Deadline] in order to be heard by the Court 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, or delivery service, by no later than [Objection/Exclusion Deadline], copies of your objection and any supporting documents to both Class Counsel and the Defendant's Counsel at the addresses listed below:

Class Counsel	Defense Counsel
Schuyler Ufkes sufkes@edelson.com EDELSON PC 350 North LaSalle Street, 14th Floor Chicago, Illinois 60654	Molly K. McGinley mollymcginley@klgates.com K&L GATES LLP 70 West Madison Street, Suite 3100 Chicago, Illinois 60602

Class Counsel will file with the Court and post on the settlement website its request for attorneys' fees and Plaintiff's request for an incentive award on [date 2 weeks before Objection/Exclusion deadline].

18. 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

19. 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 Raymond W. Mitchell in Room 2601 at the Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602, 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 that were timely submitted in writing, including arguments concerning the fairness of the proposed Settlement and those related to the amount requested by Class Counsel for attorneys' fees and expenses and the incentive award to the Class Representative.

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

20. 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.

21. 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 17 above) and intend to appear at the hearing, you must state your intention to do so in your objection.

GETTING MORE INFORMATION

22. 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 Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602, 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 Class Counsel at 1-866-354-3015 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 CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

RACHEL LABARRE, individually and on behalf of all others similarly situated, *Plaintiff*, v. CERIDIAN HCM, INC., a Delaware corporation, *Defendant*.	Case No.: 19 CH 6489 Judge Moshe Jacobius

FIRST AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Rachel LaBarre ("LaBarre") brings this First Amended Class Action Complaint and Demand for Jury Trial against Defendant Ceridian HCM, Inc. ("Ceridian") to put a stop to its unlawful collection, use, and storage of Plaintiff's and the putative Class members' sensitive biometric data. Plaintiff, for her First Amended Class Action Complaint, alleges as follows upon personal knowledge as to herself and her own acts and experiences and, as to all other matters, upon information and belief.

NATURE OF THE ACTION

1. Defendant Ceridian is a creator of a cloud-based time and attendance system called Dayforce. It offers biometric time clocks that enable businesses to track their employees' time by using a biometric finger scanner. Ceridian provides its biometric timekeeping system to numerous employers across Illinois, including Plaintiff's former employer, Standard Market.

2. When employees first begin their jobs at companies that use Ceridian's Dayforce system, they are required to scan their fingerprint in its biometric time tracking system as a means of authentication, instead of using only key fobs or other identification cards.

3. While there are tremendous benefits to using biometric time clocks in the workplace, there are also serious risks. Unlike key fobs or identification cards—which can be changed or replaced if stolen or compromised—fingerprints are unique, permanent biometric identifiers associated with the employee. This exposes employees to serious and irreversible privacy risks. For example, if a fingerprint database is hacked, breached, or otherwise exposed, employees have no means by which to prevent identity theft and unauthorized tracking.

4. Recognizing the need to protect its citizens from situations like these, Illinois enacted the Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA"), specifically to regulate companies that collect and store Illinois citizens' biometrics, such as fingerprints.

5. Despite this law, Ceridian disregards employees' statutorily protected privacy rights and unlawfully collects, stores, and uses their biometric data in violation of the BIPA. Specifically, Ceridian has violated (and continues to violate) the BIPA because it did not:

- Properly inform Plaintiff and the Class members in writing of the specific purpose and length of time for which their fingerprints were being collected, stored, and used, as required by the BIPA;
- Provide a publicly available retention schedule and guidelines for permanently destroying Plaintiff's and the Class's fingerprints, as required by the BIPA; nor
- Receive a written release from Plaintiff or the members of the Class to collect, capture, or otherwise obtain their fingerprints, as required by the BIPA.

6. Accordingly, this Complaint seeks an order: (i) declaring that Defendant's conduct violates the BIPA; (ii) requiring Defendant to cease the unlawful activities discussed herein; and (iii) awarding liquidated damages to Plaintiff and the proposed Class.

PARTIES

7. Plaintiff Rachel LaBarre is a natural person and citizen of the State of Illinois.

8. Defendant Ceridian HCM, Inc. is a corporation organized and existing under the

laws of the State of Delaware with its principal place of business located at 3311 East Old Shakopee Road, Minneapolis, Minnesota 55425.

JURISDICTION AND VENUE

9. This Court has jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because Defendant conducts business transactions in Illinois, maintains corporate offices in Illinois, and has committed tortious acts in Illinois.

10. Venue is proper in Cook County because Defendant transacts business in and maintains offices in Cook County.

FACTUAL BACKGROUND

I. The Biometric Information Privacy Act.

11. In the early 2000's, major national corporations started using Chicago and other locations in Illinois to test "new [consumer] applications of biometric-facilitated financial transactions, including finger-scan technologies at grocery stores, gas stations, and school cafeterias." 740 ILCS 14/5(b). Given its relative infancy, an overwhelming portion of the public became weary of this then-growing, yet unregulated, technology. *See* 740 ILCS 14/5.

12. In late 2007, a biometrics company called Pay By Touch—which provided major retailers throughout the State of Illinois with fingerprint scanners to facilitate consumer transactions—filed for bankruptcy. That bankruptcy was alarming to the Illinois Legislature because suddenly there was a serious risk that millions of fingerprint records—which, are unique biometric identifiers, can be linked to people's sensitive financial and personal data—could now be sold, distributed, or otherwise shared through the bankruptcy proceedings without adequate protections for Illinois citizens. The bankruptcy also highlighted the fact that most consumers who had used that company's biometric scanners were completely unaware that the scanners

were not actually transmitting data to the retailer who deployed the scanner, but rather to the now-bankrupt company, and that their unique biometric identifiers could now be sold to unknown third parties.

13. Recognizing the "very serious need [for] protections for the citizens of Illinois when it [came to their] biometric information," Illinois enacted the BIPA in 2008. *See* Illinois House Transcript, 2008 Reg. Sess. No. 276; 740 ILCS 14/5.

14. The BIPA is an informed consent statute which achieves its goal by making it unlawful for a company to, among other things, "collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifiers 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).

15. The BIPA specifically applies to employees who work in the State of Illinois. BIPA defines a "written release" specifically "in the context of employment [as] a release executed by an employee as a condition of employment." 740 ILCS 14/10.

16. Biometric identifiers include retina and iris scans, voiceprints, scans of hand and face geometry, and—most importantly here—fingerprint. *See* 740 ILCS 14/10. Biometric information is separately defined to include any information based on an individual's biometric identifier that is used to identify an individual. *See id*.

17. The BIPA also establishes standards for how companies in possession of biometric identifiers and biometric information must handle them. *See* 740 ILCS 14/15(c)–(d). For instance, the BIPA requires companies to develop and comply with a written policy—made available to the public—establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting such identifiers or information has been satisfied or within three years of the individual's last interaction with the company, whichever occurs first. 740 ILCS 14/15(a).

18. Ultimately, the BIPA is simply an informed consent statute. Its narrowly tailored provisions place no absolute bar on the collection, sending, transmitting or communicating of biometric data. For example, the BIPA does not limit what kinds of biometric data may be collected, sent, transmitted, or stored. Nor does the BIPA limit to whom biometric data may be collected, sent, transmitted, or stored. The BIPA simply mandates that entities wishing to engage in that conduct must make proper disclosures and implement certain reasonable safeguards.

II. Ceridian Violates the Biometric Information Privacy Act.

19. By the time the BIPA passed through the Illinois Legislature in mid-2008, many companies who had experimented with using biometric data as an authentication method stopped doing so, at least for a time. That is because Pay By Touch's bankruptcy, described in Section I above, was widely publicized and brought attention to consumers' discomfort with the use of their biometric data.

20. Unfortunately, Ceridian failed to address these concerns. Ceridian continues to collect, store, and use employees' biometric data in violation of the BIPA.

21. Specifically, Ceridian sells time clocks with a biometric fingerprint scanner to employers. When employees first begin work at a company that uses a Ceridian biometric time

clock system, they are required to have their fingerprints scanned in order to enroll them in Ceridian's fingerprint database.

22. When an employee scans their fingerprint on a Ceridian time clock, the time clock automatically sends the employee's biometric fingerprint data to Ceridian's servers to be collected and stored in Ceridian's fingerprint database.

23. Companies use Ceridian's biometric time clocks as an employee time tracking system that requires employees to use their fingerprint as a means of authentication. Unlike a traditional time clock, employees have to use their fingerprint to "punch" in to or out of work.

24. Ceridian failed to inform employees of the complete purposes for which it collects their sensitive biometric data or to whom the data is disclosed, if at all. Indeed, employees are unaware that by providing their biometric identifiers to their employers they are actually transmitting their sensitive biometric data to Ceridian.

25. Up until after this lawsuit was filed, Ceridian similarly failed to establish a written, publicly available policy identifying its retention schedule for biometric data, and guidelines for permanently destroying employees' fingerprints when the initial purpose for collecting or obtaining their fingerprints is no longer relevant, as required by the BIPA. Setting aside that Ceridian has collected, stored, and used employees' biometric data for years without such a policy, the publishing of the recent policy on its website is also problematic. As described above, most employees don't know they are interacting with Ceridian when they have their biometrics scanned by their employer's Ceridian devices, let alone providing Ceridian their biometric data. As such, they'd have no reason to affirmatively seek out Ceridian's website and search for its biometric data policies. Accordingly, an employee who leaves their job does so without any knowledge of Ceridian possessing their biometric identifiers or when their biometric

identifiers will be removed from Ceridian's databases—or if they ever will be.

26. The Pay By Touch bankruptcy that catalyzed the passage of the BIPA highlights why conduct such as Ceridian's—where the employees are aware that they are providing biometric identifiers to their employer but are not aware of the full extent of the reasons they are doing so, nor are informed who else is receiving this data—is so dangerous. That bankruptcy spurred Illinois citizens and legislators to realize a critical point: it is crucial for people to understand when providing biometric data who exactly is collecting it, who it will be transmitted to, for what purposes, and for how long. But Ceridian disregards these obligations, and instead unlawfully collects, stores, and uses employees' biometric identifiers and information without proper consent.

27. Ultimately, Ceridian disregards employees' statutorily protected privacy rights by violating the BIPA.

FACTS SPECIFIC TO PLAINTIFF LABARRE

28. Plaintiff LaBarre worked at a Standard Market grocery store between April 2018 and March 2019.

29. Ceridian provided Standard Market its Ceridian Dayforce biometric time clock system to track its employees' time.

30. Standard Market required LaBarre to scan her fingerprint into Ceridian's Dayforce biometric time clock system so that it could use it as an authentication method to track her time.

31. When LaBarre scanned her fingerprint into Ceridian's Dayforce biometric time clock system, the time clock system automatically sent her biometric identifier and/or biometric information to Ceridian's server to be collected and stored in Ceridian's fingerprint database.

32. Each time LaBarre began and ended her workday she was required to scan her fingerprint into Ceridian's Dayforce time clock system.

33. Neither Ceridian nor Standard Market informed LaBarre of the specific limited purposes or length of time for which it collected, stored, or used her fingerprint.

34. Similarly, Ceridian never informed LaBarre of any biometric data retention policy it developed, nor whether it will ever permanently delete her fingerprint.

35. LaBarre never signed a written release allowing Ceridian to collect or store her fingerprint.

36. LaBarre has continuously and repeatedly been exposed to the risks and harmful conditions created by Ceridian's violations of the BIPA alleged herein.

37. Plaintiff seeks liquidated damages under BIPA as compensation for the injuries Ceridian has caused.

CLASS ALLEGATIONS

38. **Class Definition**: Plaintiff Rachel LaBarre brings this action pursuant to 735 ILCS 5/2-801 on behalf of herself and a Class of similarly situated individuals, defined as follows:

> All residents of the State of Illinois who had their biometric identifiers, including fingerprints, collected, captured, received, otherwise obtained, or disclosed by Ceridian HCM, Inc. while residing in Illinois.

The following people are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and its current or former officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been

finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

39. **Numerosity**: The exact number of Class members is unknown to Plaintiff at this time, but it is clear that individual joinder is impracticable. Defendant has collected, captured, received, or otherwise obtained biometric identifiers or biometric information from at least thousands of employees who fall into the definition of the Class. Ultimately, the Class members will be easily identified through Defendant's records.

40. **Commonality and Predominance**: There are many questions of law and fact common to the claims of Plaintiff and the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

a) whether Defendant collected, captured, or otherwise obtained Plaintiff's and the Class's biometric identifiers or biometric information;

b) whether Defendant properly informed Plaintiff and the Class of its purposes for collecting, using, and storing their biometric identifiers or biometric information;

c) whether Defendant obtained a written release (as defined in 740 ILCS 14/10) to collect, use, and store Plaintiff's and the Class's biometric identifiers or biometric information;

d) whether Defendant has sold, leased, traded, or otherwise profited from Plaintiff's and the Class's biometric identifiers or biometric information;

e) whether Defendant developed a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within three years of their last interaction, whichever occurs first;

f) whether Defendant complied with any such written policy (if one existed); and

g) whether Defendant used Plaintiff's and the Class's fingerprint to identify them.

41. **Adequate Representation**: Plaintiff will fairly and adequately represent and protect the interests of the Class and has retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff nor her counsel have any interest adverse to those of the other members of the Class.

42. **Appropriateness**: This class action is appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Class is impracticable. The damages suffered by the individual members of the Class are likely to have been small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's wrongful conduct. Thus, it would be virtually impossible for the individual members of the Class to obtain effective relief from Defendant's misconduct. Even if members of the Class could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in their Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

CAUSE OF ACTION
Violation of 740 ILCS 14/1, *et seq.*
(On Behalf of Plaintiff and the Class)

43. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

44. The BIPA requires companies to obtain informed written consent from employees before acquiring their biometric data. Specifically, the 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 identifiers or biometric information, unless [the entity] 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) (emphasis added).

45. The BIPA also mandates that companies in possession of biometric data establish and maintain a satisfactory biometric data retention (and—importantly—deletion) policy. Specifically, those companies must: (i) make publicly available a written policy establishing a retention schedule and guidelines for permanent deletion of biometric data (*i.e.*, when the employment relationship ends); and (ii) actually adhere to that retention schedule and actually delete the biometric information. *See* 740 ILCS 14/15(a).

46. Unfortunately, Ceridian failed to comply with these BIPA mandates.

47. Ceridian is corporation and thus qualifies as a "private entity" under the BIPA. *See* 740 ILCS 14/10.

48. Plaintiff and the Class are individuals who had their "biometric identifiers" collected by Ceridian (in the form of their fingerprint), as explained in detail in Section II. *See*

740 ILCS 14/10.

49. Plaintiff's and the Class's biometric identifiers or information based on those biometric identifiers were used to identify them, constituting "biometric information" as defined by the BIPA. *See* 740 ILCS 14/10.

50. Ceridian violated 740 ILCS 14/15(b)(3) by failing to obtain written releases from Plaintiff and the Class before it collected, used, and stored their biometric identifiers and biometric information.

51. Ceridian violated 740 ILCS 14/15(b)(1) by failing to inform Plaintiff and the Class in writing that their biometric identifiers and biometric information were being collected and stored.

52. Ceridian violated 740 ILCS 14/15(b)(2) by failing to inform Plaintiff and the Class in writing of the specific purpose and length of term for which their biometric identifiers or biometric information was being collected, stored, and used.

53. Ceridian violated 740 ILCS 14/15(a) by failing to publicly provide a retention schedule or guideline for permanently destroying employees' biometric identifiers and biometric information.

54. By collecting, storing, and using Plaintiff's and the Class's biometric identifiers and biometric information as described herein, Ceridian violated Plaintiff's and the Class's rights to privacy in their biometric identifiers or biometric information as set forth in the BIPA, 740 ILCS 14/1, *et seq*.

55. On behalf of herself and the Class, Plaintiff seeks: (1) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Defendant to comply with the BIPA's requirements for the collection, storage, and use of biometric identifiers

and biometric information as described herein; (2) liquidated damages of $5,000 for each willful and/or reckless violation of the BIPA pursuant to 740 ILCS 14/20(2) or, in the alternative, liquidated damages of $1,000 for each negligent violation of the BIPA pursuant to 740 ILCS 14/20(1); and (3) reasonable attorneys' fees, costs, and expenses pursuant to 740 ILCS 14/20(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Rachel LaBarre, on behalf of herself and the Class, respectfully requests that the Court enter an Order:

A. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff LaBarre as a representative of the Class, and appointing her counsel as Class Counsel;

B. Declaring that Defendant's actions, as set out above, violate the BIPA;

C. Awarding statutory damages of $5,000 for *each* willful and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2) or, in the alternative, statutory damages of $1,000 for *each* negligent violation of BIPA pursuant to 740 ILCS 14/20(1);

D. Awarding injunctive and other equitable relief as is necessary to protect the interests of the Class, including an Order requiring Defendant to collect, store, and use biometric identifiers or biometric information in compliance with the BIPA;

E. Awarding Plaintiff and the Class their reasonable litigation expenses and attorneys' fees;

F. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable; and

G. Awarding such other and further relief as equity and justice may require.

JURY TRIAL

Plaintiff demands a trial by jury for all issues so triable.

Respectfully submitted,

RACHEL LABARRE, individually and on behalf of all others similarly situated,

Dated: September 22, 2020

By: /s/ J. Eli Wade-Scott
One of Plaintiff's Attorneys

Benjamin H. Richman
brichman@edelson.com
J. Eli Wade-Scott
ewadescott@edelson.com
Schuyler Ufkes
sufkes@edelson.com
EDELSON PC
350 North LaSalle Street, 14th Floor
Chicago, Illinois 60654
Tel: 312.589.6370
Fax: 312.589.6378
Firm ID: 62075

David Fish
dfish@fishlawfirm.com
John Kunze
kunze@fishlawfirm.com
THE FISH LAW FIRM, P.C.
200 East Fifth Avenue, Suite 123
Naperville, Illinois 60563
Tel: 630.355.7590
Fax: 630.778.0400
Firm ID: 44086

CERTIFICATE OF SERVICE

I, J. Eli Wade-Scott, an attorney, hereby certify that on September 22, 2020, I caused the above and foregoing ***First Amended Class Action Complaint and Demand for Jury Trial*** to be served by transmitting such document via the Court's electronic filing system to all counsel of record.

/s/ J. Eli Wade-Scott

EXHIBIT 3

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

RACHEL LABARRE, individually, and on behalf of all others similarly situated, **Plaintiff,** **v.** **CERIDIAN HCM, INC.,** **Defendant.**	**Case No. 19 CH 6489** **Judge Moshe Jacobius**

MEMORANDUM OPINION AND ORDER

This matter comes before the Court for ruling on Defendant's Section 2-619.1 Motion to Dismiss or to Strike Class Action Allegations.

I. BACKGROUND

Defendant, Ceridian HCM, Inc. ("Ceridian"), is a creator of a cloud-based time and attendance system called Dayforce. (Class Action Complaint and Demand for Jury Trial ("Complaint"), ¶¶ 1, 21.) It offers biometric time clocks enabling businesses to track their employees' time by using a biometric finger scanner. (*Id*.) Unlike traditional time clocks, these biometric time clocks require employees use their fingerprint to "punch" in or out of work. (*Id*. ¶ 22.) When employees first begin to work at a company using Ceridian's Dayforce system, they are required to have their fingerprints scanned in order to enroll them in the fingerprint database. (*Id*. ¶ 21.)

Plaintiff worked at a Standard Market grocery store between April 2018 and March 2019. (*Id*. ¶ 27.) Standard Market required Plaintiff to scan her fingerprint into Ceridian's Dayforce biometric time clock system so it could be used as an authentication method to track her time. (*Id*. ¶ 28.) Ceridian purportedly collected and stored Plaintiff's biometric identifier into its own

database. (*Id*.) Each time Plaintiff began and ended her workday, she was required to scan her fingerprint into the Dayforce time clock system. (*Id*. ¶ 29.) Neither Ceridian nor Standard Market informed Plaintiff of the specific limited purpose or length of time for which it or they collected, stored, or used her fingerprint. (*Id*. ¶ 30.) Similarly, Ceridian never informed Plaintiff of any biometric data retention policy it developed, nor whether it will ever permanently delete her fingerprint. (*Id*. ¶ 31.) Plaintiff never signed a written release allowing Ceridian to collect or store her fingerprint. (*Id*. ¶ 32.)

Plaintiff filed her Class Action Complaint on May 28, 2019. In the Complaint, Plaintiff claims Ceridian violated the following sections of BIPA:

- Section 15(a), by failing to publicly provide a retention schedule or guideline for permanently destroying employees' biometric identifiers and biometric information;
- Section 15(b)(1), by failing to inform Plaintiff and the Class in writing that their biometric identifiers and biometric information were being collected and stored;
- Section 15(b)(2), by failing to inform Plaintiff and the Class in writing of the specific purpose and length of term for which their biometric identifiers or biometric information was being collected, stored, and used; and
- Section 15(b)(3), by failing to obtain written releases from Plaintiff and the Class before it collected, used, and stored their biometric identifiers and biometric information.

(*Id*. ¶¶ 46–50.)

With respect to the class allegations, Plaintiff defines the Class as:

> All residents of the State of Illinois who had their biometric identifiers, including fingerprints, collected, captured, received, otherwise obtained, or disclosed by Ceridian HCM, Inc. while residing in Illinois.

(*Id*. ¶ 35.) Plaintiff alleges while the exact number of Class Members is unknown at this time, it is clear individual joinder is impracticable. (*Id*. ¶ 36.)

On behalf of herself and the Class, Plaintiff seeks a Court Order: (1) certifying this case as a class action on behalf of the Class identified above, appointing Plaintiff LaBarre as a

representative of the Class, and appointing her counsel as Class Counsel; (2) declaring Defendant's actions as set forth in the Complaint violate BIPA; (3) awarding statutory damages of $5,000 for each willful and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2) or, in the alternative, statutory damages of $1,000 for each negligent violation of BIPA pursuant to 740 ILCS 14/20(1); (4) awarding injunctive and other equitable relief as is necessary to protect the interests of the Class, including an Order requiring Defendant to collect, store, and use biometric identifiers or biometric information in compliance with BIPA; (5) awarding Plaintiff and the Class their reasonable litigation expenses and attorney fees; (6) awarding Plaintiff and the Class pre- and post-judgment interest to the extent allowable; and (7) awarding such other and further relief as equity and justice may require.

II. LEGAL STANDARD

When bringing a combined motion under Section 2-619.1 of the Illinois Code of Civil Procedure (the "Code"), parties are still required to adhere to the procedural distinctions between Section 2-615 and Section 2-619. *Reynolds v. Jimmy John's Enterprises*, 2013 IL App (4th) 120139, ¶ 20. Section 2-615 allows a defendant to challenge the legal sufficiency of a complaint. *Id*. ¶ 25. A motion to dismiss under Section 2-615 does not raise affirmative defenses; rather, it only alleges defects on the face of the complaint. *Turner v. Memorial Medical Center*, 233 Ill. 2d 494, 499 (2009). The question presented by such a motion is whether the well-pleaded facts, and all reasonable inferences that may be drawn therefrom, when taken as true and in a light most favorable to the plaintiff, sufficiently state a cause of action upon which relief can be granted. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). Thus, a cause of action should not be dismissed on the pleadings unless it is clearly apparent no set of facts can be proven that would entitle the plaintiff to recover. *Id*. "Where unsupported by

allegations of fact, legal and factual conclusions may be disregarded." *Kagan v. Waldheim Cemetery Co.*, 2016 IL App (1st) 131274, ¶ 29.

A Section 2-619 motion affords a "means of obtaining . . . a summary disposition of issues of law or of easily proved issues of fact." *Smith v. Waukegan Park District*, 231 Ill. 2d 111, 120 (2008). Under this section, a motion to dismiss admits the legal sufficiency of the complaint, but it raises an "affirmative matter" which acts to defeat the action. *Reynolds*, 2013 IL App (4th) 120139, ¶ 30; *Smith*, 231 Ill. 2d at 120–21. In ruling on a Section 2-619 motion, the court must interpret "all pleadings and supporting documents in the light most favorable to the nonmoving party." *Reynolds*, 2013 IL App (4th) 1230139, ¶ 31; *Borowiec v. Gateway 2000, Inc.*, 209 Ill. 2d 376, 383 (2004). If the grounds for dismissal or the elements of the defense do not appear on the face of the complaint, the party seeking dismissal must file an affidavit in support of the motion. *Reynolds*, 2013 IL App (4th) 1230139, ¶ 37; see also *Jordan v. Knafel*, 355 Ill. App. 3d 534, 544 (1st Dist. 2005). On a Section 2-619.1 motion, a court should entertain the Section 2-615 motion first, and then, only after a legally sufficient cause of action has been found, entertain the Section 2-619 motion with affidavits filed in support. *Johannesen v. Eddins*, 2011 IL App (2d) 110108, ¶ 29.

III. DISCUSSION

In 2008, Illinois enacted the Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.* ("BIPA" or the "Act"), to help regulate "the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and information." *Id*. § 5(g). "Biometric identifier" includes "a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry." *Id*. § 10. "Biometric information" means "any information, regardless of how it is

captured, converted, stored, or shared, based on an individual's biometric identifier used to identify an individual." *Id*.

Section 15 of BIPA imposes on private entities, like Defendant, obligations regarding the collection, retention, disclosure, and destruction of biometric identifiers and biometric information, including (i) obtaining consent from individuals if the company intends to collect, store, or disclose their personal biometric identifiers; (ii) inform the individuals in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; (iii) destroying biometric identifiers in a timely manner; and (iv) securely storing biometric identifiers. *Id*. § 15. The Act provides a private right of action permitting a prevailing party to recover damages of $1,000 (or actual damages if greater) for negligent violation of the Act and $5,000 (or actual damages if greater) for intentional or reckless violations, attorney fees, costs, and expenses, and injunctive relief, if appropriate. *Id*. § 20.

A. Motion to Dismiss Pursuant to Section 5/2-615

Defendant first argues Plaintiff's Complaint must be dismissed because it fails to allege sufficient facts to state a valid cause of action under BIPA. Plaintiff alleges an action based on allegations Defendant violated Sections (15)(a) and (b); however, Defendant argues Plaintiff fails to properly allege Defendant did not develop a policy as required by Section 15(a), or any such policy was not made available to the public. Defendant also argues Plaintiff fails to allege the notice and consent obligations under Section 15(b) are applicable to Defendant.

1. Violation of 740 ILCS 14/15(a)

Plaintiff alleges a breach of Section 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 and

> biometric information 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 identifiers or biometric information must comply with its established retention schedule and destruction guidelines.

740 ILCS 14/15(a).

In the Complaint, Plaintiff alleges Ceridian violated Section 15(a) "by failing to publicly provide a retention schedule or guideline for permanently destroying employees' biometric identifiers and biometric information." (Complaint, ¶ 50.) Ceridian argues Plaintiff fails to properly allege a violation of Section 15(a) because she only alleges Ceridian failed to provide her with a copy of its retention policy and never informed her of such a policy, and BIPA has no such requirement. Rather, BIPA requires Ceridian to develop a policy and make it available to the public. 740 ILCS 14/15(a); see also *Bryant v. Compass Group USA, Inc.*, 958 F.3d 617, 626 (7th Cir. 2020) ("[T]he duty to disclose under section 15(a) is owed to the public generally, not to particular persons whose biometric information the entity collects."); *Figueroa v. Kronos Inc.*, No. 19 C 1306, 2020 U.S. Dist. LEXIS 131093, at *9 (N.D. Ill. July 24, 2020) ("Section 15(a) does not obligate Kronos to inform specific individuals like Plaintiffs of its policy."). While Plaintiff argues in her Response what her Complaint really alleges "is that, as a factual matter, Ceridian did not make a retention policy available to the public *at all*," that is simply not the case. Plaintiff's Complaint does not contain any allegation Ceridian does not have or did not have a policy available to the public. Thus, Plaintiff fails to state a cause of action for a violation of Section 15(a). Ceridian's Motion to Dismiss, as to the portion of Count I asserting a violation of Section 15(a) of BIPA, is granted. Plaintiff's claim for a violation of Section 15(a) is dismissed without prejudice.

2. Violation of 740 ILCS 14/15(b)

Ceridian next argues Plaintiff fails to state a claim for a violation of Section 15(b) because the plain language of BIPA indicates Section 15(b) does not apply to entities such as Ceridian, unless they are *directly* obtaining the information from an individual. (MTD, p. 6.) Section 15(b) of BIPA provides:

> No private entity may collect, capture, purchase, receive through trade, or otherwise obtain a person's or 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). Significantly, unlike Sections 15(a), (c), (d), and (e) of BIPA—all of which apply to entities "in possession of" biometric data—Section 15(b) applies to private entities if they "collect, capture, purchase, receive through trade, or otherwise obtain" biometric data. 740 ILCS 14/15(a)-(e).

Here, Plaintiff alleges Ceridian sells the time clocks with biometric fingerprint scanners to employers and, when employees begin working at those companies, they must have their fingerprints scanned "in order to enroll them in its fingerprint database."[1] (Complaint, ¶ 21.) Plaintiff further alleges Standard Market required Plaintiff to scan her fingerprint into Ceridian's Dayforce biometric time clock system, and Ceridian "subsequently collected and stored [Plaintiff's] biometric identifier into its own database." (*Id*. ¶ 28.) Ceridian purportedly did not

[1] It is unclear to whom the database referred to here belongs – is it Standard Market's database? Or is it Ceridian's database?

inform Plaintiff of the specific limited purposes or length of time for which it collected, stored, or used her fingerprint, and Plaintiff never signed a written release allowing Ceridian to collect or store her fingerprint. (*Id*. ¶¶ 30, 32.)

Ceridian contends it does not "affirmatively" seek out and gather biometric data from employees as Plaintiff contends; rather "it is the employer who chooses which timekeeping device to use, obtains the information from its own employees, and then uses the services of Ceridian to process and store that data for purposes of maintaining employee time records, payroll and related taxes." (MTD Reply, p. 5.) In other words, Ceridian argues the legislature's use of different language in Section 15(b)—collection instead of possession—indicates Section 15(b) is intended to apply only to private entities actively acquiring biometric data from individuals, rather than entities merely passively storing data collected, captured, or obtained by another entity. Plaintiff, for her part, appears to concede the statute requires something more than mere possession of biometric data—Plaintiff points to her allegation that "Ceridian subsequently collected and stored LaBarre's biometric identifier into its own database," and argues, "[t]hat's active behavior, not passive." (MTD Response, p. 6.)

In *Heard v. Becton, Dickinson & Co.*, -- F. Supp. 3d --, 2020 U.S. Dist. LEXIS 31249, at *13 (N.D. Ill. Feb. 24, 2020), the federal district court concluded that for Section 15(b)'s requirements to apply, "an entity must, at a minimum, take an active step to 'collect, capture, purchase, receive through trade, or otherwise obtain'" biometric data." *Heard* concluded the plaintiff's allegation an outside vendor "systematically and automatically collected" his biometric data in connection with his employment did not qualify as the "active" collection required for Section 15(b) liability. The plaintiff repeatedly alleged the defendant "collected" his biometric data "without alleging how, when, or any other factual detail." *Id*. at *12. Notably,

however, the plaintiff in *Heard* did not even allege the defendant collected biometric information through its customer's use of the time clock system. *Id*. at *15.

The allegations in *Heard* are similar to those in *Namuwonge*, where the federal district court dismissed the plaintiff's Section 15(b) claims. *Namuwonge v. Kronos, Inc.*, 418 F. Supp. 3d 279, 286 (N.D. Ill. 2019). There, the plaintiff alleged her employer (Brookdale) and the supplier of Brookdale's fingerprint scanning equipment (Kronos) each "systematically and automatically collected, used, stored, and disseminated" her biometric information. *Id*. But "the more precise allegation" in the complaint "ma[de] clear that Brookdale collected the fingerprints using a system that Kronos supplied to Brookdale." *Id*. The court held that "[t]ogether, these allegations do not plausibly allege that Kronos collected, captured, or otherwise obtained [the plaintiff's] biometric information." *Id*. Similarly, in *Bernal*, the court dismissed the plaintiff's Section 15(b) claim against a provider of biometric scanning technology because the plaintiff "failed to allege facts sufficient . . . for the Court to properly assess Defendant's actual involvement, relative to the biometric scanning technology, beyond the fact that Defendant supplied [the plaintiff's employer] with the technology. *Bernal v. ADP, LLC*, No. 2017-CH-12364, 2019 Ill. Cir. LEXIS 1025, at *4 (Cir. Ct. of Cook Cty. Aug. 23, 2019).

But even if Ceridian did not "actively collect" Plaintiff's biometric data, Section 15(b) governs not only entities "collecting" biometric data, but also those that "capture, purchase, receive through trade, *or* otherwise obtain" such data. 740 ILCS 14/15(b) (emphasis added). "Obtain" means "[t]o bring into one's own possession; to procure, esp[ecially] through effort." Black's Law Dictionary 1247 (10th ed. 2014); see also Merriam-Webster Dictionary, http://www.merriam-webster.com/dictionary/obtain (last visited Aug. 3, 2020) ("Obtain" means "to gain or attain usually by planned action or effort."). While the dictionary definitions suggest

there is *usually* effort involved in "obtaining" something, they do not state or imply there *must* be effort involved. See *People v. Teper*, 2016 IL App (2d) 160063, ¶ 33 ("The definition further states that the gaining or getting is 'usually by effort,' but it does not state or imply that it must be by effort."). In any event, though, the Court agrees with Plaintiff the salient point in this case is that Ceridian purportedly got Plaintiff's biometric data. See *Figueroa v. Kronos Inc.*, No. 19 C 1306, 2020 U.S. Dist. LEXIS 64131, at *16–17 (N.D. Ill. Apr. 13, 2020) ("The complaint alleges that Kronos 'stored,' 'used,' and 'disclosed' Plaintiffs' biometric data . . . and to have done those things Kronos necessarily first had to 'obtain' the data.").

What Plaintiff fails to allege, however, is *how* Ceridian collected or otherwise obtained her biometric data. Plaintiff's conclusory allegation Ceridian "collected and stored" her biometric data is insufficient to survive a motion to dismiss. In essence, Plaintiff's "allegations merely parrot the BIPA's statutory language; they do not provide any specific facts to ground [Plaintiff's] legal claims." *Heard*, 2020 U.S. Dist. LEXIS 31249, at *13 (internal quotation marks omitted). While Plaintiff's current allegations may be sufficient under the federal notice-pleading standard, (see *Neals v. Par Technology Corp*, 419 F. Supp. 3d 1088, 1091 (N.D. Ill. 2019) ("Plaintiff presents 'a story that holds together' by alleging that PAR collected such information through its customer's use of PAR's system; nothing more is needed under federal notice-pleading standards")), more detailed allegations are required to satisfy Illinois' fact-pleading standard in this case. Plaintiff should set out the methodology by which Ceridian receives and maintains Plaintiff's protected biometric information and set out any relevant transactions and/or interactions between Ceridian and Standard Market that facilitate Ceridian receiving the protected information.

Given this conclusion, the Court need not address the parties' arguments regarding whether Section 15(b) requires a private entity other than an employer to secure an executed written release. In the interest of judicial economy, however, the Court will undertake this task. Ceridian appears to argue that because BIPA's definition of "written release" in Section 10 expressly delegates notice and consent obligations to the *employer* when biometric data is collected in the employment context, it cannot be held liable under Section 15(b). BIPA defines "written release" as "informed written consent or, in the context of employment, a release executed by an employee as a condition of employment." 740 ILCS 14/10. However, "the fact that the statute defines 'written release' in a more particularized way for employment situations has no bearing on which entities face liability under the statute." *Neals v. Par Technology Corp.*, 419 F. Supp. 3d 1088, 1092 (N.D. Ill. 2019). Simply put, BIPA obligates *any* private entity collecting a person's biometric information to comply with its requirements.

Ceridian asserts any construction of the statute requiring an entity other than the individual's employer to obtain "a release executed by the employee as a condition of employment" would be nonsensical and yield absurd results. The Court disagrees. BIPA "obligates any private entity that collects a person's biometric information to comply with its requirements; the salient 'relationship' is created by the act of collection. There is nothing absurd about that." *Neals v. Par Technology Corp.*, 419 F. Supp. 3d 1088, 1092 (N.D. Ill. 2019). Nonetheless, for the reasons stated above, Ceridian's Motion to Dismiss, as to the portion of Count I asserting a violation of Section 15(b) of BIPA, is granted. Plaintiffs claim for a violation of Section 15(b) is dismissed without prejudice.

B. Motion to Dismiss Pursuant to Section 2-619

Defendant also moves to dismiss Plaintiff's Complaint pursuant to section 2-619, arguing her claim is time-barred. BIPA does not expressly provide for a statute of limitations, and Ceridian argues the one-year statute of limitations for invasion of privacy claims should apply to BIPA because "the purpose of BIPA is to prevent inappropriate disclosure of individuals' biometric information." (MTD, p. 10.) Section 13-201 of the Code provides, "[a]ctions for slander, libel or for publication of matter violating the right of privacy, shall be commenced within one year next after the cause of action accrued." 735 ILCS 5/13-201. Plaintiff argues the proper statute of limitations is five years, as provided for in Section 13-205.

Statutes of limitation "discourage the presentation of stale claims and . . . encourage diligence in the bringing of actions." *Sundance Homes, Inc. v. County of Du Page*, 195 Ill. 2d 257, 265–66 (2001). They "represent society's recognition that predictability and finality are desirable, indeed indispensable, elements of the orderly administration of justice." *Id*. at 266. The Illinois Supreme Court has held "'[t]he determination of the applicable statute of limitations is governed by the type of injury at issue, irrespective of the pleader's designation of the nature of the action.'" *Travelers Casualty & Surety Co. v. Bowman*, 229 Ill. 2d 461, 466 (2008) (quoting *Armstrong v. Guigler*, 174 Ill. 2d 281, 286 (1996)). It is the nature of the plaintiff's injury rather than the nature of the facts from which the claim arises which should determine what limitations period should apply. *Travelers*, 229 Ill. 2d at 466. "To determine the true character of a plaintiff's cause of action . . . '[t]he focus of the inquiry is on the nature of the liability and not on the nature of the relief sought.'" *Id*. at 467 (quoting *Armstrong*, 174 Ill. 2d at 291).

Section 20 of BIPA grants any person aggrieved by a violation of BIPA a right of action. 740 ILCS 14/20. The true nature of any potential liability, then, stems from alleged violations of the BIPA statute. The instant case is clearly an action for a violation of the BIPA statute and not an action for slander, libel, or for the publication of matter violating the right to privacy. *Travelers*, 229 Ill. 2d at 466; 735 ILCS 5/13-201. Even assuming, *arguendo*, Section 20 of BIPA created an action for violating a right of privacy in one's biometric data, the plain and unambiguous language of Section 13-201 makes clear it applies to actions for *publication* of any matter violating the right of privacy. 735 ILCS 5/13-201. Publication is not a necessary element for a person to be aggrieved by a violation of BIPA. 740 ILCS 14/20. True, Sections 15(d) and (e) require some form of disclosure or "publication" to establish a violation. But no such disclosure or "publication" is required to state a claim under Sections 15(a) and (b). BIPA protecting privacy rights does not bring it within the confines of the one-year statute of limitations period that applies only when information is "published," and Ceridian has not cited any legal authority to justify the application of Section 13-201 to alleged violations of these other sections of BIPA. Moreover, different statutes of limitations for different sections of BIPA would lead to absurd results. Section 13-201 does not apply to Plaintiff's BIPA claim.

Although not argued for by Ceridian, the Court also finds that the two-year statute of limitations set forth in Section 13-202 does not apply to BIPA claims. Section 13-202 provides "Actions for . . . a statutory penalty . . . shall be commenced within 2 years next after the cause of action accrued . . . ." 735 ILCS 5/13-202. A statutory penalty is penal in nature if it "(1) impose[s] automatic liability for a violation of its terms; (2) set[s] forth a predetermined amount of damages; and (3) impose[s] damages without regard to the actual damages suffered by the plaintiff." *Landis v. Marc Realty, LLC*, 235 Ill. 2d 1, 13 (2009) (citation omitted).

Here, it is clear BIPA is a remedial statute, not a penal statute. Section 20 of BIPA does not impose damages without regard to the actual damages suffered by a plaintiff because it allows a plaintiff to recover the greater of his actual damages or the applicable liquidated damages amount. 740 ILCS 14/20. The fact that a plaintiff may be awarded or seeks only liquidated damages does not mean Section 20 is penal in nature.

BIPA is clearly "within the class of remedial statutes which are designed to grant remedies for the protection of rights, introduce regulation conducive to the public good or cure public evils." *Standard Mutual Insurance Co. v. Law*, 2013 IL 114617, ¶ 31. Indeed, the Illinois legislature enacted BIPA because it determined the "public welfare, security, and safety [would] be served by regulating the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and information." 740 ILCS 14/5(g). BIPA's 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." *Patel v. Facebook, Inc.*, 290 F. Supp. 3d 948, 954 (N.D. Cal. 2018). When a private entity disregards BIPA's 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." *Id*. Thus, by allowing private entities to face liability for violating BIPA, without requiring an individual to show more than a violation of their statutory rights, "those entities have the strongest possible incentive to conform to the law and prevent problems before they occur and cannot be undone." *Rosenbach v. Six Flags Entm't Corp.*, 2019 IL 123186, ¶ 37. Whether Section 20's liquidated damages provisions are viewed "as a liquidated sum for actual harm, or as an incentive for aggrieved parties to enforce the statute, or both, the [liquidated damages] amount clearly serves more than purely punitive or

deterrent goals." *Standard Mutual*, 2013 IL 114617, ¶ 32. Section 13-202 does not apply to Plaintiff's BIPA claims.

Section 13-205 of the Code states, "[A]ll civil actions not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued." 735 ILCS 5/13-205. Because Section 20 does not contain a limiting provision and neither Section 13-201 nor Section 13-202 applies, the Court finds that Section 13-205 provides the applicable statute of limitations for Section 20: five years. See, *e.g.*, *Motague v. George J. London Mem'l Hosp.*, 78 Ill. App. 3d 298, 304 (1st Dist. 1979) (recognizing the general rule a statutory right of action is a "civil action not otherwise provided for"); *People ex rel. Powles v. Alexander Cty.*, 310 Ill. App. 3d 602, 604 (4th Dist. 1941) ("It has been held that where liability results from a statute, an action to enforce such liability is a 'civil action not otherwise provided for'"). Ceridian's Motion to Dismiss Pursuant to Section 2-619 is denied.

C. Motions to Strike Class Allegations Pursuant to Section 2-615

Finally, Ceridian argues Plaintiff failed to make the requisite factual showing she meets the statutory requirements for class certification, and thus the Court should strike Plaintiff's class allegations pursuant to Section 2-615. Ceridian contends Plaintiff has not, and cannot, allege facts relating to employees of other customers of Ceridian—employers she never worked for and knows nothing about. Ceridian concludes Plaintiff "has not alleged facts supporting the statutory prerequisites for proceeding via the class that she purports to represent. Individual considerations relating to employers other than The Standard Market, as well as their employees, prevent Plaintiff from alleging facts supporting the statutory prerequisites of 735 ILCS 5/2-801, and necessitate that Plaintiff's class action allegations be stricken at this stage." (MTD Reply, p. 8.)

Plaintiff responds Ceridian's arguments to strike the class allegations are vague and improper. Plaintiff states there are commonalities of fact and law here, where all the allegations are based on Ceridian's collection and retention of biometric data on Ceridian's servers. Plaintiff also points out that Ceridian's fear of different employment mechanisms, i.e., unionized versus un-unionized, arbitration agreements versus non-arbitration agreements, etc., are speculative and not allegations included in the Complaint. Therefore, Plaintiff states, the Court cannot consider those possibilities since they are speculative and go outside the allegations contained in the Complaint.

When a cause of action is also a class action, to survive a motion to dismiss the plaintiff must allege facts sufficient to bring the claim within the statutory prerequisites for a class action. *Weiss v. Waterhouse Securities, Inc.*, 208 Ill. 2d 439, 451 (2004). Section 2-801, "Prerequisites for the maintenance of a class action," provides:

> An action may be maintained as a class action in any court of this State and a party may sue or be sued as a representative party of the class only if the court finds:
>
> (1) The class is so numerous that joinder of all members is impracticable.
> (2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members.
> (3) The representative parties will fairly and adequately protect the interest of the class.
> (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy.

735 ILCS 5/2-801. At this stage of the litigation, however, the Court "should not inquire whether the putative class action [Plaintiff's Complaint] establishes the statutory class action prerequisites." *Weiss*, 208 Ill. 2d at 453. Plaintiff's Complaint "simply must contain allegations which implicate, or bring the complaint, within, these prerequisites. It is enough that the factual

allegations are sufficiently broad in scope to plead the possible existence of a class action claim under section 2-810." *Id.* at 453–54.

In the Court's view, the possibility Plaintiff can maintain these claims as a class action cannot be ruled out. The allegations of the Complaint indicate common issues of fact or law may predominate, and a class action is an appropriate method for the fair and efficient adjudication of the controversy. To be clear, the Court is not reaching a determination today as to whether Plaintiff's proposed class will be certified; rather, the Court is only concluding Plaintiff's allegations are "sufficiently broad in scope to plead the possible existence of a class action claim under section 2-810." *Weiss*, 208 Ill. 2d at 453–54. Ceridian's Motion to Strike Plaintiff's Class Action Allegations Pursuant to Section 2-615 is denied.

IV. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED:

1.) Defendant's Section 2-615 Motion to Dismiss is GRANTED. Plaintiff's Complaint is dismissed without prejudice;

2.) Defendant's Section 2-619 Motion to Dismiss is DENIED;

3.) Defendant's Motion to Strike Class Allegations is DENIED;

4.) Plaintiff shall file her First Amended Complaint within twenty-eight (28) days, if she chooses to do so;

5.) This matter is set for a status hearing on October 14, 2020 at 10:00 a.m. The parties shall submit a Joint Status Report to ccc.chancerycalendar12@cookcountyil.gov no later than October 7, 2020.

ENTERED:

ENTERED
Judge Moshe Jacobius-1556
AUG 25 2020
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Judge Moshe Jacobius No. 1556

EXHIBIT 4

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

RACHEL LABARRE, individually, and on behalf of all others similarly situated, **Plaintiff,** **v.** **CERIDIAN HCM, INC.,** **Defendant.**	**Case No. 19 CH 6489** **Judge Moshe Jacobius**

MEMORANDUM OPINION AND ORDER

This matter comes before the Court for ruling on Defendant's Section 2-619.1 Motion to Dismiss Plaintiff's First Amended Class Action Complaint.

I. BACKGROUND

Defendant, Ceridian HCM, Inc. ("Ceridian"), is a creator of a cloud-based time and attendance system called Dayforce. (First Amended Class Action Complaint and Demand for Jury Trial ("Am. Complaint"), ¶¶ 1, 21.) It offers biometric time clocks enabling businesses to track their employees' time by using a biometric finger scanner. (*Id*.) When employees first begin to work at a company using a Ceridian biometric time clock, they are required to have their fingerprints scanned in order to enroll them in the fingerprint database. (*Id*. ¶ 21.) When an employee scans their fingerprint, the time clock automatically sends the employee's biometric fingerprint data to Ceridian's servers to be collected and stored in Ceridian's fingerprint database. (*Id*. ¶ 22.)

Plaintiff worked at a Standard Market grocery store between April 2018 and March 2019. (*Id*. ¶ 28.) Ceridian provided Standard Market its Ceridian Dayforce biometric time clock system to track its employees' time. (*Id*. ¶ 29.) Standard Market required Plaintiff to scan her fingerprint

into Ceridian's Dayforce biometric time clock system so it could be used as an authentication method to track her time. (*Id*. ¶ 30.) When Plaintiff scanned her fingerprint, the time clock system purportedly automatically sent her biometric identifier and/or biometric information to Ceridian's server to be collected and stored in Ceridian's fingerprint database. (*Id*. ¶ 31.)

Each time Plaintiff began and ended her workday, she was required to scan her fingerprint into the Dayforce time clock system. (*Id*. ¶ 32.) Neither Ceridian nor Standard Market informed Plaintiff of the specific limited purpose or length of time for which it or they collected, stored, or used her fingerprint. (*Id*. ¶ 33.) Similarly, Ceridian never informed Plaintiff of any biometric data retention policy it developed, nor whether it will ever permanently delete her fingerprint. (*Id*. ¶ 34.) Plaintiff never signed a written release allowing Ceridian to collect or store her fingerprint. (*Id*. ¶ 35.) Additionally, Plaintiff alleges that up until after this lawsuit was filed, Ceridian failed to establish a written, publicly available policy identifying its retention schedule for biometric data, and guidelines for permanently destroying employees' finger prints when the initial purpose for collecting or obtaining their fingerprints is no longer relevant. (*Id*. ¶ 25.)

Plaintiff filed her Amended Class Action Complaint on September 22, 2020. In the Amended Complaint, Plaintiff claims Ceridian violated the following sections of BIPA:

- Section 15(a), by failing to publicly provide a retention schedule or guideline for permanently destroying employees' biometric identifiers and biometric information;
- Section 15(b)(1), by failing to inform Plaintiff and the Class in writing that their biometric identifiers and biometric information were being collected and stored;
- Section 15(b)(2), by failing to inform Plaintiff and the Class in writing of the specific purpose and length of term for which their biometric identifiers or biometric information was being collected, stored, and used; and
- Section 15(b)(3), by failing to obtain written releases from Plaintiff and the Class before it collected, used, and stored their biometric identifiers and biometric information.

(*Id*. ¶¶ 50–53.)

With respect to the class allegations, Plaintiff defines the Class as:

> All residents of the State of Illinois who had their biometric identifiers, including fingerprints, collected, captured, received, otherwise obtained, or disclosed by Ceridian HCM, Inc. while residing in Illinois.

(*Id*. ¶ 38.) Plaintiff alleges while the exact number of Class Members is unknown at this time, it is clear individual joinder is impracticable. (*Id*. ¶ 39.)

On behalf of herself and the Class, Plaintiff seeks a Court Order: (1) certifying this case as a class action on behalf of the Class identified above, appointing Plaintiff LaBarre as a representative of the Class, and appointing her counsel as Class Counsel; (2) declaring Defendant's actions as set forth in the Amended Complaint violate BIPA; (3) awarding statutory damages of $5,000 for *each* willful and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2) or, in the alternative, statutory damages of $1,000 for each negligent violation of BIPA pursuant to 740 ILCS 14/20(1); (4) awarding injunctive and other equitable relief as is necessary to protect the interests of the Class, including an Order requiring Defendant to collect, store, and use biometric identifiers or biometric information in compliance with BIPA; (5) awarding Plaintiff and the Class their reasonable litigation expenses and attorney fees; (6) awarding Plaintiff and the Class pre- and post-judgment interest to the extent allowable; and (7) awarding such other and further relief as equity and justice may require.

Ceridian moves to dismiss Plaintiff's Amended Complaint pursuant to Section 2-615 for failure to state a claim for violations of Sections 15(a) and 15(b) of BIPA. Ceridian also moves to dismiss the Amended Complaint pursuant to Section 2-619(a)(9), arguing the doctrine of extraterritoriality bars the application of BIPA to Ceridian. Finally, Ceridian requests the Court stay this matter pending the resolution of the issue of the appropriate statute of limitations for

BIPA claims, which is currently being considered by the Illinois Appellate Court for the First District.

II. LEGAL STANDARD

When bringing a combined motion under Section 2-619.1 of the Illinois Code of Civil Procedure (the "Code"), parties are still required to adhere to the procedural distinctions between Section 2-615 and Section 2-619. *Reynolds v. Jimmy John's Enterprises*, 2013 IL App (4th) 120139, ¶ 20. Section 2-615 allows a defendant to challenge the legal sufficiency of a complaint. *Id*. ¶ 25. A motion to dismiss under Section 2-615 does not raise affirmative defenses; rather, it only alleges defects on the face of the complaint. *Turner v. Memorial Medical Center*, 233 Ill. 2d 494, 499 (2009). The question presented by such a motion is whether the well-pleaded facts, and all reasonable inferences that may be drawn therefrom, when taken as true and in a light most favorable to the plaintiff, sufficiently state a cause of action upon which relief can be granted. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). Thus, a cause of action should not be dismissed on the pleadings unless it is clearly apparent no set of facts can be proven that would entitle the plaintiff to recover. *Id*. "Where unsupported by allegations of fact, legal and factual conclusions may be disregarded." *Kagan v. Waldheim Cemetery Co.*, 2016 IL App (1st) 131274, ¶ 29.

A Section 2-619 motion affords a "means of obtaining . . . a summary disposition of issues of law or of easily proved issues of fact." *Smith v. Waukegan Park District*, 231 Ill. 2d 111, 120 (2008). Under this section, a motion to dismiss admits the legal sufficiency of the complaint, but it raises an "affirmative matter" which acts to defeat the action. *Reynolds*, 2013 IL App (4th) 120139, ¶ 30; *Smith*, 231 Ill. 2d at 120–21. In ruling on a Section 2-619 motion, the court must interpret "all pleadings and supporting documents in the light most favorable to the nonmoving

party." *Reynolds*, 2013 IL App (4th) 1230139, ¶ 31; *Borowiec v. Gateway 2000, Inc.*, 209 Ill. 2d 376, 383 (2004). If the grounds for dismissal or the elements of the defense do not appear on the face of the complaint, the party seeking dismissal must file an affidavit in support of the motion. *Reynolds*, 2013 IL App (4th) 1230139, ¶ 37; see also *Jordan v. Knafel*, 355 Ill. App. 3d 534, 544 (1st Dist. 2005). On a Section 2-619.1 motion, a court should entertain the Section 2-615 motion first, and then, only after a legally sufficient cause of action has been found, entertain the Section 2-619 motion with affidavits filed in support. *Johannesen v. Eddins*, 2011 IL App (2d) 110108, ¶ 29.

III. DISCUSSION

In 2008, Illinois enacted the Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.* ("BIPA" or the "Act"), to help regulate "the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and information." *Id*. § 5(g). "Biometric identifier" includes "a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry." *Id*. § 10. "Biometric information" means "any information, regardless of how it is captured, converted, stored, or shared, based on an individual's biometric identifier used to identify an individual." *Id*.

Section 15 of BIPA imposes on private entities, like Defendant, obligations regarding the collection, retention, disclosure, and destruction of biometric identifiers and biometric information, including (i) obtaining consent from individuals if the company intends to collect, store, or disclose their personal biometric identifiers; (ii) inform the individuals in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; (iii) destroying biometric identifiers in a timely manner; and (iv) securely storing biometric identifiers. *Id*. § 15. The Act provides a private right of action

permitting a prevailing party to recover damages of $1,000 (or actual damages if greater) for negligent violation of the Act and $5,000 (or actual damages if greater) for intentional or reckless violations, attorney fees, costs, and expenses, and injunctive relief, if appropriate. *Id*. § 20.

A. Motion to Dismiss Pursuant to 735 ILCS 5/2-615

Ceridian first argues Plaintiff's Complaint must be dismissed because it fails to allege sufficient facts to state a valid cause of action under BIPA. Plaintiff alleges an action based on allegations Ceridian violated Sections (15)(a) and (b); however, Ceridian contends Plaintiff does not support her allegations with sufficient facts showing Ceridian did not have a publicly available retention policy and how Ceridian collected Plaintiff's biometric information.

1. Violation of 740 ILCS 14/15(a)

Plaintiff alleges a breach of Section 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 and biometric information 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 identifiers or biometric information must comply with its established retention schedule and destruction guidelines.

740 ILCS 14/15(a).

In the Complaint, Plaintiff alleges Ceridian violated Section 15(a) "by failing to publicly provide a retention schedule or guideline for permanently destroying employees' biometric identifiers and biometric information." (Am. Complaint, ¶ 53.) Plaintiff also alleges that, up until after this lawsuit was filed, Ceridian failed to establish a written, publicly available policy identifying its retention schedule for biometric data, and guidelines for permanently destroying employees' fingerprints when the initial purpose for collecting or obtaining their fingerprints is no

longer relevant." (*Id*. ¶ 25.) Plaintiff further asserts Ceridian never informed her of any biometric data retention policy it developed. (*Id*. ¶ 34.)

Ceridian argues Plaintiff's allegation Ceridian did not "establish" a publicly available policy is a bare allegation, lacking additional details, and merely parrots the statutory language of BIPA. Ceridian further contends Plaintiff misconstrues the requirements of Section 15(a), noting there is nothing in Section 15(a) requiring Ceridian to affirmatively or proactively provide the publicly available policy to the individual. Ceridian also points out Plaintiff's failure to allege she: (1) inquired as to the existence of a policy; (2) inquired as to the location of a policy; (3) looked for a policy and was unable to locate the policy after searching for it, or (4) made any effort to obtain a copy of the policy.

Ceridian correctly argues it had no obligation to affirmatively provide information to Plaintiff. BIPA merely requires Ceridian to develop a policy and make it available to the public. 740 ILCS 14/15(a); see also *Bryant v. Compass Group USA, Inc.*, 958 F.3d 617, 626 (7th Cir. 2020) ("[T]he duty to disclose under section 15(a) is owed to the public generally, not to particular persons whose biometric information the entity collects."); *Figueroa v. Kronos Inc.*, No. 19 C 1306, 2020 U.S. Dist. LEXIS 131093, at *9 (N.D. Ill. July 24, 2020) ("Section 15(a) does not obligate Kronos to inform specific individuals like Plaintiffs of its policy."). As for Ceridian's complaints Plaintiff failed to conduct any sort of investigation into whether or not Ceridian had a publicly available retention policy, if Plaintiff was unaware Ceridian was collecting her biometric data in the first place (Am. Complaint, ¶¶ 24–25), how would she know to seek out Ceridian's policy (if one even existed at the time)?

Viewing Plaintiff's allegations in the light most favorable to her—as the Court must do in the context of the instant motion—the Court finds Plaintiff sufficiently stated a cause of action for

a violation of Section 15(a). Plaintiff points out that when facts are alleged which, to a great degree of certitude are within the knowledge of the defendant, the pleading requirement is somewhat relaxed. *Doe v. Coe*, 2019 IL 123521, ¶ 73. Ceridian points out in a footnote that it disclosed to Plaintiff in communication about the policy which Plaintiff denied; however, the affidavit of Theodor Jahnke, Product Owner of WFM Clock for Ceridian HCM, Inc., submitted by Ceridian is totally silent on the existence of such a policy. Discovery will reveal whether or not Ceridian complied with Section 15(a) at the relevant time. Therefore, Ceridian's Motion to Dismiss Plaintiff's claim of a violation of Section 15(a) is denied.

2. Violation of 740 ILCS 14/15(b)

Ceridian next argues Plaintiff fails to state a claim for a violation of Section 15(b) because it does not actively collect biometric information. Section 15(b) of BIPA provides:

> No private entity may collect, capture, purchase, receive through trade, or otherwise obtain a person's or 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). Significantly, unlike Sections 15(a), (c), (d), and (e) of BIPA—all of which apply to entities "in possession of" biometric data—Section 15(b) applies to private entities if they "collect, capture, purchase, receive through trade, or otherwise obtain" biometric data. 740 ILCS 14/15(a)-(e).

Ceridian first focuses on the fact that Standard Market, not Ceridian, owns the device at issue, and Standard Market, not Ceridian, required Plaintiff to use the device each time she clocked into work. Ceridian argues Plaintiff's allegations pertaining to "Ceridian's Dayforce biometric clock system" are misleading and/or inaccurate, and attempts to characterize it as "Standard Market's time clock system." MTD, at 8. This is nothing but a red herring. Just because Standard Market owns the physical time clock does not mean it is Standard Market's time clock *system*.

Ceridian more persuasively argues Plaintiff's Amended Complaint "fails to address when, where, and how the purported fingerprint data was supposedly transferred from Standard Market's device . . . to Ceridian's servers outside [of] Illinois." MTD, at 8. Plaintiff alleges when she scanned her fingerprint into Ceridian's Dayforce biometric time clock system, the time clock system automatically sent her fingerprint data to Ceridian's servers to be collected and stored in Ceridian's fingerprint database. Am. Complaint, ¶¶ 22, 31. But Ceridian says "[s]imply stating that the clock system 'automatically' sends data is not an allegation of conduct on the part of Ceridian." MTD Reply, at 11. In its Memorandum Opinion and Order dated August 25, 2020 ("Opinion"), however, the Court addressed Ceridian's argument it does not actively collect biometric data and determined the salient point here is that Ceridian purportedly got Plaintiff's data. Opinion, at 8–9 (citing *Figueroa v. Kronos Inc.*, No. 19 C 1306, 2020 U.S. Dist. LEXIS 64131, at *16–17 (N.D. Ill. Apr. 13, 2020) ("The complaint alleges that Kronos 'stored,' 'used,' and 'disclosed' Plaintiffs' biometric data . . . and to have done those things Kronos necessarily first had to 'obtain' the data.")). The Court did suggest Plaintiff "should set out the methodology by which Ceridian receives and maintains Plaintiff's protected biometric information and set out any relevant transactions and/or interactions between Ceridian and Standard Market that facilitate Ceridian receiving the protected information." *Id*. at 10.

Plaintiff alleges, "When LaBarre scanned her fingerprint into Ceridian's Dayforce biometric time clock system, the time clock system automatically sent her biometric identifier and/or biometric information to Ceridian's server to be collected and stored in Ceridian's fingerprint database." Am. Complaint, ¶ 31. At this stage of the litigation, Plaintiff cannot be expected to be privy to all of the intricacies and technical inner workings of the Dayforce system. The allegations of the First Amended Complaint that Ceridian possessed and collected Plaintiff's fingerprint information provides sufficient allegations under Illinois law to overcome Ceridian's pleading arguments. In the Court's view, the allegations in Plaintiff's Amended Complaint sufficiently state a cause of action for violation of Section 15(b). Ceridian's Motion to Dismiss Plaintiff's claims for violations of Section 15(b) is denied.

B. Motion to Dismiss Pursuant to 735 ILCS 5/2-619

1. Illinois's Extraterritoriality Doctrine

Defendant argues Plaintiff's claims should be dismissed with prejudice because her claims against Ceridian are barred by the doctrine of extraterritoriality. Plaintiff responds applying BIPA to Ceridian's conduct at issue does not require "extraterritorial effect" because the vast majority of the underlying circumstances and conduct occurred in Illinois.

The parties agree BIPA does not apply extraterritorially. *Monroy v. Shutterfly, Inc.*, No. 16 C 10984, 2017 U.S. Dist. LEXIS 149604, at *15 (N.D. Ill. Sep. 15, 2017). However, the Illinois Supreme Court has held an Illinois law can be applied if "the circumstances that relate to the disputed transaction occur[red] primarily and substantially in Illinois." *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 187 (2005). "[T]here is no single formula or bright-line test for determining whether a transaction occurs within [Illinois]" and "each case must be decided on its own facts." *Id*. Thus, the question is whether the events giving rise to this suit occurred primarily

and substantially in Illinois. This, however, is a highly fact-based analysis that is generally inappropriate for the motion to dismiss stage. *Monroy*, 2017 U.S. Dist. LEXIS 149604, at *17 (holding the extraterritoriality doctrine is better addressed on a motion for summary judgment); *Rivera v. Google, Inc.*, 238 F. Supp. 3d 1088, 1101–02 (N.D. Ill. 2017) (same).

According to Ceridian, the "transaction" for purposes of the extraterritoriality analysis can be defined as "Ceridian's alleged conduct—the purported collection, storing, and using of Plaintiff's biometric information." MTD, at 12. Ceridian asserts the conduct at issue in this case occurred exclusively outside of Illinois, citing the following with respect to the allegations of the Amended Complaint:

- There is no specific allegation in the Amended Complaint referencing any Ceridian conduct that occurred within Illinois;
- Ceridian is a Delaware corporation with its principal place of business in Minnesota and, during the pendency of Plaintiff's employment at Standard Market, Ceridian's operations flowed from its principal place of business and corporate residency, which existed wholly outside Illinois;
- Standard Market is alleged to have collected Plaintiff's fingerprint in Illinois when it required Plaintiff to scan her finger into the time clock owned by Standard Market, but Plaintiff does not allege how Ceridian is responsible for that conduct; and
- Plaintiff alleges Ceridian was in possession of the information, but does not allege this information was stored in Illinois.

MTD, at 12–13. Ceridian also points out it does not store the information at issue in Illinois[1], and Ceridian had no direct contact in Illinois with Plaintiff or other employees of Standard Market concerning their employment enrollment process, timekeeping process, or in connection with Standard Market employees' use of any timekeeping device. MTD, Ex. 6, Affidavit of Theodor Jahnke ("Jahnke Aff."), ¶¶ 7–8.

[1] The geographic location of data servers is but one factor in the territoriality inquiry. *In re Facebook Biometric Information Privacy Litigation*, 326 F.R.D. 535, 547 (N.D. Cal. 2018). As *Avery* cautions, "focusing solely on [only one circumstance] . . . can create questionable results" where "the bulk of the circumstances . . . occur within Illinois." *Avery*, 216 Ill. 2d at 186; *see also Rivera*, 238 F. Supp. 3d at 1102 (in BIPA face scan context, even if "the scanning takes place outside of Illinois, that would not necessarily be dispositive.").

Ceridian argues Plaintiff focuses her allegations primarily and substantially on the actions of Standard Market and fails to allege the necessary legal nexus between Ceridian's conduct with regard to her data and whether *Ceridian's conduct* occurred in Illinois. Plaintiff contends Ceridian's reading of *Avery* in defining the conduct at issue is too narrow. In Plaintiff's view, *Avery* "refers broadly to 'the circumstances relating to the transaction,' encompassing conduct of both the defendant and the plaintiff, as well as circumstances outside the control of any party." MTD Response, at 12 (citing *Avery*, 216 Ill. 2d at 184–86). But the Court agrees with Ceridian that any alleged wrongdoing or damages purportedly caused by Ceridian must be tied to Ceridian's conduct in or related to Illinois. In an age where communication often occurs through electronic transmission, the nature of the communication and the connectivity between diverse geographical locations are certainly relevant and need to be examined, explored, and explained.

Plaintiff alleges she scanned her fingerprints into Ceridian's system in Illinois. The Court finds discovery is needed to determine to what extent Ceridian's alleged acts occurred in Illinois. There are simply too many unknowns at this stage of the proceedings, which prevent the Court from making a determination whether BIPA is being applied extraterritorially in this case. See *Vance v. IBM*, No. 20 C 577, 2020 U.S. Dist. LEXIS 168610, at *7–8 (N.D. Ill. Sep. 15, 2020). Ceridian's Motion to Dismiss pursuant to Section 2-619(a)(9) is denied.

2. Statute of Limitations

Ceridian also moves to dismiss Plaintiff's Complaint pursuant to section 2-619(a)(5), arguing her claim is time-barred by the one-year statute of limitations set forth in 735 ILCS 5/13-201. This Court already rejected this argument in its Memorandum Opinion and Order dated August 25, 2020, and sees no reason to revisit the issue now. Ceridian's Motion to Dismiss Pursuant to Section 2-619(a)(5) is denied. The Court further denies Ceridian's request to stay this

matter pending the outcome of the Illinois Appellate Court for the First District's ruling in *Jerome Times and Isaac Watson v. Black Horse Carriers, Inc.*, Case No, 1-20-0563. The Court agrees with Plaintiff that numerous courts have determined that the 5 year statute of limitations is applicable to BIPA violations and does not see this as a basis for staying this cause of action.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss Plaintiff's First Amended Class Action Complaint is DENIED. Defendant shall file an answer to Plaintiff's First Amended Complaint within twenty-eight (28) days. This matter is set for a status hearing on April 7, 2021, at 10:00 a.m. by Zoom (Meeting ID: 990 0014 8007 Password: 545631 Dial-In: (312) 626-6799).

It is so ordered.

ENTERED
Judge Moshe Jacobius-1556
MAR 04 2021
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

ENTERED:

Judge Moshe Jacobius No. 1556

EXHIBIT 5

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

RACHEL LABARRE, individually, and on behalf of all others similarly situated,	)	
Plaintiff,	)	
	)	Case No. 2019 CH 06489
vs.	)	
CERIDIAN HCM, INC.,	)	
Defendant.	)	

DEFENDANT CERIDIAN HCM, INC.'S
ANSWER TO FIRST AMENDED CLASS ACTION COMPLAINT

Defendant, Ceridian HCM, Inc.'s ("Ceridian"), by and through its Attorneys, K&L Gates LLP, and for its Answer to Plaintiff's First Amended Class Action Complaint ("First Amended Complaint"), states as follows:

NATURE OF THE ACTION

1. Defendant Ceridian is a creator of a cloud-based time and attendance system called Dayforce. It offers biometric time clocks that enable businesses to track their employees' time by using a biometric finger scanner. Ceridian provides its biometric timekeeping system to numerous employers across Illinois, including Plaintiff's former employer, Standard Market.

ANSWER:

Ceridian admits that it is a creator of cloud-based software known as Dayforce ("Dayforce Software"), which may, at the election of the customer, include a time and attendance module. Ceridian further admits that it offers time clocks, some of which may include a finger scanner, to its employer customers, including Plaintiff's former employer, Standard Market. Ceridian also admits that some of its customers use the time clocks purchased from Ceridian in Illinois. Except as so stated, Ceridian denies that Dayforce requires the use of a finger scanner, and admits that various methods of time tracking and various clocks may be used with Dayforce. Ceridian denies any remaining allegations of Paragraph 1, and specifically

denies that it collects, uses or stores any fingerprints or other biometric identifier or biometric information, as those terms are defined in the Biometric Information Privacy Act 740 ILCS 14/1, et seq. ("BIPA").

2. When employees first begin their jobs at companies that use Ceridian's Dayforce system, they are required to scan their fingerprint in its biometric time tracking system as a means of authentication, instead of using only key fobs or other identification cards.

ANSWER:

"Ceridian Dayforce system," as used in the First Amended Complaint, is not a defined term and Ceridian lacks knowledge and information sufficient to admit or deny allegations concerning "Ceridian's Dayforce system." To the extent an answer is required, Ceridian denies that companies that use Dayforce software must require their employees to use a finger scan time tracking system. Answering further, Ceridian lacks knowledge sufficient to admit or deny whether an employer requires an employee to scan a finger for time tracking purposes, as such requirements would be at the discretion of and imposed by each employer. Answering further, Ceridian expressly denies that it requires any of its customers' employees to scan a fingerprint for time tracking purposes and affirmatively states that Dayforce software is used for purposes other than time-tracking and is used by customers with a variety of clocks that do not utilize finger scanners. Ceridian further denies that it captures, collects or otherwise stores fingerprints or images of fingerprints. Ceridian denies any remaining allegations in Paragraph 2.

3. While there are tremendous benefits to using biometric time clocks in the workplace, there are also serious risks. Unlike key fobs or identification cards—which can be changed or replaced if stolen or compromised—fingerprints are unique, permanent biometric identifiers associated with the employee. This exposes employees to serious and irreversible privacy risks. For example, if a fingerprint database is hacked, breached, or otherwise exposed, employees have no means by which to prevent identity theft and unauthorized tracking.

ANSWER:

Ceridian admits that there are tremendous benefits to using finger scan time clocks

offered by Ceridian, and that fingerprints are unique to each person. Ceridian further admits that key fobs or identification cards can be replaced. Ceridian denies any remaining allegations of the first three sentences of Paragraph 3. Ceridian lacks knowledge or information sufficient to form a belief as to the last sentence of Paragraph 3, and therefore denies such allegations.

4. Recognizing the need to protect its citizens from situations like these, Illinois enacted the Biometric Information Privacy Act, 740 ILCS 14/1, et seq. ("BIPA"), specifically to regulate companies that collect and store Illinois citizens' biometrics, such as fingerprints.

ANSWER:

Paragraph 4 of the First Amended Complaint alleges legal conclusions, to which no answer is required. To the extent that an answer may be required, Ceridian admits only that Illinois enacted BIPA, and states further that the intent or purpose of BIPA is set forth in the statute itself or the legislative history of that statute. Ceridian denies any remaining allegations of Paragraph 4.

5. Despite this law, Ceridian disregards employees' statutorily protected privacy rights and unlawfully collects, stores, and uses their biometric data in violation of the BIPA. Specifically, Ceridian has violated (and continues to violate) the BIPA because it did not:

- Properly inform Plaintiff and the Class members in writing of the specific purpose and length of time for which their fingerprints were being collected, stored, and used, as required by the BIPA;
- Provide a publicly available retention schedule and guidelines for permanently destroying Plaintiff's and the Class's fingerprints, as required by the BIPA; nor
- Receive a written release from Plaintiff or the members of the Class to collect, capture, or otherwise obtain their fingerprints, as required by the BIPA.

ANSWER:

Paragraph 5 of the First Amended Complaint alleges legal conclusions, to which no answer is required. To the extent that an answer may be required Ceridian denies the allegations of Paragraph 5. Further answering, Ceridian denies that any class has been certified in this case or that any class should be certified in this case.

6. Accordingly, this Complaint seeks an order: (i) declaring that Defendant's conduct violates the BIPA; (ii) requiring Defendant to cease the unlawful activities discussed herein; and (iii) awarding liquidated damages to Plaintiff and the proposed Class.

ANSWER:

Paragraph 6 of the First Amended Complaint alleges legal conclusions, to which no answer is required. To the extent that an answer may be required, Ceridian admits that the First Amended Complaint purports to seek the relief identified in Paragraph 6. Except as so stated, Ceridian denies the allegations in Paragraph 6 of the First Amended Complaint, and specifically denies that it has violated BIPA or that its conduct has caused damages of any kind to Plaintiff. Further answering, Ceridian denies that any class has been certified in this case or that any class should be certified in this case.

PARTIES

7. Plaintiff Rachel LaBarre is a natural person and citizen of the State of Illinois.

ANSWER:

Ceridian lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 7 and therefore denies those allegations.

8. Defendant Ceridian HCM, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 3311 East Old Shakopee Road, Minneapolis, Minnesota 55425.

ANSWER:

Ceridian admits the allegations of Paragraph 8.

JURISDICTION AND VENUE

9. This Court has jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because Defendant conducts business transactions in Illinois, maintains corporate offices in Illinois, and has committed tortious acts in Illinois.

ANSWER:

Paragraph 9 of the First Amended Complaint alleges legal conclusions, to which no

answer is required. To the extent that an answer may be required, Ceridian admits it conducts business in Illinois but denies that the alleged conduct on the part of Ceridian in the First Amended Complaint occurred in Illinois. Answering further, Ceridian denies that it currently maintains corporate offices in Illinois. Except as so stated, Ceridian denies the allegations of Paragraph 9.

10. Venue is proper in Cook County because Defendant transacts business in and maintains offices in Cook County.

ANSWER:

Paragraph 10 of the First Amended Complaint alleges legal conclusions to which no answer is required. To the extent that an answer may be required, Ceridian admits it transacts business in Cook County but denies that the alleged conduct on the part of Ceridian in the First Amended Complaint occurred in Illinois. Answering further, Ceridian denies that it currently maintains offices in Cook County. Except as so stated, Ceridian denies the allegations of Paragraph 10.

FACTUAL BACKGROUND

I. The Biometric Information Privacy Act.

11. In the early 2000's, major national corporations started using Chicago and other locations in Illinois to test "new [consumer] applications of biometric-facilitated financial transactions, including finger-scan technologies at grocery stores, gas stations, and school cafeterias." 740 ILCS 14/5(b). Given its relative infancy, an overwhelming portion of the public became weary of this then-growing, yet unregulated, technology. *See* 740 ILCS 14/5.

ANSWER:

Paragraph 11 of the First Amended Complaint purports to summarize portions of BIPA and alleges legal conclusions, to which no answer is required. To the extent that an answer may be required, Ceridian admits only that the statute is accurately quoted. Except as so stated, Ceridian denies the allegations of Paragraph 11.

12. In late 2007, a biometrics company called Pay By Touch—which provided major retailers throughout the State of Illinois with fingerprint scanners to facilitate consumer transactions—filed for bankruptcy. That bankruptcy was alarming to the Illinois Legislature because suddenly there was a serious risk that millions of fingerprint records—which, are unique biometric identifiers, can be linked to people's sensitive financial and personal data—could now be sold, distributed, or otherwise shared through the bankruptcy proceedings without adequate protections for Illinois citizens. The bankruptcy also highlighted the fact that most consumers who had used that company's biometric scanners were completely unaware that the scanners were not actually transmitting data to the retailer who deployed the scanner, but rather to the now-bankrupt company, and that their unique biometric identifiers could now be sold to unknown third parties.

ANSWER:

Ceridian lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 12 and therefore denies such allegations.

13. Recognizing the "very serious need [for] protections for the citizens of Illinois when it [came to their] biometric information," Illinois enacted the BIPA in 2008. *See* Illinois House Transcript, 2008 Reg. Sess. No. 276; 740 ILCS 14/5.

ANSWER:

Paragraph 13 of the First Amended Complaint purports to quote an Illinois House Transcript and alleges legal conclusions, to which no answer is required. To the extent that an answer may be required, Ceridian admits only that the transcript is accurately referenced. Except as so stated, Ceridian denies the allegations of Paragraph 13.

14. The BIPA is an informed consent statute which achieves its goal by making it unlawful for a company to, among other things, "collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifiers 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).

ANSWER:

Paragraph 14 of the First Amended Complaint purports to summarize portions of BIPA and alleges legal conclusions, to which no answer is required. To the extent that an answer may be required, Ceridian admits only that the statute is accurately quoted. Except as so stated, Ceridian denies the allegations of Paragraph 14.

15. The BIPA specifically applies to employees who work in the State of Illinois. BIPA defines a "written release" specifically "in the context of employment [as] a release executed by an employee as a condition of employment." 740 ILCS 14/10.

ANSWER:

Paragraph 15 of the First Amended Complaint purports to summarize portions of BIPA and alleges legal conclusions, to which no answer is required. To the extent that an answer may be required, Ceridian admits only that the statute is accurately quoted. Except as so stated, Ceridian denies the allegations of Paragraph 15.

16. Biometric identifiers include retina and iris scans, voiceprints, scans of hand and face geometry, and—most importantly here—fingerprint. *See* 740 ILCS 14/10. Biometric information is separately defined to include any information based on an individual's biometric identifier that is used to identify an individual. *See* id.

ANSWER:

Paragraph 16 of the First Amended Complaint purports to summarize portions of BIPA and alleges legal conclusions, to which no answer is required. To the extent that an answer may be required, Ceridian admits only that the definition of "biometric identifiers" and "biometric information" are set forth in 740 ILCS 14/10. Except as so stated, Ceridian denies the allegations of Paragraph 16.

17. The BIPA also establishes standards for how companies in possession of biometric identifiers and biometric information must handle them. *See* 740 ILCS 14/15(c)–(d). For instance, the BIPA requires companies to develop and comply with a written policy—made available to the

public—establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting such identifiers or information has been satisfied or within three years of the individual's last interaction with the company, whichever occurs first. 740 ILCS 14/15(a).

ANSWER:

The allegations of Paragraph 17 assert conclusions of law and purport to summarize provisions of BIPA to which no answer is required. To the extent an answer may be required, Ceridian admits only that BIPA speaks for itself and denies any allegations inconsistent with the express language of the statute. Except as so stated, Ceridian denies the allegations of Paragraph 17.

18. Ultimately, the BIPA is simply an informed consent statute. Its narrowly tailored provisions place no absolute bar on the collection, sending, transmitting or communicating of biometric data. For example, the BIPA does not limit what kinds of biometric data may be collected, sent, transmitted, or stored. Nor does the BIPA limit to whom biometric data may be collected, sent, transmitted, or stored. The BIPA simply mandates that entities wishing to engage in that conduct must make proper disclosures and implement certain reasonable safeguards.

ANSWER:

The allegations of Paragraph 18 assert conclusions of law to which no answer is required. To the extent an answer may be required, Ceridian admits only that BIPA speaks for itself and denies any allegations inconsistent with the express language of the statute. Except as so stated, Ceridian denies the allegations of Paragraph 18.

II. Ceridian Violates the Biometric Information Privacy Act.

19. By the time the BIPA passed through the Illinois Legislature in mid-2008, many companies who had experimented with using biometric data as an authentication method stopped doing so, at least for a time. That is because Pay By Touch's bankruptcy, described in Section I above, was widely publicized and brought attention to consumers' discomfort with the use of their biometric data.

ANSWER:

Ceridian lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 19 and therefore denies those allegations.

20. Unfortunately, Ceridian failed to address these concerns. Ceridian continues to collect, store, and use employees' biometric data in violation of the BIPA.

ANSWER:

Paragraph 20 asserts conclusions of law to which no answer is required. To the extent an answer may be required, Ceridian denies the allegations of Paragraph 20.

21. Specifically, Ceridian sells time clocks with a biometric fingerprint scanner to employers. When employees first begin work at a company that uses a Ceridian biometric time clock system, they are required to have their fingerprints scanned in order to enroll them in Ceridian's fingerprint database.

ANSWER:

Ceridian admits that it sells time clocks with a finger scanners to employers. Except as so stated, Ceridian denies the allegations of the first sentence of Paragraph 21 of the First Amended Complaint. Answering further, Ceridian lacks knowledge sufficient to admit or deny the allegations of the second sentence of Paragraph 21, and therefore denies such allegations. Answering further, Ceridian denies that it requires employees to scan fingers into a database.

22. When an employee scans their fingerprint on a Ceridian time clock, the time clock automatically sends the employee's biometric fingerprint data to Ceridian's servers to be collected and stored in Ceridian's fingerprint database.

ANSWER:

Ceridian denies the allegations of Paragraph 22 of the First Amended Complaint. Ceridian specifically denies that biometric fingerprint data is sent to, collected by or stored in Ceridian's "fingerprint database" that it maintains a "fingerprint database" and that it collects or stores biometric identifiers or biometric information as those terms are defined by BIPA.

23. Companies use Ceridian's biometric time clocks as an employee time tracking system that requires employees to use their fingerprint as a means of authentication. Unlike a traditional time clock, employees have to use their fingerprint to "punch" in to or out of work.

ANSWER:

Ceridian admits that customers of Ceridian use time clocks with finger scanners

purchased from Ceridian for, among other things, time tracking of employees. Except as so stated, Ceridian denies the allegations of the first sentence of Paragraph 23. Answering further, Ceridian denies that the time clocks sold by Ceridian require employees to use their fingerprints to punch in to or out of work. Ceridian lacks knowledge sufficient to admit or deny the remaining allegations of the second sentence of Paragraph 23 and therefore denies such allegations.

24. Ceridian failed to inform employees of the complete purposes for which it collects their sensitive biometric data or to whom the data is disclosed, if at all. Indeed, employees are unaware that by providing their biometric identifiers to their employers they are actually transmitting their sensitive biometric data to Ceridian.

ANSWER:

The first sentence of Paragraph 24 of the First Amended Complaint consists of legal conclusions to which no answer is required. To the extent an answer is required Ceridian denies the allegations of the first sentence of Paragraph 24. Ceridian lacks knowledge sufficient to admit or deny the allegations of the second sentence of Paragraph 24, and therefore denies such allegations.

25. Up until after this lawsuit was filed, Ceridian similarly failed to establish a written, publicly available policy identifying its retention schedule for biometric data, and guidelines for permanently destroying employees' fingerprints when the initial purpose for collecting or obtaining their fingerprints is no longer relevant, as required by the BIPA. Setting aside that Ceridian has collected, stored, and used employees' biometric data for years without such a policy, the publishing of the recent policy on its website is also problematic. As described above, most employees don't know they are interacting with Ceridian when they have their biometrics scanned by their employer's Ceridian devices, let alone providing Ceridian their biometric data. As such, they'd have no reason to affirmatively seek out Ceridian's website and search for its biometric data policies. Accordingly, an employee who leaves their job does so without any knowledge of Ceridian possessing their biometric identifiers or when their biometric identifiers will be removed from Ceridian's databases—or if they ever will be.

ANSWER:

Paragraph 25 consists of legal conclusions to which no answer is required. To the extent an answer may be required, Ceridian denies the allegations of the first and second sentences of

Paragraph 25. Answering further, Ceridian lacks knowledge sufficient to admit or deny the allegations of the third, fourth and fifth sentences of Paragraph 25 and therefore denies such allegations. Answering further, Ceridian denies that it collected or otherwise stored any biometric identifiers at any time and affirmatively states that developed a written publicly available policy identifying retention schedules and guidelines for the deletion of data collected by the timekeeping devices purchased by the Standard Market.

26. The Pay By Touch bankruptcy that catalyzed the passage of the BIPA highlights why conduct such as Ceridian's—where the employees are aware that they are providing biometric identifiers to their employer but are not aware of the full extent of the reasons they are doing so, nor are informed who else is receiving this data—is so dangerous. That bankruptcy spurred Illinois citizens and legislators to realize a critical point: it is crucial for people to understand when providing biometric data who exactly is collecting it, who it will be transmitted to, for what purposes, and for how long. But Ceridian disregards these obligations, and instead unlawfully collects, stores, and uses employees' biometric identifiers and information without proper consent.

ANSWER:

Ceridian lacks knowledge sufficient to admit or deny the allegations of the first two sentences of Paragraph 26. Answering further, the last sentence of Paragraph 26 consists of legal conclusions to which no answer is required. To the extent an answer may be required, Ceridian denies the allegations of the last sentence of Paragraph 26.

27. Ultimately, Ceridian disregards employees' statutorily protected privacy rights by violating the BIPA.

ANSWER:

Paragraph 27 consists of legal conclusions to which no answer is required. To the extent an answer is required, Ceridian denies the allegations of Paragraph 27.

FACTS SPECIFIC TO PLAINTIFF LABARRE

28. Plaintiff LaBarre worked at a Standard Market grocery store between April 2018 and March 2019.

ANSWER:

Ceridian lacks knowledge sufficient to admit or deny the allegations of Paragraph 28, and therefore denies such allegations.

29. Ceridian provided Standard Market its Ceridian Dayforce biometric time clock system to track its employees' time.

ANSWER:

Ceridian admits only that Standard Market purchased timeclocks with finger scanning devices from Ceridian. Except as so stated, Ceridian denies the allegations of Paragraph 29.

30. Standard Market required LaBarre to scan her fingerprint into Ceridian's Dayforce biometric time clock system so that it could use it as an authentication method to track her time.

ANSWER:

Paragraph 30 consists of legal conclusions to which no answer is required. To the extent an answer is required, Ceridian lacks knowledge sufficient to admit or deny the allegations of Paragraph 30 and therefore denies such allegations. Further responding, Ceridian specifically denies that it collected, used or stored any fingerprints or other biometric identifier or biometric information of LaBarre.

31. When LaBarre scanned her fingerprint into Ceridian's Dayforce biometric time clock system, the time clock system automatically sent her biometric identifier and/or biometric information to Ceridian's server to be collected and stored in Ceridian's fingerprint database.

ANSWER:

Paragraph 31 consists of legal conclusions to which no answer is required. To the extent an answer is required, Ceridian denies the allegations of Paragraph 31. Further responding, Ceridian specifically denies that it collected, used or stored any fingerprints, or other biometric identifier or biometric information of LaBarre.

32. Each time LaBarre began and ended her workday she was required to scan her fingerprint into Ceridian's Dayforce time clock system.

ANSWER:

Ceridian lacks knowledge sufficient to admit or deny the allegations of Paragraph 32 and

therefore denies such allegations. Further answering, Ceridian specifically denies that it collected, used or stored any fingerprints, or other biometric identifier or biometric information of LaBarre.

33. Neither Ceridian nor Standard Market informed LaBarre of the specific limited purposes or length of time for which it collected, stored, or used her fingerprint.

ANSWER:

Ceridian lacks knowledge sufficient to admit or deny what Standard Market informed LaBarre, and therefore denies the allegation that Standard Market did not inform LaBarre of the specific limited purposes or length of time for which it collected, stored or used her fingerprint. Answering further, Ceridian specifically denies any remaining allegations of Paragraph 33.

34. Similarly, Ceridian never informed LaBarre of any biometric data retention policy it developed, nor whether it will ever permanently delete her fingerprint.

ANSWER:

Paragraph 34 consists of legal conclusions to which no answer is required. To the extent an answer is required, Ceridian specifically denies that it had an obligation or duty to expressly inform LaBarre of its data retention policies. Except as so stated, Ceridian denies the allegations of Paragraph 34. Further responding, Ceridian affirmatively states that prior to the filing of the First Amended Complaint, Ceridian informed Plaintiff, by Declaration of Linda Aguiar, that it did not have any finger scan information generated from LaBarre's use of the finger scan timeclock.

35. LaBarre never signed a written release allowing Ceridian to collect or store her fingerprint.

ANSWER:

Ceridian lacks knowledge sufficient to admit or deny the allegations of Paragraph 35, and therefore denies such allegations. Further responding, Ceridian expressly denies that it ever

collected, used or stored LaBarre's fingerprint.

36. LaBarre has continuously and repeatedly been exposed to the risks and harmful conditions created by Ceridian's violations of the BIPA alleged herein.

ANSWER:

Paragraph 36 consists of legal conclusions to which no answer is required. To the extent an answer is required, Ceridian denies the allegations of Paragraph 36.

37. Plaintiff seeks liquidated damages under BIPA as compensation for the injuries Ceridian has caused.

ANSWER:

Paragraph 37 consists of legal conclusions to which no answer is required. Ceridian admits that Plaintiff purports to seek liquidated damages under BIPA, but denies that any such damages or due or owing and denies that Ceridian has caused any injuries to Plaintiff.

CLASS ALLEGATIONS

38. Class Definition: Plaintiff Rachel LaBarre brings this action pursuant to 735 ILCS 5/2-801 on behalf of herself and a Class of similarly situated individuals, defined as follows:

> All residents of the State of Illinois who had their biometric identifiers, including fingerprints, collected, captured, received, otherwise obtained, or disclosed by Ceridian HCM, Inc. while residing in Illinois.

The following people are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and its current or former officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

ANSWER:

Ceridian admits only that Plaintiff seeks to bring this action on behalf of herself and a class of similarly situated individuals as defined by Paragraph 38. Except as so stated, Ceridian denies the allegations of Paragraph 38. Answering further, Ceridian denies that a plaintiff class

has been certified in this action, and states that none should be certified.

39. Numerosity: The exact number of Class members is unknown to Plaintiff at this time, but it is clear that individual joinder is impracticable. Defendant has collected, captured, received, or otherwise obtained biometric identifiers or biometric information from at least thousands of employees who fall into the definition of the Class. Ultimately, the Class members will be easily identified through Defendant's records.

ANSWER:

The allegations of Paragraph 39 assert conclusions of law to which no answer is required. To the extent an answer may be required, Ceridian denies the allegations of Paragraph 39. Answering further, Ceridian denies that a plaintiff class has been certified in this action, and states that none should be certified.

40. Commonality and Predominance: There are many questions of law and fact common to the claims of Plaintiff and the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

a) whether Defendant collected, captured, or otherwise obtained Plaintiff's and the Class's biometric identifiers or biometric information;

b) whether Defendant properly informed Plaintiff and the Class of its purposes for collecting, using, and storing their biometric identifiers or biometric information;

c) whether Defendant obtained a written release (as defined in 740 ILCS 14/10) to collect, use, and store Plaintiff's and the Class's biometric identifiers or biometric information;

d) whether Defendant has sold, leased, traded, or otherwise profited from Plaintiff's and the Class's biometric identifiers or biometric information;

e) whether Defendant developed a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within three years of their last interaction, whichever occurs first;

f) whether Defendant complied with any such written policy (if one existed); and

g) whether Defendant used Plaintiff's and the Class's fingerprint to identify them.

ANSWER:

The allegations of Paragraph 40 assert conclusions of law to which no answer is required. To the extent an answer may be required, Ceridian denies the allegations of Paragraph 40. Answering further, Ceridian denies that a plaintiff class has been certified in this action, and states that none should be certified.

41. Adequate Representation: Plaintiff will fairly and adequately represent and protect the interests of the Class and has retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff nor her counsel have any interest adverse to those of the other members of the Class.

ANSWER:

The allegations of Paragraph 41 assert conclusions of law to which no answer is required. To the extent an answer may be required, Ceridian denies the allegations of Paragraph 41. Answering further, Ceridian denies that a plaintiff class has been certified in this action, and states that none should be certified.

42. Appropriateness: This class action is appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Class is impracticable. The damages suffered by the individual members of the Class are likely to have been small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's wrongful conduct. Thus, it would be virtually impossible for the individual members of the Class to obtain effective relief from Defendant's misconduct. Even if members of the Class could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in their Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

ANSWER:

The allegations of Paragraph 42 assert conclusions of law to which no answer is required. To the extent an answer may be required, Ceridian denies the allegations of Paragraph 42.

Answering further, Ceridian denies that a plaintiff class has been certified in this action, and states that none should be certified.

CAUSE OF ACTION
Violation of 740 ILCS 14/1, *et seq*.
(On Behalf of Plaintiff and the Class)

43. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

ANSWER:

Ceridian incorporates the foregoing responses to the allegations of the Complaint as if fully set forth herein.

44. The BIPA requires companies to obtain informed written consent from employees before acquiring their biometric data. Specifically, the 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 identifiers or biometric information, unless [the entity] 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) (emphasis added).

ANSWER:

Paragraph 44 of the First Amended Complaint purports to summarize portions of BIPA and alleges legal conclusions, to which no answer is required. To the extent that an answer may be required, Ceridian admits only that the statute is accurately quoted. Except as so stated, Ceridian denies the allegations of Paragraph 44. Answering further, Ceridian expressly denies Plaintiff's interpretation of the quoted or referenced material.

45. The BIPA also mandates that companies in possession of biometric data establish and maintain a satisfactory biometric data retention (and—importantly—deletion) policy. Specifically, those companies must: (i) make publicly available a written policy establishing a retention schedule and guidelines for permanent deletion of biometric data (i.e., when the employment relationship ends); and (ii) actually adhere to that retention schedule and actually delete the biometric information. *See* 740 ILCS 14/15(a).

ANSWER:

Paragraph 45 of the First Amended Complaint purports to summarize portions of BIPA and alleges legal conclusions, to which no answer is required. To the extent that an answer may be required, Ceridian admits only that BIPA speaks for itself and denies any allegations inconsistent with the express language of the statute. Except as so stated, Ceridian denies the allegations of Paragraph 45.

46. Unfortunately, Ceridian failed to comply with these BIPA mandates.

ANSWER:

Paragraph 46 consists of a legal conclusion to which no answer is required. To the extent an answer may be required, Ceridian denies the allegations of Paragraph 46.

47. Ceridian is corporation and thus qualifies as a "private entity" under the BIPA. *See* 740 ILCS 14/10.

ANSWER:

Paragraph 47 of the First Amended Complaint asserts conclusions of law to which no answer is required. To the extent an answer may be required, Ceridian admits only that it is a corporation. Except as so stated, Ceridian denies the allegations of Paragraph 47.

48. Plaintiff and the Class are individuals who had their "biometric identifiers" collected by Ceridian (in the form of their fingerprint), as explained in detail in Section II. *See* 740 ILCS 14/10.

ANSWER:

Paragraph 48 consists of a legal conclusion to which no answer is required. To the extent an answer may be required, Ceridian denies the allegations of Paragraph 48, and incorporates by reference its answers to Paragraphs in Section II. Further answering, Ceridian denies that any class has been certified in this case or that any class should be certified in this case.

49. Plaintiff's and the Class's biometric identifiers or information based on those biometric identifiers were used to identify them, constituting "biometric information" as defined by the BIPA. *See* 740 ILCS 14/10.

ANSWER:

Paragraph 49 consists of legal conclusions to which no answer is required. To the extent an answer may be required, Ceridian denies the allegations of Paragraph 49. Further answering, Ceridian denies that a plaintiff class has been certified in this action, states that none should be certified, and denies that it collected, used or stored any biometric identifier or biometric information of Plaintiff or the putative class members.

50. Ceridian violated 740 ILCS 14/15(b)(3) by failing to obtain written releases from Plaintiff and the Class before it collected, used, and stored their biometric identifiers and biometric information.

ANSWER:

Paragraph 50 consists of legal conclusions to which no answer is required. To the extent an answer may be required, Ceridian denies the allegations of Paragraph 50. Further answering, Ceridian denies that a plaintiff class has been certified in this action, states that none should be certified, and specifically denies that it collected, used or stored any biometric identifier or biometric information of Plaintiff or the putative class.

51. Ceridian violated 740 ILCS 14/15(b)(1) by failing to inform Plaintiff and the Class in writing that their biometric identifiers and biometric information were being collected and stored.

ANSWER:

Paragraph 51 consists of legal conclusions to which no answer is required. To the extent an answer may be required, Ceridian denies the allegations of Paragraph 51. Further answering, Ceridian denies that a plaintiff class has been certified in this action, states that none should be certified, and specifically denies that it collected, used or stored any biometric identifier or biometric information of Plaintiff or the putative class.

52. Ceridian violated 740 ILCS 14/15(b)(2) by failing to inform Plaintiff and the Class in writing of the specific purpose and length of time for which their biometric identifiers or biometric information was being collected, stored, and used.

ANSWER:

Paragraph 52 consists of legal conclusions to which no answer is required. To the extent an answer may be required, Ceridian denies the allegations of Paragraph 52. Further answering, Ceridian denies that a plaintiff class has been certified in this action, states that none should be certified, and denies that it collected, used or stored any biometric identifier or biometric information of Plaintiff or the putative class.

53. Ceridian violated 740 ILCS 14/15(a) by failing to publicly provide a retention schedule or guideline for permanently destroying employees' biometric identifiers and biometric information.

ANSWER:

Paragraph 53 consists of legal conclusions to which no answer is required. To the extent an answer may be required, Ceridian denies the allegations of Paragraph 53. Further answering, Ceridian denies that a plaintiff class has been certified in this action, states that none should be certified, and denies that it collected, used or stored any biometric identifier or biometric information of Plaintiff or the putative class.

54. By collecting, storing, and using Plaintiff's and the Class's biometric identifiers and biometric information as described herein, Ceridian violated Plaintiff's and the Class's rights to privacy in their biometric identifiers or biometric information as set forth in the BIPA, 740 ILCS 14/1, *et seq*.

ANSWER:

Paragraph 54 consists of legal conclusions to which no answer is required. To the extent an answer may be required, Ceridian denies the allegations of Paragraph 54. Further answering, Ceridian denies that a plaintiff class has been certified in this action, states that none should be certified, and denies that it collected, used or stored any biometric identifier or biometric information of Plaintiff or the putative class.

55. On behalf of herself and the Class, Plaintiff seeks: (1) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Defendant to comply

with the BIPA's requirements for the collection, storage, and use of biometric identifiers and biometric information as described herein; (2) liquidated damages of $5,000 for each willful and/or reckless violation of the BIPA pursuant to 740 ILCS 14/20(2) or, in the alternative, liquidated damages of $1,000 for each negligent violation of the BIPA pursuant to 740 ILCS 14/20(1); and (3) reasonable attorneys' fees, costs, and expenses pursuant to 740 ILCS 14/20(3).

ANSWER:

Ceridian admits that Plaintiff purports to seek the relief asserted in Paragraph 55, but denies that Ceridian is failing to comply with BIPA's requirements and further denies that it is liable or responsible for any alleged damages or relief, and further denies that that it either negligently, recklessly or intentionally violated BIPA.

AFFIRMATIVE DEFENSES

Ceridian asserts the following Affirmative Defenses to the First Amended Complaint ("Complaint") and reserves the right to raise such additional affirmative defenses as may be established during the conduct of discovery and in its investigation of this matter.

FIRST AFFIRMATIVE DEFENSE

The First Amended Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Ceridian was not the proximate cause of any alleged harm or damage to Plaintiff and/or alleged members of the putative class, and Plaintiff was not aggrieved by Ceridian. Specifically, the Standard Market was obligated to provide any notice and obtain any consent required to collect any information from employees that was processed by Ceridian, including information generated from the timeclocks with finger scanners. To the extent that Plaintiff was harmed or damaged by the use of the timeclock with a finger scanner used by the Standard Market, such injury was caused by the Standard Market.

THIRD AFFIRMATIVE DEFENSE

Ceridian is not liable under BIPA or under any other legal theory because, among other reasons, Plaintiff and/or the alleged members of the putative class consented, either expressly or constructively, to the use of their finger scans for use on the alleged timekeeping systems at issue. Further, the claims are barred in whole or in part, to the extent Plaintiff adequately pleads negligence, by the doctrine of primary assumption of risk. Upon information and belief, Plaintiff and each putative class member approved and participated in the conduct of which they now complain, including by voluntarily presenting their fingers to be scanned in connection with their employer's use of timeclocks and finger scan devices sold by Ceridian. This conduct indicates that Plaintiffs and each putative class member implicitly consented to encounter an inherent and known risk. As such, Plaintiffs and each putative class member excused Ceridian from any legal duty it may have had in connection with the conduct at issue.

FOURTH AFFIRMATIVE DEFENSE

Ceridian is not liable under BIPA or under any other legal theory because any alleged collection, capture, possession, disclosure, or other receipt of any alleged biometric information or biometric identifiers was by third-parties, including but not limited to Plaintiff's employer. To the extent any employee, agent or contractor of Ceridian performed any act or engaged in any conduct that violated the BIPA any such act or conduct was outside the scope of authority of such employee, agent or contractor and was not authorized by Ceridian.

Furthermore, all or part of the damages alleged in the Complaint were caused by the acts and/or omissions of other persons or entities (including, without limitation, acts and/or omissions of Plaintiff and/or members of the putative class, and/or persons who acted on their behalf), and for whose conduct Ceridian is not legally responsible, which intervened between the alleged acts

and/or omissions of Ceridian and the alleged violations of BIPA and/or damages of Plaintiff and/or members of the asserted putative class. The alleged damages, if any, are therefore not recoverable from Ceridian. In the alternative, any damages that Plaintiff and/or members of the putative class may be entitled to recover against Ceridian must be reduced to the extent that such damages are attributable to persons or entities other than Ceridian.

FIFTH AFFIRMATIVE DEFENSE

Any award of statutory and/or punitive damages to Plaintiff and/or the putative class would be grossly disproportionate to any actual injury or harm sustained by Plaintiff or any class member and would therefore deny Ceridian its rights under the Due Process and Excessive Fines Clauses of the United States Constitution. Furthermore, BIPA, particularly as applied to class actions, imposes liabilities, damages, penalties, or fines that are so excessive, severe, and oppressive as to be obviously unreasonable and wholly disproportionate to the offense of clocking in and our of work, and BIPA thereby violates the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution. In addition, the prayer for relief is barred in whole or in part because Plaintiffs and the putative class members are not entitled to recover liquidated damages under Section 14/20(1) or (2) of BIPA as such would be an unenforceable penalty. On behalf of themselves and the putative class members, Plaintiffs seek an award of $5,000 for each willful or reckless violation of the statute and $1,000 for each negligent violation. To the extent Plaintiffs, allege that each instance of noncompliance with the separate provisions of the Act constitutes a distinct violation and that Ceridian committed multiple violations of BIPA with respect to Plaintiffs and each putative class member, any such recovery would not be a reasonable estimate of actual damages, but instead would amount to a disparate penalty—more akin to punitive

damages for strict liability—given that Plaintiffs and the putative class members have not suffered any injury or harm to warrant such relief.

SIXTH AFFIRMATIVE DEFENSE

Any alleged loss or damage that Plaintiff (or any other alleged member of the putative class) claims to have sustained is speculative and uncertain, and therefore is not compensable.

SEVENTH AFFIRMATIVE DEFENSE

Any alleged information generated by the finger scan clocks offered by Ceridian is not biometric information nor biometric identifiers, as those terms are defined by BIPA. The claims are barred in whole or in part because the timeclocks and finger scan devices sold by Ceridian to its customers do not collect, store, or capture "biometric identifiers" or "biometric information" as defined by BIPA. To the extent that the statute applies to the timeclocks and finger scan devices sold by Ceridian to its customers, the claims are barred in whole or in part based on Ceridian's good faith and reasonable interpretation of BIPA, substantial compliance therewith, and/or absence of any intentional, reckless, or negligent violation of the statute.

EIGHTH AFFIRMATIVE DEFENSE

Ceridian is not liable under BIPA or under any other legal theory because, among other reasons, the claims of Plaintiff and/or alleged members of the putative class are barred, in whole or in part, by the applicable statute of limitations and/or laches. Plaintiff's, and each putative class member's, claims may be barred in whole or in part to the extent time-barred by the applicable one-year statute of limitations for publication of matter violating a right of privacy (735 ILCS 5/13- 201), two-year statute of limitations to recover damages for injury to person or for a statutory penalty (735 ILCS 5/13-202), and/or five-year statute of limitations for civil actions not otherwise subject to a limitations period (735 ILCS 5/13-205). To the extent that Plaintiff believes that the

Standard Market and/or Ceridian violated BIPA with respect to the collection of her data, she could have provided notice to Ceridian of such purported violation upon the first use of the device. At no time prior to the filing of the Complaint did Plaintiff notify Ceridian that she believed Ceridian had violated BIPA with respect to the collection of her data, nor did she inquire as to the existence of a policy establishing guidelines for the deletion of information collected by the finger scan timekeeping device. Further, on information and belief, Plaintiff never made any inquiry whatsoever, either through Standard Market, Ceridian, or otherwise, seeking any information or policies regarding the alleged collection of her biometric information or biometric identifiers.

NINTH AFFIRMATIVE DEFENSE

To the extent any employee or agent of Ceridian performed any act or engaged in any conduct violative of BIPA, any such act or conduct was outside the scope of authority of such employee or agent and was not authorized by Ceridian.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are limited to the extent that Plaintiff failed to mitigate the alleged damages. To the extent that Plaintiff believes that the Standard Market and/or Ceridian violated BIPA with respect to the collection of her data, she should have provided notice to Ceridian of such purported violation upon the first use of the device. At no time prior to the filing of the Complaint did Plaintiff notify Ceridian that she believed Ceridian had violated BIPA with respect to the collection of her data, nor did she inquire as to the existence of a policy establishing guidelines for the deletion of information collected by the finger scan timekeeping device.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver or estoppel. To the extent that Plaintiff believes that the Standard Market and/or Ceridian violated BIPA with

respect to the collection of her data, she could have provided notice to Ceridian of such purported violation upon the first use of the device. At no time prior to the filing of the Complaint did Plaintiff notify Ceridian that she believed Ceridian had violated BIPA with respect to the collection of her data, nor did she inquire as to the existence of a policy establishing guidelines for the deletion of information collected by the finger scan timekeeping device.

TWELFTH AFFIRMATIVE DEFENSE

BIPA is violative of Article IV, Section 13 of the Illinois Constitution's prohibition against special legislation as it confers benefits or exclusive privileges on certain persons or groups of persons to the exclusion of other similarly situate BIPA excludes from its mandates certain financial institutions, affiliates of certain financial institutions, government agencies, and government contractors, and it fails to provide its benefits to employees of certain financials institutions, government employees, and employees of government contractors when working in their capacity as government contractors. BIPA's conferral of benefits on certain persons or groups of persons, including Plaintiff and putative class members, while excluding other persons or groups of persons, including employees of financial institutions and government entities, for no rational reason is improper and violative of the Illinois Constitution and the statute should be stricken.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff may not maintain this lawsuit as a class action because the purported claims of the putative class representative are not sufficiently typical of those of the purported class members, common issues of fact and law do not predominate over individual issues, liability and damages cannot be proven on a class-wide basis, the putative plaintiff class representative will not adequately represent the purported plaintiff class, the putative plaintiff class is not ascertainable,

the proposed class action would not be manageable, and a class action is not a superior method for adjudication of the purported claims set forth in the Complaint.

Additionally and separately, as a matter of constitutional right and substantive due process, Ceridian would be entitled to contest its liability to any particular individual plaintiff, even if the representative of the purported plaintiff class prevails on his claims. Trying this case as a class action would violate the U.S. Constitution and the Illinois Constitution.

FOURTEENTH AFFIRMATIVE DEFENSE

Any alleged conduct by Ceridian occurred outside of Illinois and, therefore, the application of BIPA to the alleged conduct would require the improper extraterritorial application of an Illinois statute. Each class member's claims are barred in whole or in part to the extent they require the extraterritorial application of BIPA and/or violate the Dormant Commerce Clause where the alleged violations occurred outside of the State of Illinois such that enforcement of the statute against Ceridian would impermissibly regulate and control commercial activity beyond state boundaries. Any and all alleged conduct by Ceridian occurred outside of Illinois. Moreover, in regulating the commercial exchange of information in private hands and requiring significant disclosures, BIPA infringes First Amendment protections of commercial speech and against compelled speech.

FIFTEENTH AFFIRMATIVE DEFENSE

Upon information and belief, Ceridian alleges that some or all members of the putative class may be bound by an agreement to arbitrate. Accordingly, Ceridian reserves its right to seek individual arbitration where appropriate.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's and putative class members' claims are preempted, in whole or in part, by applicable Federal Law, including but not limited to: the Interstate Commerce Commission Termination Act ("ICCTA"), 49 U.S.C. § 10101 *et seq*.; the Federal Railroad Safety Act, 49 U.S.C. § 20101 *et seq*.; the Federal Aviation Administration Authorization Act, 49 U.S.C. § 14501(c) *et seq*.; the Railway Labor Act, 45 U.S.C. § 151, *et seq*.; and Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a) (to the extent that Plaintiff /or some or all of the putative class members are union members).

SEVENTEENTH AFFIRMATIVE DEFENSE

The Complaint is barred in whole or in part under the doctrines of issue or claim preclusion. Plaintiff, and other putative class members have pending duplicative claims that overlap with their claims here, and which therefore may be precluded.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent they are or become moot as to Plaintiff and some or all members of the putative class. Settlements or dispositive rulings in overlapping BIPA actions may moot the claims at issue here.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent they have been released as to Plaintiff and some or all members of the putative class. Plaintiff and putative class members have released their BIPA related claims through settlements or dispositive rulings in overlapping BIPA actions against their employers for the same alleged collection, use, storage or dissemination of their purported biometric information or biometric identifiers at issue here.

TWENTIETH AFFIRMATIVE DEFENSE

Putative class members' and Plaintiff's claims may be preempted pursuant to labor law preemption, preemption under the Illinois Worker's Compensation Act, or BIPA exclusions as contained in 740 ILCS 14/25, or as provided in any provision of BIPA.

TWENTY FIRST AFFIRMATIVE DEFENSE

The claims are barred in whole or in part because any alleged disclosure falls within BIPA's financial transaction exception. Specifically, BIPA permits disclosure of biometric identifiers or biometric information to "complete[] a financial transaction requested or authorized by the subject." 740 ILCS 14/15(d)(2). Any disclosure by Ceridian of biometric identifiers or biometric information of Plaintiff or members of the putative class was for the purpose of completing a financial transaction requested or authorized by Plaintiff or members of the putative class.

TWENTY SECOND AFFIRMATIVE DEFENSE

Upon information and belief, Ceridian alleges that some or all members of the putative class may be bound by class action waivers. Accordingly, putative class members have waived their right to participate in a class action and their right to join Plaintiff's claims asserted in this matter as a putative class member.

Dated: April 1, 2021

Respectfully submitted,

CERIDIAN HCM, INC., Defendant

By: */s/ Molly K. McGinley*
One of their Attorneys

Molly K. McGinley
Kenn Brotman
Marvis A. Barnes, II
K&L GATES LLP
70 W. Madison Street, Suite 3100
Chicago, Illinois 60602
Telephone: (312) 807-4419
Facsimile: (312) 345-9060
molly.mcginley@klgates.com
kenn.brotman@klgates.com
marvis.barnes@klgates.com
Attorney No.: 45515

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she caused a true and correct copy of the preceding Defendant Ceridian HCM, Inc.'s Answer to Plaintiff's First Amended Class Action Complaint, to be served through the Odyssey e-file system on the following counsel of record on April 1, 2021:

J. Eli Wade-Scott
Edelson PC
350 North LaSalle Street, 14th Floor
Chicago, IL 60654
Tel: 312.589.6370
Fax: 312.589.6378
ewadescott@edelson.com
Firm ID: 62075

David Fish
The Fish Law Firm, P.C.
200 East Fifth Avenue, Suite 123
Naperville, IL 60563
Tel: 630.355.7590
Fax: 630.778.0400
dfish@fishlawfirm.com
Firm ID: 44086

Attorneys for Plaintiff

/s/ Molly K. McGinley

EXHIBIT 6

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

RACHEL LABARRE, individually, and on behalf of all others similarly situated,	)	
Plaintiff,	)	Case No. 2019 CH 06489
vs.	)	
CERIDIAN HCM, INC.,	)	
Defendant.	)	

ORDER

THIS CAUSE coming before the Court on Defendant's Motion for Bifurcated Discovery, due notice having been given, and the Court being fully advised in the premises, IT IS HEREBY ORDERED:

1) Defendant's Motion for Bifurcated Discovery ("Motion") is continued.

2) On or before July 21, 2021, Defendant shall file a supplemental submission in support of its Motion identifying the following information:

i) a list of all cases alleging claims under the Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA"), that name Ceridian as a defendant, and the status of each case (i.e., whether litigation is ongoing, whether the case has settled, etc.);

ii) a list of all cases alleging claims under BIPA that name a Ceridian customer as a named defendant, and the status of each case (i.e., whether litigation is ongoing, whether the case has settled, etc.), if known by Ceridian;

iii) a list of all cases alleging claims under BIPA that name Ceridian as a respondent in discovery;

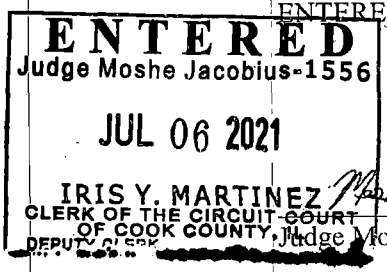
iv) the total number of Ceridian customers that Ceridian services in Illinois that have used Ceridian's timekeeping system that utilizes finger-scan technology, during the alleged class period of May 28, 2014 to the present;

v) of the total number of Ceridian customers identified in response to iv) above, from how many customers did Ceridian receive biometric data, during the alleged class period of May 28, 2014 to the present; and

vi) the total number of Ceridian customers that obtained a consent form to collect biometric data, including biometric identifiers or biometric information, which names Ceridian or the licensor, vendor, or service provider of the employer's timekeeping system in the consent form, during the alleged class period of May 28, 2014 to the present, if known by Ceridian.

3) This matter is set for further status on August 9, 2021 at 10:00 a.m., via Zoom videoconference (Meeting ID: 990 0014 8007 Password: 545631).

ENTERED:



Judge Moshe Jacobius

Attorney No.: 45515
Name: K&L Gates LLP/KB
Atty. For: Defendant Ceridian HCM, Inc.
Address: 70 W. Madison, Suite 3100
City/State/Zip: Chicago, Illinois 60602
Telephone: (312) 807-4277

EXHIBIT 7

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

RACHEL LABARRE, individually and on behalf of all others similarly situated, *Plaintiff*, v. CERIDIAN HCM, INC., a Delaware corporation, *Defendant.*	Case No.: 19 CH 6489 Judge Moshe Jacobius

ORDER

This matter coming before the Court on August 9, 2021, on Defendant's Motion for Bifurcated Discovery and for status, due notice having been given, and the Court being fully advised in the premises, IT IS HEREBY ORDERED:

1) Defendant's Motion for Bifurcated Discovery is taken under further advisement.

2) The Parties shall commence written discovery related to any consent obtained by, or disclosures made by, Ceridian or any of its customers on behalf of Ceridian related to biometric data, including but not limited to the date(s) any consent and/or disclosure programs were implemented.

3) This matter is set for further status on October 5, 2021 at 10:00 a.m., via Zoom videoconference (Meeting ID: 990 0014 8007 Password: 545631).

ENTERED:

ENTERED
Judge Moshe Jacobius-1556
AUG 09 2021
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Judge Moshe Jacobius

EXHIBIT 8

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

RACHEL LABARRE, individually and on behalf of all others similarly situated, *Plaintiff*, v. CERIDIAN HCM, INC., a Delaware corporation, *Defendant*,	Case No. 2019 CH 06489 Calendar 2 Judge Raymond W. Mitchell

DECLARATION OF SCHUYLER UFKES
IN SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true:

1. I am an attorney admitted to practice before the Supreme Court of the State of Illinois. I am entering this Declaration in support of Plaintiff's Motion for and Memorandum in Support of Preliminary Approval of Class Action Settlement. 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. The Settlement was reached through arm's-length negotiations and without collusion. In fact, the Settlement was sharply negotiated and took several months to achieve. In November 2021, after exchanging several demands and counteroffers, the parties agreed that a formal mediation would be productive. On February 3, 2022, the parties participated in a full-

day, formal mediation session with the Honorable James F. Holderman (Ret.) of JAMS in Chicago. The parties negotiated throughout the day and ultimately reached an agreement on the material terms of a class-wide settlement at the end of the mediation session. The parties memorialized their agreement on the material terms of the deal in a binding Memorandum of Understanding, executed on February 3, 2022. Over the next several months, the parties drafted and negotiated the remaining terms of the full, written Settlement Agreement, before executing it on April 20, 2022.

3. A true and accurate copy of the Firm Resume of Edelson PC is attached hereto as Exhibit 8-A.

* * *

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

Executed on April 21, 2022 at Chicago, Illinois.

/s/Schuyler Ufkes
Schuyler Ufkes

EXHIBIT 8-A

Edelson

November 2021

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

☆ ☆ ☆ ☆ ☆ ☆ ☆

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

—Law360

Table of Contents

Table of Contents

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 totalling 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 plaintiffs 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 Lawyers, 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 Claimant's 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 have been chosen by courts to handle some of the most complex and significant issues affecting our country today. 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 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 chemical" 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 determinant 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 in 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. Aryzta,* 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.

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.
- *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

0_312.589.6375
F_312.589.6378

jedelson@edelson.com

Jay Edelson

Founder and CEO

Considered one of the nation's leading class and mass action lawyers.

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 "profiliertesten (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/

0_415.234.5342
F_415.373.9435

rbalabanian@edelson.com

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.

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.

0_312.589.6377
F_312.589.6378

brichman@edelson.com

Benjamin H. Richman

Managing Partner, Chicago office

Appointed by the federal and state courts to be Class or Lead Counsel in dozens of cases

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. His suits have recovered hundreds of millions of dollars for his clients.

- 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.

Benjamin H. Richman

Managing Partner, Chicago office

- Ben is currently part of the team leading the *In re National Collegiate Athletic Association 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 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 has also routinely guest-lectures at various law schools on issues related to class actions, complex litigation and negotiation.

0_312.589.6374
F_312.589.6378

randrews@edelson.com

Ryan D. Andrews

Partner

Appointed class counsel in numerous federal and state class actions nationwide.

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.

0_312.572.7218
F_312.589.6378

cdore@edelson.com

Christopher L. Dore

Partner

Appointed by the federal and state courts to be Class or Lead Counsel in dozens of cases

Chris oversees the firm's case development team, with particular emphasis on consumer protection cases and managing the firm's mass tort development group.

- In the mass tort and mass action space, Chris has assisted in, among others, the development and representation of cases involving (1) hundreds of individuals suffering from exposure to the air pollutant ethylene oxide ("EtO"); (2) thousands of former football players suffering from the long-term effects of concussive and sub-concussive hits; (3) thousands of families who lost their homes, businesses, and even loved ones in the 2018 "Camp Fire" and the 2020 Oregon wildfires; (4) thousands of consumers exposed to toxic PFAS in their drinking water; and (5) dozens of governmental entities, unions, private insurance funds, and others seeking to recover from the devastation of the opioid crisis.

- In the area of consumer protection, Chris has helped develop hundreds of cases, from deceptive product and online marketing to violations of the Telephone Consumer Protection Act ("TCPA"), along with issues centered on employment, unfair practices in the health care industry, banking, and insurance industry. For example, Chris was at the forefront of developing litigation related to business interruption insurance on behalf of thousands of businesses following COVID-19 government shutdowns.

- Chris has been asked to appear on television, radio, and in national publications to discuss consumer protection and privacy issues, as well as asked to lecture at his alma mater on class action practice.

- Chris received his law degree from the University of Illinois Chicago School of Law, his M.A. in Legal Sociology from the International Institute for the Sociology of Law (located in Oñati, Spain), and his B.A. in Legal Sociology from the University of California, Santa Barbara. Chris also serves on the Illinois Bar Foundation, Board of Directors.

0_415.234.5344
F_415.373.9435

alawson@edelson.com

J. Aaron Lawson

Partner

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

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.

0_415.638.9853
F_415.373.9435

tlogan@edelson.com

Todd Logan

Partner

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

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.

0_312.572.7213
F_312.589.6378

dmindell@edelson.com

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.

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.

0_312.267.2079
F_312.589.6378

rperlstadt@edelson.com

Roger Perlstadt

Partner

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

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.

0_720.741.0084
F_312.589.6378

erapp@edelson.com

Eve-Lynn J. Rapp

Partner
Co-Chair, Public Client team

Appointed by the federal and state courts to be Class or Lead Counsel in dozens of cases

Eve is a partner and Co-Chair of Edelson's Public Client team, 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 date 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, 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

Partner
Co-Chair, Public Client team

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 post graduate 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.

0_312.239.3362
F_312.589.6378

ascharg@edelson.com

Ari J. Scharg

Partner
Co-Chair, Government Affairs Group

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

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.

0_312.572.7208
F_312.589.6378

bthomassen@edelson.com

Ben Thomassen

Partner

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

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.

0_312.589.6379
F_312.589.6378

atievsky@edelson.com

Alexander G. Tievsky

Partner

Briefed and argued cases in numerous federal appellate and district court.

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

0_312.242.0859
F_312.589.6378

ewadescott@edelson.com

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.

0_773.389.2281
F_312.589.6378

nrosinia@edelson.com

Nicholas Rosinia

Senior Litigation Counsel

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

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. *Ciapessoni, et. al. v. The United States of America*, No. 1:15-cv-00938 (Fed. Cl. 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 recieved his J.D magna cum laude from Washington University in St. Louis School of Law.

0_773.389.2153
F_312.589.6378

aturner@edelson.com

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.

0_312.572.7212
F_312.589.6378

tbenjamin@edelson.com

Theo Benjamin

Associate

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

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 and helped provide legal aid, representation, and policy research to refugees and asylum seekers undergoing the U.S. resettlement process.

0_415.638.9903
F_415.373.9435

mcampbell@edelson.com

Maya Campbell

Associate*

Served as Senior Articles and Essays Editor of California Law Review at the University of California, Berkeley School Law.

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

- Maya recieved her J.D. from the University of California, Berkeley School of Law, where she was co-chair of the Womxn of Color Collective, and served on the Executive Board of the Law Students of African Descent.
- During law school, Maya externed for the Honorable Donna M. Ryu on the Northern District of California, interned with the ACLU – Immigrants' Rights Project, and served as a research assistant for Professors Joy Milligan and Dylan Penningroth.
- Maya has a forthcoming publication, Perceived to be Deviant: Social Norms, Social Change, and New York State's "Walking While Trans" Ban, 110 CALIF. L. REV. (June 2022).
- Maya graduated with a degree in History from Reed College.

* Candidate for February 2022 California bar exam.

0_312.872.4566
F_312.589.6378

edawkins@edelson.com

Évievalle Dawkins

Associate

Member of the Charles Hamilton Houston National Moot Court Team at Howard University School of Law.

Évievalle's practice focuses on consumer, privacy-related, and tech-related class actions.

- Currently, Évievalle represents more than one thousand individuals who lost their homes and businesses in the 2018 Northern California Camp Fire. As part of this effort, she leads a team in preparing hundreds of claim submissions to the Fire Victim Trust. Évievalle is also involved in Edelson's environmental practice, representing individuals that were exposed to dangerous levels of ethlylene-oxide.

- Évievalle received her J.D. from Howard University School of Law. As a student attorney in the Fair Housing Clinic, she represented low-income families from wards 6 & 8 in Washington, D.C. in Landlord Tenant Court. In addition to providing holistic legal services to clients, she was involved in community outreach events and led canvassing and know your rights training efforts for public housing residents.

- She participated in the Thurgood Marshall Clerkship Program at the Maryland Office of the Attorney General. Évievalle spent the summer working in the Civil Rights and Legislative Affairs Divisions where she drafted policy proposals and regularly participated in meetings with high-level staff including the Attorney General.

- Évievalle participated in the Alternative Dispute Resolution (ADR) Consortium where she observed the ADR process and assisted in mediations as an intern at the Equal Employment Opportunity Commission. While a member of the Charles Hamilton Houston National Moot Court Team, Évievalle competed in the National Telecommunications and Technology Competition. Additionally, she served on the Executive Board of the Student Bar Association.

- Before law school, Évievalle worked on electoral and issue-based campaigns as the Operations Director and Project Manager for a D.C.-based political consulting firm. She also served as a White House Intern in Spring 2013.

0_872.268.7553
F_312.589.6378

pflynn@edelson.com

Palden Flynn

Associate*

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

Palden's practice focuses focuses on consumer and privacy-related class actions, in addition to environmental and government actions.

- Palden's environmental practice involves representing individuals who were exposed to ethylene oxide ("EtO") emitted by medical equipment sterilization and chemical manufacturing plants.
- Palden recieved her J.D. cum laude from Northwestern University Pritzker School of Law.
- At Northwestern, Palden participated in the Bluhm Legal Clinic's Environmental Advocacy Center, where she researched and drafted clean energy legislation based on similar state and federal programs. She also researched funding sources for environmental programs and drafted memoranda analyzing the benefits and drawbacks of different options.
- In 2021, Palden received honors on completion of the James A. Rahl/Owen L. Coon Senior Research Program, and was designated as a Center for Leadership Fellow on completion of Northwestern University's Fellowship in Leadership.
- Palden graduated with a B.A. in classics from Dartmouth College.

*Massachusetts admission pending.

0_773.389.2237
F_312.589.6378

abhausmann@edelson.com

Amy B. Hausmann

Associate

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

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 representes 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.

O_415.212.9300
F_415.373.9435

lhough@edelson.com

Lily Hough

Associate

A key player in defeating a motion to dismiss claims under the federal Wiretap Act.

Lily's practice focuses on consumer privacy-related class actions.

- Lily has extensive experience litigating complex technical issues and novel legal theories in "Internet of Things" privacy cases arising under federal and state laws. For example, in *S.D. v. Hytto, Ltd., d/b/a Lovense*, No. 18-cv-00688 (N.D. Cal.), Lily was a key player in defeating a motion to dismiss claims under the federal Wiretap Act in a class action lawsuit alleging that an adult sex toy company collected highly sensitive data on customer usage. During her first year of practice, Lily briefed and argued a successful opposition to a motion to dismiss in another class action under the federal Wiretap Act, in which she represented users of the Golden State Warriors' mobile application in *Satchell v. Sonic Notify, Inc. d.b.a. Signal 360 et al.*, No. 16-cv-04961 (N.D. Cal.).

- Lily has also achieved unique victories in efforts to end harassing robocalls to consumers through class action lawsuits under the Telephone Consumer Protection Act ("TCPA"). In 2019, she and co-counsel represented class members in a jury trial that secured a $925 million verdict in *Wakefield v. Visalus, Inc.*, No. 15-cv-01857 (D. Or.). Lily recently defeated a motion to dismiss TCPA claims and successfully litigated challenging questions of statutory interpretation involving whether job offer solicitations constituted "telemarketing" in *Risher v. Adecco, Inc., et al.,* No. 19-cv-05602 (N.D. Cal.).

- In 2020, Lily joined the firm's efforts to litigate claims by survivors of childhood sexual abuse against various entities under California's recently enacted AB 218.

- Lily received her J.D., cum laude, from Georgetown University Law Center. In law school, Lily served as a Law Fellow for Georgetown's first year Legal Research and Writing Program and as the Executive Editor of the Georgetown Immigration Law Journal. She participated in D.C. Law Students In Court, one of the oldest clinical programs in the District of Columbia, where she represented tenants in Landlord & Tenant Court and plaintiff consumers in civil matters in D.C. Superior Court. She also worked as an intern at the U.S. Department of State in the Office of the Legal Adviser, International Claims and Investment Disputes (L/CID).

- Prior to law school, Lily attended the University of Notre Dame, where she graduated magna cum laude with departmental honors and earned her B.A. in Political Science and was awarded a James F. Andrews Scholarship for commitment to social concerns. She is also a member of the Pi Sigma Alpha and Phi Beta Kappa honor societies.

0_312.561.4106
F_312.589.6378

movca@edelson.com

Michael Ovca

Associate

Litigating a half-dozen Telephone Consumer Protection Act cases.

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.

0_312.874.7650
F_312.589.6378

epenkowski@edelson.com

Emily Penkowski

Associate

Cum laude from Northwestern University Pritzker School of Law

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.

0_312.572.7211
F_312.589.6378

aplawinski@edelson.com

Albert J. Plawinski

Associate

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

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.

0_872.268.7642
F_312.589.6378

areilly@edelson.com

Angela Reilly

Associate

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

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".

0_773.668.0328
F_312.589.6378

zseaman-grant@edelson.com

Zoë Seman-Grant

Associate*

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

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."

0_415.234.5345
F_415.373.9435

bsilverkorn@edelson.com

Brandt Silver-Korn

Associate

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

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.

O_312.819.2104
F_312.589.6378

sufkes@edelson.com

Schuyler Ufkes

Associate

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

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.

0_773.906.5346
F_312.589.6378

jwright@edelson.com

Jacob Wright

Director of Public Policy

Advises federal, state, county, and local government officials on a variety of issues.

Jacob is part of the firm's Public Client and Government Affairs Group. Jacob advises federal, state, county, and local government officials on a variety of issues involving consumer protection, data security, privacy, and technology. Jacob's work includes working alongside numerous public interest organizations and non-governmental organizations to defend current law and advocate for the adoption of new laws that better protect consumers.

- Jacob has testified multiple times before committees in both the Illinois House of Representatives and the Illinois Senate. He has also guest lectured at the Chicago-Kent College of Law and is frequently asked to speak at town halls, public forums, and conferences involving issues such as privacy, net neutrality, data security, and technology.

- Prior to joining Edelson PC, Jacob was Assistant Counsel to the Speaker of the Illinois House of Representatives where he was tasked with reviewing and drafting legislation, analyzing bills, providing memoranda and analyses on legislative matters to House leadership, and assisting House members with committee testimony and floor debate.

- Jacob received his B.A. in Government and Middle Eastern Studies from the University of Texas at Austin, received his MA in International Affairs from the American University School of International Service, and graduated cum laude from American University Washington College of Law. During law school, he clerked for the Honorable Sally D. Adkins of the Maryland Court of Appeals and worked in the Office of U.S. Senator Richard J. Durbin.

- Jacob is a Member of the Equality Illinois Political Action Committee as well as a Next Generation Board Member of La Casa Norte.

0_312.589.6373
F_312.589.6378

sdavis@edelson.com

Shawn Davis

Director of Digital Forensics

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

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 9

DECLARATION OF DAVID FISH

Pursuant to 28 USC §1746, I swear under penalty of perjury that the following information is true:

1. My name is David Fish. I am over the age of twenty-one and I am competent to make this Declaration and I have personal knowledge of the matters set forth herein.

2. I graduated #2 in my law school class from Northern Illinois University College of Law in 1999. Prior to starting my own firm, I was employed by other law firms engaged in litigation in and around Chicago, Illinois including, Jenner & Block in Chicago as a summer associate, Klein, Thorpe & Jenkins in Chicago as an associate and The Collins Law Firm, P.C. as an associate. My law firm's resume is attached hereto.

3. I have extensive experience representing employees and employers in labor and employment disputes. I have handled disputes with the Illinois Department of Labor, the United States Department of Labor, the Illinois Department of Human Rights, the National Labor Relations Board, the Equal Employment Opportunity Commission, and in the state and federal courts in Illinois. I have litigated hundreds of cases in the United States District Court for the Northern District of Illinois.

4. I am the former chair of the DuPage County Bar Association's Labor and Employment Committee and served on the Illinois State Bar Association's Labor and Employment Committee Section Council. I also am a member of the National Employment Lawyers Association—Illinois chapter.

5. I have, on several occasions, lectured at educational seminars for lawyers and other professionals. I moderated a continuing legal education panel of federal magistrates and judges on the Federal Rules of Civil Procedure through the Illinois State Bar Association. I have presented

on electronic discovery rules and testified before the United States Judicial Conference in Dallas, Texas regarding electronic discovery issues. I have provided several CLE presentations on issues relating to labor and employment law.

6. I have served as counsel in dozens of claims brought under the Illinois Biometric Information Privacy Act (BIPA) and recovered millions of dollars for my clients in these cases. As a result, I am very familiar with the risks, defenses, strengths, and weaknesses of these cases. I am familiar with the amounts at which other BIPA cases have settled in the state of Illinois.

7. I have been involved in this litigation from the start. The settlement reached in this case is a good outcome for the putative class. The settlement in this case is particularly appropriate and fair given the potential defenses that are available to a vendor of biometric equipment as opposed to the typical employer case. This unique defendant-setting, along with the uncertainty of pending appeals dealing with issues such as preemption of claims and the statute of limitations made settlement in this case a good idea and factored into the amount of the settlement.

8. The proposed Settlement Agreement provides an excellent result for the Class Members. It provides Class members a definite recovery and was entered into at a time when the outcome was uncertain. The settlement agreement entered into in this case represents a fair compromise of a disputed claim. Given the uncertainty relating to the law at issue, including the statute of limitations and workers compensation preemption and what constitutes a biometric identifier, I believe it to be a more than fair outcome for the Class.

Dated: April 5, 2022 /s/David J. Fish
David J. Fish

FIRM OVERVIEW

The Fish Potter Bolaños, P.C. has experience representing employees and employers in labor and employment disputes, including before the Illinois Department of Labor, the United States Department of Labor, the Illinois Department of Human Rights, the National Labor Relations Board, the EEOC, and in the state and federal courts in Illinois.

Our efforts have resulted in numerous favorable outcomes for our clients. Our attorneys are known for their knowledge of labor and employment matters and have been asked to present and publish in various classrooms and on-line publications to educate others on how this area of the law works. We also have an active *pro bono* practice and provide employment counseling for no charge to dozens of low income and elderly clients each year through a partnership with Prairie State Legal Services.

ATTORNEY PROFILES

MARA BALTABOLS

Mara is an accomplished civil litigator and class action attorney with a wide-range of experience litigating in state and federal court. Mara was recognized as an Illinois Super Lawyer Rising Star in Civil Defense Litigation in 2013, and in Consumer Law in 2016-2019. Mara is a strong believer in taking the best cases to trial. She served as a primary attorney in a case brought by a senior citizen against a major loan servicer, *Hammer v. RCS*, that resulted in a $2,000,000

jury verdict upheld on post-trial motions. She was a featured speaker at NACBA's 23rd Annual Convention discussing effective adversary proceedings and successfully preparing cases for trial.

Mara previously worked as an attorney at Bock, Hatch, Lewis & Oppenheim, LLC (f/k/a Bock & Hatch, LLC) and at Sulaiman Law Group, Ltd. d/b/a Atlas Consumer Law.

Mara obtained her J.D. from the University of South Carolina in 2009, and her undergraduate degree from the University of Colorado at Boulder in 2003. Mara is a member of the Illinois Bar and admitted to practice in the Northern and Southern federal district courts in Illinois. She is also admitted to the Eastern District of Wisconsin and Eastern District of Michigan.

MARIA DE LAS NIEVES BOLAÑOS

Ms. Bolaños was influenced from a young age by the work and activism of her single mother who worked to provide health care and educational services to Central Washington's Yakima Valley, including through work with migrant farmworkers and community organizations. It was this background that created Ms. Bolaños' interest in employment law and drew her to her first legal job with mentor and workers' rights activist Robin Potter, who later became her law partner.

Ms. Bolaños represents workers in wage and hour, False Claims Act, and employment discrimination and retaliation and litigation. She has significant litigation experience at the State and Federal level, as well as with local administrative agencies, including Equal Employment Opportunity Commission, the Illinois Department of Human Rights and the Illinois Education

Labor Relations Board. Ms. Bolaños' experience includes representation of single plaintiffs, class and large class action cases with exceptional results, including a $14 million dollar settlement in a class action sexual harassment case in *Brown, et al. v. Cook County, et al.,* No. 17-cv-8085 (N.D. III. 2020).

Ms. Bolaños is a 2009 graduate of DePaul University College of Law. She serves on the Executive Board of the National Employment Lawyers Association (NELA) and is VP of Diversity, Equity, and Inclusion on its Executive Committee. She also chares NELA's Low Wage Worker Practice Group and serves on its Legislative Action Committee and is a member of NELA's Illinois affiliate, the Illinois State Bar Association, and the National Lawyers Guild's Chicago Labor and Employment Committee. Ms. Bolaños serves on the ARISE Chicago Legal Advisory Board and serves on the Board for In These Times Magazine.

Ms. Bolaños frequently lectures on various employment law matters, including NELA's Annual Conventions, NELA Illinois' Seventh Circuit Conference, the Decalogue Society, Illinois Legal Services Committee for Immigrants, and a variety of other organizations. Ms. Bolaños co-authored a brief on behalf of *amici curiae* Steve Viscelli, Domingo Avalos, Gabriel Procel, Brion Gray, James Zuber, Hector Zelaya, Desiree Ann Wood, the Wage Justice Center and Real Women in Trucking, Inc., in the case, *New Prime Inc. v. Oliveira*, 139 S.Ct. 532, 202 L.Ed. 2d 536 (2019).

ALENNA BOLIN

For thirty years, Ms. Bolin has advocated for employees from all walks of life and diverse backgrounds, in workplace civil rights, FMLA, sexual harassment, discrimination,

retaliation and retaliatory discharge, and related employment matters. Her creative litigation strategies and advanced writing abilities combine to make her a skilled advocate for her clients. She treats clients with respect and compassion while guiding them through the legal process.

She has served as Of Counsel to the firm (formerly Potter Bolaños LLC and Robin Potter & Associates) since 2010.

Ms. Bolin previously practiced in the areas of civil rights, contracts, securities, commodities, and fraud, in addition to employment law. She was part of the two-lawyer trial team that won a $500,000 jury verdict on workplace intentional infliction of emotional distress, a verdict that was later upheld on appeal in *Naeem v. McKesson Drug Co*., 444 F.3d 59 (7th Cir. 2006). She was extensively involved in researching and drafting the winning briefs in *Walters v. Metropolitan Educational Enterprises, Inc.,* 519 S.Ct. 202 (1997), in which the U.S. Supreme Court issued a decision favorable to employees. More recently, she participated in case development and discovery on the legal team that achieved a $14 million dollar settlement in a class action sexual harassment case in *Brown v. Cook County, et al*., No. 17-cv-8085 (N.D. Ill. 2020). She has served as a contributing author for the Midwinter Report of FMLA Cases, published by the FMLA subcommittee of the Section of Labor and Employment Law of the American Bar Association.

Ms. Bolin received her J.D. from the University of California, Davis, School of Law, and her B.A., *cum laude*, from Northern Illinois University. During law school, she authored an article that won awards for excellence in writing and was published as the Pease Environmental

Law Review. Along with her J.D., she received a Public Interest Law Program Certificate. Ms. Bolin is an active member of the National Employment Lawyers Association.

PATRICK COWLIN

Mr. Cowlin is an experienced attorney who primarily represents employees in wage and hour, discrimination, disparate impact, harassment, retaliation, FMLA, and other employment and *qui tam* cases. He has successfully litigated and negotiated cases involving individual plaintiffs, as well as class actions and collective actions. He has also represented union members in contract arbitration and administrative proceedings, and public school parents and students in class litigation.

Mr. Cowlin was recognized as a top rated employment litigation attorney in Illinois from 2017-2021, earning a "Rising Star" designation from Illinois Super Lawyers. He graduated with a B.B.A. in Finance from University of Wisconsin-Madison and graduated *cum laude* from DePaul University College of Law in 2012.

Mr. Cowlin is admitted to the Illinois Bar and the U.S. District Court for the Northern District of Illinois. He is a member of the National Employment Lawyers Association ("NELA"), NELA-Illinois, and the National Lawyers Guild. He is a part of NELA-Illinois' Legislative Action Committee, which works to ensure Illinois Law appropriately protect employees' rights.

DAVID FISH

Mr. Fish graduated #2 in his law school class from Northern Illinois University College of Law after graduating from Illinois State University. Prior to starting his own firm, Mr. Fish was employed by larger law firms. (Including, Jenner & Block in Chicago, Illinois as a summer associate and Klein, Thorpe & Jenkins/Collins Law). He is a member of the National Employment Lawyers Association which is a group of employment lawyers.

Mr. Fish has, on several occasions, lectured at educational seminars for lawyers and other professionals. He has moderated a continuing legal education panel of federal magistrates and judges on the Federal Rules of Civil Procedure, he has presented before the Illinois State Bar Association on electronic discovery rules, and he testified before the United States Judicial Conference in Dallas, Texas regarding electronic discovery issues.

Mr. Fish's publications include: "Enforcing Non-Compete Clauses in Illinois after Reliable Fire", Illinois Bar Journal; "Top 10 wage violations in Illinois", ISBA Labor and Employment Newsletter (August, 2017); "Physician Non-Complete Agreements in Illinois: Diagnosis—Critical Condition; Prognosis- Uncertain" DuPage County Bar Journal (October 2002); "Are your clients' arbitration clauses enforceable?" Illinois State Bar Association, ADR Newsletter (October 2012); "The Legal Rock and the Economic Hard Place: Remedies of Associate Attorneys Wrongfully Terminated for Refusing to Violate Ethical Rules", of W. Los Angeles Law Rev. (1999); "Zero-Tolerance Discipline in Illinois Public Schools" Illinois Bar Journal (May 2001); "Ten Questions to Ask Before Taking a Legal-Malpractice Case" Illinois Bar Journal (July 2002); "The Use Of The Illinois Rules of Professional Conduct to Establish The Standard of Care In Attorney Malpractice Litigation: An Illogical Practice", Southern

Illinois Univ. Law Journal (1998); "An Analysis of Firefighter Drug Testing under the Fourth Amendment", International Jour. Of Drug Testing (2000); "Local Government Web sites and the First Amendment", Government Law, (November 2001, Vol. 38).

KIMBERLY HILTON

Ms. Hilton has worked in the legal field for over twenty years as an attorney, legal assistant, a paralegal, and a law clerk. Ms. Hilton's primary focus throughout her career has been in the area of labor and employment. Ms. Hilton has litigated in the state and federal courts and before agencies such as the Illinois Department of Human Rights, the Equal Employment Opportunity Commission, the Illinois Human Rights Commission and the American Arbitration Association.

Ms. Hilton graduated *cum laude* from The John Marshall Law School, Chicago, Illinois in 2010. Ms. Hilton received her Bachelor of Arts in English and Political Science from Cornell College, Mt. Vernon, Iowa in 2003. During law school, Ms. Hilton worked as a judicial extern for the Illinois Appellate Court, First District in Chicago, wrote and edited articles for The John Marshall Law Review and participated in John Marshall's Moot Court program.

Ms. Hilton is a member of the National Employment Lawyers Association – Illinois and the Illinois State Bar Association. Ms. Hilton has also presented two CLE classes for the DuPage County Bar Association one about the EEOC and IDHR claim procedure and the other about COVID-19 and the new laws that were enacted in light of the pandemic.

JAMES GREEN

Mr. Green represents individuals denied workers' compensation, social security or other disability benefits and unions and union members in labor negotiations and arbitrations, unfair labor practices and dismissal cases.

For more than thirty years Mr. Green as successfully represented hundreds of individuals in claims for Workers' Compensation benefits. He has assisted injured workers in a wide range od employment settings, including airline industry, heath care institutions and public schools to obtain the full benefits they are entitled to receive under the Illinois Workers' Compensation Statute. He also represents clients who have been denied Social Security Disability Benefits. He is available to assist claimants in guiding them through the entire maze of the bureaucratic process from filing an application to representing them in a hearing before an Administrative Law Judge, is their claims are denied.

Mr. Green has worked closely with the Chicago Teachers Union for the last ten years. He has represented it in labor arbitrations and unfair labor practice charges before the Illinois Labor Relations Board and individual teachers in statutory dismissal hearing and in workers' compensation claims. He previously serves as the General Counsel for Teamsters Local 726 from 1994-2009, negotiating contracts and representing the Union in all aspects of its operations.

Mr. Green has deep roots in the labor movement prior to practicing law. He began his career organizing child-care workers in Chicago, then worked as a staff director of a local union, managed a Health, Welfare and Pension fund for the Midwest Region for the International Ladies Garment Workers Union.

Mr. Green is an active member of the Chicago Bar Association, the Workers' Compensation Lawyers' Association and the AFL-CIO Union Labor Alliance. Mr. Green graduated *cum laude* from the John Marshall Law School.

JOHN KUNZE

John C. Kunze graduated from The University of Illinois Champaign-Urbana with a Bachelor of Arts Degree in History. Mr. Kunze graduated *cum laude* from The John Marshall Law School in Chicago, Illinois. While at John Marshall John was a member of Law Review, co-founded The Video Game Law Society, and was the founding editor of the Society's Newsletter.

Mr. Kunze is a member of the National Employment Lawyers Association and the Illinois State Bar Association.

SETH MATUS

For more than twenty years, Mr. Matus has worked as a lawyer serving businesses ranging from start-ups and family companies to high tech firms, professional organizations, retailers and temporary labor services. Mr. Matus has repeatedly saved employers facing class-action overtime lawsuits from multi-million dollar liability and obtained favorable outcomes for general contractors entangled in complex construction disputes.

Mr. Matus is a leader in developing and implementing innovative policies and procedures to protect confidential information and trade secrets and in ensuring that businesses comply with applicable law after breaches involving personal data. He has been certified as an information

privacy professional in US private-sector law by the International Association of Privacy Professionals and has presented several seminars on information privacy topics to business owners and human resources professionals. Mr. Matus also presented a CLE to the DuPage County Bar Association about the laws enacted in response to the COVID-19 pandemic and the implications for small businesses in response.

Mr. Matus received his JD from the University of Colorado in 1996 and his B.A. from Rutgers in 1992. He is a member of the Illinois, Colorado, New Mexico bars.

THALIA PACHECO

Thalia serves as the leader of our employment discrimination department where she litigates the rights of workers. She received her B.A. from Northern Illinois University (DeKalb, Illinois) and received her J.D. from DePaul University College of Law (Chicago). At DePaul, Thalia was the Editor-in-Chief of the Journal of Women, Gender & Law.

While attending law school, Thalia focused her studies in labor and employment law and interned at C-K Law Group: The Law Offices of Chicago-Kent in its Plaintiff's Employment Law Clinic and Chicago Public Schools in its Labor and Employee Discipline Department. Thalia has worked at a number of Chicago employment law firms in the area, including Siegel and Dolan, The Case Law Firm, and employment defense firm Franczek PC. Thalia is a member of the Hispanic Lawyers Association of Illinois and the American Bar Association. Thalia is fluent in Spanish. Thalia has presented a CLE for the DuPage County Bar Association about the leave laws related to the COVID-19 pandemic.

ROBIN POTTER

Robin Potter moved to Chicago in 1978, where she has built a nationwide private practice trying and litigating Labor & Employment, Discrimination, Sex Harassment, Whistleblower, Wage & Hour and False Claims Ac (FCA) individual and class action cases. Her FCA cases have returned ten of millions of dollars to the U.S. treasury and private carriers. She has been proud to serve as counsel to the Chicago Teacher's Union, union members and leadership working to reform their unions and increase democracy equity and justice in the workplace.

Robin served as a government supervisor in overseeing and conducting elections in the Laborers' International Union (LIUNA). She was also the court-appointed Claims Administrator in *Smith v. NIKE*, Case No. 03 C 9110 (N.D. Ill., J, Shadur), a class action rase discrimination case and was the Special Master in *EEOC v. The Dial Corporation*, Case No. 99 C 3356 (N.D.IL.), a pattern and sexual harassment case.

Robin has frequently lectured, including at the following venues: American Bar Association Midyear, annual, labor & employment, and EEOC meetings; Illinois State Bar Association (Labor Section); National Employment Lawyers' Association, Association of Trial Lawyers of America (Civil Rights and Individual Employee Rights Sections); the Taxpayers Against Fraud (lawyers representing plaintiffs in Qui Tam litigation); the American Federation of Teacher and American Federation of Labor Lawyers' Coordinating Committee; and the Practicing Law Institute.

In 2013, the National Lawyers' Guild, Chicago honored Robin and her firm s co-recipients of the Arthur Kinoy People's Law Award, "in recognition of tireless advocacy on behalf of the Chicago Teachers Union and Chicago Public School students, parents, and employees." Also in 2016, Robin was a finalist for the Public Justice Trial Lawyer of the Year Award for "outstanding contribution to the public interest" for her work in the case *United States and State of Illinois, ex rel Absher v. Momence Meadows Nursing Center, Inc*. The Chicago Democratic Socialists of America honored Robin at their 2014 Debs-Thomas-Harrington Dinner for her work supporting the labor movement and employees' rights.

Robin helped found the Nation Employment Lawyers Association and its Illinois chapter, NELA-Illinois, and remains an active member of both organizations. She is also a member of Taxpayers Against Fraud, the Chicago Bar Association, and the American Bar Association Litigation and Labor and Employment Section. She is on the Board of Directors of Advocates for Justice, a New York City based group engaged in nationwide advocacy and litigation, in public education and other areas of law reform.

Robin is a 1977 graduate of the University of Iowa Law School.

SANDY ALPERSTEIN

Sandy holds a B.A. in English from the University of Florida and is graduate of the University of Chicago Law School (*cum laude*, 1990). Sandy was a Staff Member of the Law Review and is admitted to the Illinois State Bar and the Northern District of Illinois. Sandy has represented clients in varied settings such as large law firms (Mayer, Brown), in-house (UARCO

Incorporated), smaller boutique law firms, and in her own private practice. Sandy is an active volunteer in the disability community, participating in special education law and policy advocacy on the federal, state, and local levels.

ROGELIO DELATORRE

Mr. Delatorre is a second year law student from Chicago-Kent College of Law. Mr. Delatorre is a first-generation Mexican-American whose parents are originally from Mexico but settled in the Chicagoland area. As a student, Mr. Delatorre is a member of the Hispanic Lawyers Association of Illinois, the Bar Representative on the Chicago-Kent Hispanic=Latinx Law Student Association Executive Board, the Treasurer of the Chicago-Kent Student Humanitarian Network, and a member of Chicago-Kent's Student Alumni Board. Additionally, Mr. Delatorre is the Vice-Chair of Communications of the Hispanic National Bar Association – Law Student Division.

Mr. Delatorre graduated with his Bachelor's Degree from Benedictine University where he majored in Accounting and obtained a minor in Political Science. Mr. Delatorre is also an alumnus of the Emma Bowen National Foundation, a national organization that provides diverse students with internships in the media industry.

Mr. Delatorre is fluent in Spanish. He is passionate about helping diversify the legal profession, helping the Latinx Community, and helping others in the process.

ASHLEY FEENY

Ms. Feeny has five years of legal assistant/paralegal experience. She graduated from Saint Xavier University in 2015 with a bachelor's degree in Criminal Justice and a minor in Middle Eastern Studies. She has experience in Real Estate Law, Class Actions, EEOC, NLRB and IDHR cases.

JESSICA HOWARD

Jessica is a paralegal who assists with our Workers' Compensation Cases, Social Security, and Employment Law Teams. Jessica also has a background in professional writing.

NICOLE SANDERS

Nicole is an experienced legal assistant/paralegal with over 28 years' experience in the legal field. Nicole has helped attorneys and clients in many different areas of the law including: employment law, personal injury, workers' compensation, real estate, divorce, and estate planning. She currently serves to support our employment attorneys and litigators.

REPRESENTATIVE CASES

Some examples of class, collective, and/or employment litigation in which Fish Potter Bolaños, P.C. (or our prior firms, The Fish Law Firm PC, Potter Bolaños, LLC, and Robin Potter & Associates) has served as counsel include:

a. *Brown v. Cook County*, No. 17-C-8085, 332 F.R.D. 229 (N.D.Ill.) ($14 million sexual harassment recovery for class of 532 assistant public defenders and law

clerks certified in suit alleging hostile work environment due to egregious harassment by pre-trial detainees).

b. *U.S.A. ex rel. Lokesh Chandra, M.D. v. Sushil A. Sheth, M.D.*, Case No. 06 C 2191 (N.D. Ill.) (False Claims Act case; $20 million settlement with the United States government).

c. *Nelson v. UBS Global Management*, No. 03-C-6446, 04 C 7660 (N. D. Ill.)(ERISA class action on behalf of thousands of BP Amoco employees who had Enron debt purchased as part of their money market fund; recovery of approximately $7 million).

d. *Franzen v. IDS Futures Corporation,* 06 CV 3012 (N. D. Ill. 2006)(recovery of millions of dollars for more than 1,000 limited partners in an investment fund that lost value as a result of the Refco bankruptcy).

e. *Kuhl v. Guitar Center*, Case No. 07 C 214 (J. Gottschall)(nation-wide FLSA and Rule 23 class for commissioned sales force; class settlement of $2,870,000 - 9000 class members)

f. *Pope v. Harvard Bancshares*, 06 CV 988, 240 F.R.D 383 (N. D. Ill. 2006)(class action recovery of $1.3 million for former shareholders of community bank who had stock repurchased in a reorganization).

g. *Johnson v Resthaven/Providence Life Services,* 2019CH1813 (Cook County, IL)($3 million class action recovery under Biometric Information Privacy Act)

h. *Cesarz et al v. Wynn Las Vegas LLC et al,* 2:13-cv-00109 (Nevada)($5.6 million FLSA settlement against Wynn Las Vegas casino workers)

i. *Barnes v. Aryzta, LLC,* 288 F. Supp. 3d 834 (N.D. Ill and Cook County)($2.9 million class action recovery under BIPA)

j. *Cruz v. Unilock Chicago, Inc.,* (J. Colwell) 383 Ill. App. 3d 752; 892 N.E.2d 78; 322 Ill. Dec. 831 (1st Dist. 2008)(certified class of 300 plant employees under IMWL and IWPCA; class-wide settlement of $1,600,000)

k. *Canas v. Smithfield Foods*, 2020CV4937($7.75 million recovery under FLSA and IMWL for COVID-19 pandemic related bonuses)

l. *Pietrzycki v. Heights Tower Serv., Inc.,* 197 F. Supp. 3d 1007 (N.D. Ill. 2016)(finding Fish appropriate to represent Class in wage and hour claims relating to overtime; case ultimately resolved on a class wide basis prior to trial).

m. *WAM Holdings, Inc d/b/a All Star Management, Inc./Wendy's*, Cook County, Case No. 2019-CH-11575 ($5.85 million class action recovery under the Biometric Information Privacy Act)

n. *Balonek et al v. Safeway et al*., No. 14-cv-01457 (N.D.Ill.) (class action settlement under FLSA and IMWL for $1.7 million on behalf of General Merchandise Managers and Assistant General Merchandise managers who worked in Illinois at Dominick's)

o. *Ralph/Memoli v. Get Fresh Produce Inc.,* 2019CH2324 ($675,000 settlement on a class wide basis for claims under Biometric Information Privacy Act)

p. *Parker v. DaBecca Natural Foods*, 2019CH1845 ($999,975 settlement on a class wide basis for claims under Biometric Information Privacy Act)

q. *Blount v. Stroud, et al.*, 01 L 2330 (Cook County, IL)($3.1 million verdict for retaliatory discharge and retaliation under 42 U.S.C. §1981, November 2005; 376 Ill. App. 3d 935, 877 N.E.2d 49 (1st Dist. 2007)(verdict rev'd. on IDHR preemption grounds); PLA recon. granted to Illinois Supreme Court - 232 Ill. 2d 302, 904 N.E.2d 1 (2008)(reversing and remanding to Appellate Court), 395 Ill. App. 3d 8; 915 N.E.2d 925; 2009 Ill. App. LEXIS 553; 333 Ill. Dec. 854; 106 Fair Empl. Prac. Cas. (BNA) 1163 (1st Dist. - Oct. 6, 2009);(denying remaining post-trial appeals and reinstating jury verdict); Rehearing den., 2009 Ill. App. LEXIS 1051 (Ill. App. Ct. 1st Dist., Oct. 2, 2009); defense appeal denied 2010 Ill. LEXIS 160 (Ill., Jan. 27, 2010); cert den., 131 S. Ct. 503 (2010)(initial fee petition in amount of $1,156,589 granted)

r. *Day v. NuCO2 Mgmt., LLC*, 1:18-CV-02088, 2018 WL 2473472, at *1 (N.D. Ill. May 18, 2018)(serving as the collective's co-counsel in a $900,000 settlement under FLSA)

s. *USA ex rel. Dr. Raymond Pollak v. University of Illinois, et al.*, Case No. 99 C 710 (Intervened False Claims Act; partial settlements in 2003 of $2.4 million on Medicare and Medicaid fraud, false hospitalizations in liver transplant).

t. *Mello et al v. Krieger Kiddie Corporation*, 15-cv-5660 (collective and putative class action alleging claims under FLSA, IMWL, IWPCA).

u. *Bell v. UPS, Case No.* 94 CH 1658 (Cook Co.)($7.25 million settlement of class action overtime case for 3000+ Illinois package car drivers)

v. *Sotelo v. DirectRevenue*, No. 05-2562 (N.D. Ill. filed Apr. 29, 2005)(class action alleging that company placed "spyware" on consumers' computers; resulted in a settlement that mandated significant disclosures to computer users before unwanted software could by placed on their computers, see also Julie Anderson, *Sotelo v. Directrevenue, LLC: Paving the Way for Spyware-Free Internet*, 22 Santa Clara High Tech. L.J. 841 (2005).

w. *LaPlaca v. Malnati et a*l., No. 15-cv-1312 (N.D.Ill.) (Class action on behalf of restaurant employees, $850,00 court-approved settlement).

x. *Sharples et al v. Krieger Kiddie Corporation*, 2013 CH 25358 (Cir. Court Cook County) (Illinois Wage Payment and Collection Act IWPCA class action claims; final approval of class wide settlement).

y. *Kusinski v. MacNeil Automotive Products Limited*, 17-cv-03618 (class and collective claims under the FLSA and the IMWL; final approval of class settlement entered);

z. *Gabryszak v. Aurora Bull Dog Co.,* 427 F. Supp. 3d 994 (N.D. Ill. 2019)(obtaining partial summary judgment for Collective under FLSA in a tip credit case for servers).