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

JOE YOUNG, individually and on behalf of all others similarly situated, Plaintiff, v. TRI CITY FOODS, INC., a Delaware corporation, Defendant.	Case No. 2018 CH 13114 Calendar 15

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

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I. INTRODUCTION

This proposed class action settlement, if approved, will end nearly 7 years of litigation challenging Defendant Tri City Foods, Inc.'s ("TCF") alleged violations of the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1 *et seq.* Specifically, Plaintiff Joe Young ("Plaintiff" or "Young") claims that TCF unlawfully collected his and other employees' fingerprints at its Burger King restaurants in Illinois through a biometric finger-scanning point-of-sale ("POS") and time-tracking system without providing required disclosures or obtaining informed written consent.

This case has significant history. In short, following years of motions practice, discovery, and a full-day mediation session overseen by the Honorable James F. Holderman (Ret.) of JAMS, the Parties have reached a class action Settlement that, if approved by this Court, will resolve the claims of 21,954 Settlement Class Members, including Plaintiff.[1]

The Settlement provides outstanding monetary relief. It creates a non-reversionary Settlement Fund of $15,367,800.00, and after all estimated fees and costs are deducted, each Class Member will automatically be sent a Settlement Payment for approximately $450 (via a check in the mail or Zelle). This result is undeniably impressive, especially when viewed in light of other similarly-sized BIPA class action settlements and TCF's financial condition. Indeed, while some courts have approved BIPA class settlements offering zero cash and credit monitoring, *see e.g.*, *Carroll v. Crème de la Crème, Inc.*, No. 2017-CH-01624 (Cir. Ct. Cook Cty. June 6, 2018), and others have approved settlements requiring class members to make claims with any residual funds reverting to the defendant, *see e.g.*, *Marshall v. Lifetime Fitness, Inc.*,

[1] Unless otherwise specified, all capitalized terms are defined in the Class Action Settlement Agreement (the "Agreement" or "Settlement"), which is attached as Exhibit 1.

No. 2017-CH-14262 (Cir. Ct. Cook Cty. July 30, 2019) ($270 per claimant with credit monitoring, with unclaimed funds reverting), the instant Settlement secures significant automatic monetary relief—with no need for a claims process and without any reverter to TCF.

Class action settlements are reviewed for approval in a well-established two-step process. 4 NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 13:10 (6th ed.). The first step, preliminary approval, requires that the parties present the settlement to the Court, and the Court determines whether it will "likely be able to" grant final approval of the agreement, determining whether the Settlement Class should be notified of the settlement, conditionally certifying the class representative and counsel, and setting the case for a final fairness hearing. *Id.* If preliminarily approval is granted, notice is then sent to the Settlement Class and any objections or exclusions from the Settlement Class are collected. Thereafter, in the second step, the Court holds a final fairness hearing to determine whether the settlement is "fair, reasonable, and adequate," and should be finally approved. *See* 4 NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 13:39 (6th ed.).

This matter is at the first stage. Given the extraordinary relief secured by the Settlement, the Court should readily find that the Settlement is within the range of possible approval. Accordingly, Plaintiff asks the Court to certify the Settlement Class for purposes of settlement, preliminarily approve the Settlement, appoint Class Counsel, appoint Joe Young as Class Representative, direct notice to the Settlement Class, and schedule a Final Approval Hearing.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Allegations and Defendant's Fingerprint Scanning System.

Plaintiff Joe Young claims that TCF used a fingerprint scanning system to monitor its employees' working hours and control its POS system, including cash register access. (Compl. ¶¶

2, 22-23, attached as Exhibit 2.) Plaintiff alleges that when he first began working for TCF, the company required him—and all other new employees at its Burger King stores—to scan his fingerprints to enroll them in TCF's employee fingerprint database. (*Id.* ¶ 22.) Employees were then required to use their fingerprints to clock in and out of work and use the restaurant's POS system. (*Id.* ¶ 23). In doing so, Plaintiff alleges that TCF failed to comply with BIPA's requirements. (*Id.* ¶¶ 21-25, 42-52.) Specifically, Plaintiff alleges TCF violated Section 15(b) of BIPA by collecting its employees' fingerprints without first obtaining their informed, written consent, and Section 15(a) of BIPA by failing to establish and follow a publicly available biometric data retention policy. (*Id.* ¶¶ 42-43, 48-51.) BIPA 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. *See* 740 ILCS 14/20. Defendant denies that it has engaged in any wrongdoing. (*See* Def.'s Ans., attached as Exhibit 3.)

B. The Litigation, Negotiations, and Settlement.

Young filed this case on October 22, 2018, seeking redress on behalf of himself and a proposed class of Illinois TCF employees for alleged violations of BIPA. TCF responded by moving to stay proceedings pending the Illinois Supreme Court's decision in *Rosenbach v. Six Flags Entertainment Corp.*, 2019 IL 123186, which the Court granted. During the stay, Plaintiff obtained interrogatory responses and significant documents from third-party Respondent in Discovery NCR Corporation ("NCR") regarding the POS system at issue.

After *Rosenbach* was decided on January 25, 2019, the stay was lifted. On March 5, 2019, TCF moved to dismiss under 735 ILCS 5/2-619, arguing that Plaintiff's claims were both time-barred and preempted by the Illinois Worker's Compensation Act. After full briefing, the Court denied TCF's motion.

The case then proceeded through a series of stays pending various appellate decisions addressing then-unsettled BIPA issues, including *McDonald v. Symphony Bronzeville*, No. 126511, *Tims v. Black Horse Carriers, Inc.*, No. 1-20-0563, *Marion v. Ring Container Tech., LLC*, No. 3-20-0184, and *Cothron v. White Castle System, Inc*., No. 128004 After these appeals had been decided, the Court lifted the stay on March 23, 2023.

By that time, the Parties had already commenced settlement negotiations. TCF provided informal discovery on its financial condition and the scope of the proposed Settlement Class.

Meanwhile, on June 30, 2023, TCF filed a declaratory judgment action against its insurance carriers seeking a declaration as to their coverage obligations. The case was re-filed in federal court and the Parties cross-moved for summary judgment. In November 2024, Judge Kocoras held that one carrier (C&I) may owe a duty to defend, upon the exhaustion of a separate underlying policy with a $5 million limit. *See Tri City Foods, Inc. v. Commerce & Industry Insurance Company*, No. 24-cv-414, Dkt. 64 (N.D. Ill. Nov. 26, 2024) (attached as Exhibit 4.).

When settlement talks stalled, Plaintiff moved to lift the stay and the Parties were directed to re-engage in formal discovery. The Parties served written discovery requests on each other, and both sides responded and produced documents.

While TCF was litigating its coverage dispute, the Parties again discussed the possibility of settling the case and agreed that a mediation would aid settlement discussions. On March 18, 2025, the Parties participated in a nearly ten-hour mediation with the Honorable James F. Holderman (Ret.) of JAMS. As a result, the Parties executed a binding Memorandum of Understanding the following day, and over the next several months, negotiated the remaining terms of the full Settlement Agreement now before the Court.

III. TERMS OF THE SETTLEMENT AGREEMENT

A. Settlement Class Definition.

The Settlement Class is defined as: "all individuals who scanned their finger at a restaurant in Illinois operated by Tri City Foods, Inc. between October 22, 2013 and the date of the Preliminary Approval Order." (Settlement § 1.23.) The definition contains five exclusions that are common in BIPA class action settlements.[2]

B. Settlement Payments.

The Settlement provides that TCF will establish a Settlement Fund of $15,367,800 for the benefit of the 21,954 class members. (*Id.* §§ 1.25, 7.3.) After paying all Settlement Administration Expenses, costs, attorneys' fees, and any incentive award from the Settlement Fund, the Settlement Administrator will distribute Settlement Payments pro rata directly to Class Members without the need for a claims process, which are expected to be about $450 each. (*Id.* §§ 1.26; 2.1(a).) Class Members can receive their Settlement Payment via check mailed to their last known mailing address, which they can update on the Settlement Website, or electronically through Zelle. (*Id.* § 2.1(b).) Checks that become void 180 days after issuance will be redistributed to Class Members who successfully received their initial check or Zelle payment, if feasible and in the interests of the Settlement Class. (*Id.* § 2.1(e).) If redistribution is not feasible or if residual funds remain after redistribution, the remaining funds will be distributed to Legal

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[2] Those exclusions 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 prepare and submit a timely postmarked request for exclusion from the Settlement Class; (4) persons for whom Defendant's records reflect a biometric consent form timely-signed prior to the person's first use of the POS system's finger scanner; and (5) the legal representatives, successors or assigns of any such excluded persons.

Aid Chicago, or any other or additional *cy pres* recipient(s) selected by the Court that are consistent with 735 ILCS 5/2-807(b). (*Id.*)

C. Injunctive and Prospective Relief.

As a result of this lawsuit, Defendant has stopped using finger-scanning technology in Illinois. (*Id.* § 2.2(a).) If TCF ever decides to resume using such technology in Illinois, it has agreed to obtain informed written consent, create a publicly available retention schedule, and destroy finger-scan data consistent with its retention schedule. (*Id.*)

D. Payment of Attorneys' Fees, Expenses, Incentive Award, and Settlement Administration Expenses.

Defendant has agreed to pay Plaintiff's reasonable attorneys' fees and expenses to proposed Class Counsel in an amount to be determined by the Court. (*Id.* § 8.1.) Class Counsel has agreed, with no consideration from Defendant, to limit their request for fees to 35% of the Settlement Fund, which Defendant may oppose. (*Id.*) There's also no "kicker" clause, meaning any difference between the amount sought in attorneys' fees and the amount awarded will remain in the Settlement Fund and will be distributed to Class Members—not to Defendant. (*Id.*) Defendant has also agreed to pay Plaintiff an incentive award of $5,000 from the Settlement Fund, subject to Court approval, in recognition of his efforts as class representative. (*Id.* § 8.2.) Plaintiffs will move for these payments via a separate request after preliminary approval and two weeks before the deadline for Settlement Class members to object to the Settlement (i.e., the "Objection Deadline"). TCF has agreed to pay from the Settlement Fund all notice and administrative expenses. (*Id.* § 1.25.)

E. Release of Liability.

In exchange for the relief described above, TCF, its affiliated companies, and insurers will be released from any and all claims under BIPA and other related laws accrued through the

date of the Preliminary Approval Order related to or arising from any of Defendant's alleged violations of BIPA, or Defendant's alleged collection, possession, capture, purchase, receipt through trade, obtaining, sale, profit from, disclosure, redisclosure, dissemination, storage, transmittal, and/or protection from disclosure of biometric data, through the use of finger scanners at Defendant's Illinois facilities. (*Id.* §§ 1.18-1.20, 3.)

IV. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES.

Before granting preliminary approval of the proposed Settlement, the Court must determine that the proposed Settlement Class is appropriate for certification. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). A party seeking class certification must demonstrate that (1) the class is so numerous that joinder of all members is impracticable; (2) common questions of law or fact predominate over any questions affecting only individual 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. 735 ILCS 5/2-801; *see Cruz v. Unilock Chi., Inc.*, 383 Ill. App. 3d 752, 760-61 (2d Dist. 2008). Each factor is met here.

A. The Settlement Class is Sufficiently Numerous.

Because the proposed Settlement Class includes 21,954 members, the numerosity requirement is easily met. *See Cruz*, 383 Ill. App. 3d at 771(finding that a proposed class of nearly 200 plaintiffs was sufficiently numerous to proceed as a class action).

B. Common Issues of Fact and Law Predominate.

Next, "questions of fact or law common to the class [must] predominate over any questions affecting only individual members." 735 ILCS 5/2-801(2). To that end, 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 v. Midway Moving & Storage, Inc.*, 378 Ill. App. 3d 51, 54 (1st Dist. 2007). Common questions typically predominate when a defendant has engaged in standardized conduct toward members of the proposed class. *See Miner v. Gillette Co.*, 87 Ill. 2d 7, 17 (1981); *McCarthy v. LaSalle Nat'l Bank & Tr. Co.*, 230 Ill. App. 3d 628, 634 (1st Dist. 1992).

Here, Plaintiff's and the proposed Settlement Class's claims are based upon the same common contention: TCF allegedly collected employee fingerprints without seeking prior informed written consent and without posting a publicly available retention policy for biometric data. (*See* Compl. ¶¶ 5, 22-25.) This raises several common issues of law and fact, such as whether the fingerprint data collected constitutes "biometric identifiers" or "biometric information" as defined by 740 ILCS 14/10; whether TCF provided notices to and obtained written releases from employees that are BIPA-compliant before collecting their fingerprint data, and whether and when TCF developed a written, publicly available policy regarding the retention and destruction of biometric data. All these questions will have class-wide answers, satisfying the commonality and predominance requirements.

C. Young and Settlement Class Counsel are Adequate Representatives.

Young is a member of the proposed Settlement Class with identical interests to other Class Members, and he does not have any interests antagonistic to the Settlement Class, because—like the other Class Members—he challenges TCF's collection of his fingerprint data using its NCR POS system and its failure to obtain informed written consent during the class period. (Compl. ¶¶ 33–37.) Because their alleged injuries are identical, their interests and legal rights under BIPA are identical. *See Hopson v. Macon Cnty.*, 2012 IL App (4th) 110665-U, ¶ 30.

Proposed Class Counsel Edelson PC has extensive experience in litigating class actions of similar size, scope, and complexity to the instant action, and in BIPA litigation in particular, as detailed in the Declaration of Schuyler Ufkes (*See* Ufkes Decl. ¶ 5, attached as Exhibit 5; Firm Resume of Edelson PC, attached as Exhibit 5-A to the Ufkes Decl.) Proposed Class Counsel Workplace Law Partners, P.C. is a deeply experienced employment class action firm that also has been involved in dozens of BIPA cases. (*See* Declaration of David Fish ("Fish Decl."), attached as Exhibit 6, ¶ 3.) Accordingly, the adequacy requirement is satisfied.

D. The Appropriateness Requirement Is Met.

A class action is the most appropriate method of resolving this controversy because it allows the Court to adjudicate common issues that will result in uniform rulings for all Class Members, allows the aggregation of relatively modest individual claims, and prevents inconsistent results. *See P.J.'s Concrete Pumping Serv., Inc. v. Nextel W. Corp.*, 345 Ill. App. 3d 992, 1004 (2d Dist. 2004). Therefore, this requirement is also satisfied.

V. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL.

Illinois law requires judicial approval of all proposed class action settlements. *See City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990). As discussed above, the procedure for review of a proposed class action settlement is a familiar two-step process—preliminary and final approval. 4 NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 13:10 (6th ed.). During this first step (a preliminary, pre-notification hearing) the Court assesses whether the proposed settlement falls "within the range of possible approval," such that there is reason 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). The preliminary approval

process allows for an initial evaluation of the fairness of the proposed settlement, relying on written submissions and informal presentations from the settling parties, but withholds stricter review until the final fairness hearing. *See* MANUAL FOR COMPLEX LITIGATION § 21.632 (4th ed. 2004); *see also*, *e.g.*, *Rosen v. Ingersoll-Rand Co.*, 372 Ill. App. 3d 440, 454-55 (1st Dist. 2007). If the Court finds that a proposed settlement falls "within the range of possible approval," the Court grants preliminarily approval to the agreement and notice is sent to the class. 4 NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 13:10 (6th ed.). The case then proceeds to the second step in the review process: the final fairness hearing. *Id.*

When determining whether a settlement is fair, reasonable, and adequate, courts typically consider: (1) the strength of the case compared to the relief offered; (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; (6) the reaction of class members; (7) the opinion of competent counsel; and (8) the stage of proceedings and discovery completed.[3] *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 493 (1st Dist. 1992). Here, each relevant factor supports approval of the Settlement.

A. The Strength of Plaintiff's Case Compared to the Relief Obtained Supports Approval.

The Settlement provides exceptional relief, offering $15,367,800 to 21,954 Class Members, which translates to approximately $450 per person after any approved fees and costs

[3] The fourth and sixth factors—the amount of opposition to the Settlement and the reaction of the Settlement Class members—are of less import at this stage, as the Court will not have the information necessary to assess them until final approval, once notice of the Settlement has been disseminated and Settlement Class members have had an opportunity to respond. For that reason, Plaintiff will analyze those factors in his motion for final approval, instead of in this motion.

are paid. This represents strong relief, particularly when viewed in light of other BIPA settlements with similar class sizes and the risks of continued litigation.

Some approved BIPA settlements have featured reversionary settlement funds—meaning any money not claimed by the class members reverts back to the defendant instead of being redistributed to class members or donated to *cy pres*—and credit monitoring services that are near meaningless. *E.g.*, *Carroll*, No. 2017-CH-01624 (credit monitoring only); *Vahle v. Ackercamps.com LLC*, No. 2023-LA-68 (Cir. Ct. Williamson Cty. May 3, 2024) (approving reversionary claims made settlement of $2.9 million for 11,867 class members); *Zhirovetskiy v. Zayo Grp., LLC*, No. 2017-CH-09323 (Cir. Ct. Cook Cty. Apr. 8, 2019) (fund of $990,000 for 2,200 class members, which capped payments at $400, only sent payments to those who submitted claims, and reverted up to $490,000 of unclaimed funds back to defendant); *Marshall*, No. 2017-CH-14262 ($270 per-claimant cap and reversion of unclaimed funds to the defendant). The payments here are automatic, projected to be about $450 per Class Member, and will be redistributed to Class Members (not TCF) if some aren't cashed.

The better BIPA settlements in the employment context, like this one, send significant cash payments equally and directly to class members without a claims process, do not feature any reversion to defendant, and redistribute uncashed checks to class members. That's the case here, and this Settlement—at $15,367,800 for approximately 21,954 Class Members—is among the strongest ever secured for a class of this size (i.e., those with over 10,000 class members). *See, e.g.*, *Sykes v. Clearstaff, Inc.*, No. 2019-CH-03390 (Cir. Ct. Cook Cty. Jan. 5, 2021) ($950,000 fund for 8,150 class members) (Loftus, J.); *Diaz v. Greencore USA-CPG Partners*, No. 2017-CH-13198 (Cir. Ct. Cook Cty. Dec. 17, 2018) ($6,000,000 fund/8,000 class members); *O'Sullivan v. Wam Holdings, Inc.*, No. 2019-CH-11575 (Cir. Ct. Cook Cty. Sept. 2, 2021)

($5,850,000 fund for 9,720 class members); *Davis v. Heartland Emp. Servs. LLC*, No. 19-cv-00680, Dkt. 130 (N.D. Ill. Oct. 25, 2021) ($5,418,000 fund/11,048 class members); *Sanchez v. Visual Pak*, No. 2018-CH-02651 (Cir. Ct. Cook Cty. Aug. 10, 2021) (allocating $3.2 million of total $3.5 million fund for class of 12,500 members and reverting 50% of uncashed checks to defendant); *Williams v. Personalizationmall.com, LLC*, No. 20-cv-00025, Dkt. 103 (N.D. Ill. July 20, 2022) ($4,500,000 fund/20,393 class members); *Roach v. Walmart Inc*., No. 2019-CH-01107 (Cir. Ct. Cook Cty. Dec. 14, 2020) ($10,000,000 fund for 21,677 class members); *Owens v. Wendy's Int'l, LLC*, No. 2018-CH-11423 (Cir. Ct. Cook Cty. Apr. 12, 2024) ($18,207,090 fund for 19,891 class members). Indeed, the instant Settlement is $5.3 million more than the recovery approved in *Walmart* and over $10 million more than the monetary relief in *Williams*, both of which included over 20,000 class members.

Were this litigation to continue, Plaintiff would've faced several unsettled issues that could have deprived him and the class of relief altogether. For example, TCF was expected to argue that the information captured by its fingerprint scanners were not actually "biometric identifiers" or "biometric information" subject to BIPA, but merely a string of numbers and letters. Additionally, the Illinois Supreme Court recently emphasized in *Cothron* that obtaining statutory damages under BIPA is discretionary, not mandatory. *Cothron*, 2023 IL 128004, ¶ 42. That means Plaintiff still faced the risk that even if he certified a class, won at summary judgment and trial, and defeated any appeals, the court or a jury could adjust a damages award. *See Rogers v. BNSF Ry. Co.*, 680 F. Supp. 3d 1027, 1042 (N.D. Ill. 2023) (vacating pre-*Cothron* damages award of $5,000 per class member and ordering new trial for jury to determine the amount of damages). There was also the risk that any significant damages award might be reduced on due process grounds given the potential statutory damages at issue. *See, e.g.*, *Golan v.*

FreeEats.com, Inc., 930 F.3d 950, 963 (8th Cir. 2019) (statutory award in TCPA class action of $1.6 billion reduced to $32 million). Given the significant exposure that TCF faced, there was no doubt that these issues would be pressed on appeal, further delaying relief, and there were serious concerns about Plaintiff and the class actually collecting on any judgment larger than the Settlement (as further discussed below, *infra* Section V.B.).

B. TCF's Financial Condition Weighs Heavily in Support of Approval.

Two factors are at play. First, TCF has been engaged in an on-going coverage dispute, initially with three of its carriers but ultimately against C&I only. Whether coverage applies was material to settlement negotiations. Second, TCF provided the financials in connection with settlement discussions, and they suggest that TCF would not be able to withstand a more significant resolution, let alone a judgment. TCF's ability to pay weighs in favor of approval.

C. The Complexity of the Case and Further Litigation Supports Approval.

This case has taken 6.5 years to reach this stage, and absent settlement, would require additional litigation through class certification, dispositive motions, trial, and appeals—extending the case several more years. *See Goldsmith v. Tech. Sols. Co*., No. 92 C 4374, 1995 WL 17009594, at *4 (N.D. Ill. Oct. 10, 1995), attached as Exhibit 7 ("As courts recognize, a dollar obtained in settlement today is worth more than a dollar obtained after a trial and appeals years later."). This factor supports approval.

D. The Settlement was Negotiated Free of Collusion.

The Parties engaged in arm's-length negotiations, including a ten-hour mediation with Judge Holderman, producing a strong Settlement. The non-reversionary nature of the fund, significant cash payments to Class Members, redistribution of uncashed checks, and absence of "clear sailing" or kicker clauses all confirm the absence of collusion. *See Snyder v. Ocwen Loan*

Servicing, LLC, No. 14 C 8461, 2019 WL 2103379, at *4 (N.D. Ill. May 14, 2019), attached as Exhibit 8.

E. Class Counsel Supports the Settlement.

Proposed Class Counsel, with extensive experience in BIPA litigation, firmly believes the Settlement is fair, reasonable, and adequate. (Ufkes Decl. ¶ 7.)

F. The Settlement Was Reached After Sufficient Discovery.

Class Counsel obtained formal discovery from NCR Corporation regarding the specific technology at issue, formal discovery from TCF regarding the basic facts of the case and received informal discovery from TCF about the size of the alleged class and Defendant's financials, enabling proper evaluation of the case. In short, the issues in this litigation have come into sufficient focus for the Parties to assess the strengths and weaknesses of their positions. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 587 (N.D. Ill. 2011) (concluding that sufficient discovery had been completed prior to settlement where class counsel obtained substantial informal discovery from defendant).

Accordingly, the Court should grant preliminary approval of the Settlement.

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

Finally, once a court has found that an action may proceed on behalf of a class, 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. However, courts must also consider the requirements of due process. *Client Follow-Up v. Hynes*, 105 Ill. App. 3d. 619, 625 (1st Dist. 1982); *Carrao v. Health Care Serv. Corp*., 118 Ill. App. 3d 417, 429 (1st Dist. 1983). Due process requires that the court "direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *Amchem*

Prods., 521 U.S. at 617 (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974) (explaining that "[i]ndividual notice must be sent to all class members whose names and addresses may be ascertained through reasonable effort.")).

Here, the Settlement features a comprehensive notice plan. The Settlement Administrator—Analytics Consulting LLC—will send direct Notice via First Class Mail to all physical addresses on the Class List and also via email where available. (Settlement § 4.1(c).) The Notice will direct Class Members to a Settlement Website where they can obtain additional information. The Website will also allow Class Members to select Zelle as their payment method, instead of a check, and allow them to update their addresses where their check will be sent. (*Id.* § 4.1(d); *see* Exhibit C.) Because the proposed notice plan sends direct notice to all Settlement Class members, fully apprising them of their rights, it comports with due process requirements.

VII. CONCLUSION

For the foregoing reasons, Plaintiff Joe Young respectfully requests that this Court (1) certify the Settlement Class for settlement purposes; (2) appoint Plaintiff as the Class Representative; (3) appoint J. Eli Wade-Scott and Schuyler Ufkes of Edelson PC and David Fish of Workplace Law Partners, P.C. as Class Counsel; (4) grant preliminary approval of the Settlement; (5) approve the form and contents of the Notice; (6) appoint Analytics Consulting LLC as the Settlement Administrator; (7) order the issuance of Notice; (8) schedule a Final Approval Hearing; and (9) provide such other relief as the Court deems just.

Respectfully submitted,

JOE YOUNG, individually and on behalf of a class of similarly situated individuals,

Dated: July 2, 2025

By: /s/ Schuyler Ufkes
One of Plaintiffs' attorneys

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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 July 2, 2025.

/s/ Schuyler Ufkes

EXHIBIT 1

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

JOE YOUNG, individually and on behalf of all others similarly situated, *Plaintiff*, v. TRI CITY FOODS, INC., a Delaware corporation, *Defendant.*	Case No. 2018 CH 13114 Calendar 15

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement ("Settlement Agreement") is entered into by and among Plaintiff Joe Young ("Young" or "Plaintiff"), for himself individually and on behalf of the Settlement Class, and Defendant Tri City Foods, Inc. ("TCF" or "Defendant"). Plaintiff and TCF are referred to individually as a "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 (as defined below), upon and subject to the terms and conditions of this Settlement Agreement, and is subject to the final approval of the Court.

RECITALS

A. On October 22, 2018, Plaintiff Joe Young filed a putative class action complaint against Defendant TCF in the Circuit Court of Cook County, Illinois, titled *Young v. Tri City Foods, Inc.*, Case No. 2018 CH 13114 (Cir. Ct. Cook Cty) (hereafter, "Action"). In his complaint, Plaintiff alleged that TCF (Plaintiff's former employer) collected and stored his fingerprints without his consent in violation of the Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.* ("BIPA" or "Privacy Act"), and sought statutory damages and injunctive relief.

B. On November 21, 2018, TCF moved to stay proceedings pending the Illinois Supreme Court's decision in *Rosenbach v. Six Flags Entertainment Corp.,* 2019 IL 123186. While the motion was pending, Plaintiff served a set of interrogatories and requests for production to former Respondent in Discovery NCR Corporation ("NCR") on December 11, 2018. After briefing, the Court granted TCF's motion to stay. The stay continued until the Supreme Court decided *Rosenbach* on January 25, 2019.

C. After the stay was lifted, NCR responded to Plaintiff's discovery requests on March 15, 2019, and produced responsive documents shortly thereafter.

D. On March 5, 2019, TCF moved to dismiss pursuant to 735 ILCS 5/2-619, arguing that Plaintiff's Privacy Act claims accrued on the first collection, were time-barred by the one-year privacy statute of limitations or the two-year personal injury and statutory penalty statutes of limitations (735 ILCS 5/13-201, 202), and that his statutory damages claims were preempted by the exclusive remedy provisions of the Illinois Worker's Compensation Act ("WCA") (820 ILCS 305/5(a), 11). Plaintiff opposed, arguing that the WCA did not preempt his statutory damages claims and that the five-year "catch-all" statute of limitations applied to Privacy Act claims (735 ILCS 5/13-205).

E. On June 8, 2020, the Court denied TCF's motion to dismiss, finding that the Privacy Act was not preempted by the WCA, and that Plaintiff's claims were subject to a five-year statute of limitations. The Court did not address TCF argument that Plaintiff's claims accrued and the statute of limitations began to run on the "first collection." Plaintiff then served written interrogatories and requests for production on TCF in August 2020.

F. In lieu of responding, on September 4, 2020, TCF moved to stay discovery pending the Illinois Appellate Court's decisions in *McDonald v. Symphony Bronzeville*, No. 1-19-2398,

Tims v. Black Horse Carriers, Inc., No. 1-20-0563, and *Marion v. Ring Container Tech., LLC*, No. 3-20-0184. The Court granted TCF's motion and stayed discovery through January 20, 2021.

G. Then, on September 24, 2020, TCF filed a Motion to Reconsider, to Supplement its Motion to Dismiss, or to Certify for Interlocutory Appeal. The motion argued *inter alia* that the Privacy Act is arbitrary, unconstitutional "special legislation" in violation of Article IV, Section 13 of the Illinois Constitution. After full briefing, the Court denied TCF's motion on January 22, 2021. The Court further ordered TCF to answer Plaintiff's complaint by February 24, 2021.

H. TCF answered the complaint on February 24, 2021, and asserted seventeen affirmative or other defenses, to which Plaintiff replied on March 16, 2021.

I. On March 10, 2021, TCF moved to extend the existing stay of discovery pending decisions in *Tims* and *Marion*, and to extend the stay pending the Illinois Supreme Court's decision in *McDonald*. The Court granted the motion and later entered a subsequent order extending the stay pending the Illinois Supreme Court's decision in *Cothron v. White Castle System, Inc.*, No. 128004.

J. After all these cases had been decided, Plaintiff moved to lift the stay in February 2023. Defendant opposed, arguing that the stay should continue while the Illinois Supreme Court heard a petition for rehearing in the *Cothron* case. The Court initially agreed with Defendant and denied Plaintiff's motion to lift the stay on March 3, 2023. Shortly thereafter, on March 23, 2023, the Court lifted the stay on its own motion. However, by that time, the Parties had commenced settlement negotiations, and on August 17, 2023, the Court entered an agreed order staying the case "by agreement pending settlement discussions."

K. The Court continued to stay the case pending settlement discussions for another year, while the parties negotiated and engaged in informal discovery.

L. Plaintiff then moved to lift the stay on July 2, 2024, which TCF opposed. The Parties briefed Plaintiff's Motion to Lift the Stay. Following oral argument, the Court granted Plaintiff's motion and lifted the stay on August 13, 2024, directing the parties to engage in discovery. On August 27, 2024, TCF served written discovery requests to Plaintiff, to which Plaintiff responded and produced responsive documents. On September 3, 2024, Plaintiff issued renewed discovery requests to TCF, to which TCF responded and produced responsive documents.

M. On June 30, 2023, TCF filed a coverage declaratory judgment action against three of its insurers, Continental Casualty Co., Commerce & Industry Insurance Co. ("C&I"), and XL Specialty Insurance Co., in the Circuit Court of Cook County, seeking a declaration that these three insurers owed TCF a duty to defend against Plaintiff's BIPA claims. *See Tri City Foods, Inc. v. Continental Casualty Co., et al*., No. 2023 CH 06191 (Cir. Ct. Cook Cty.). Following the coverage decision in *National Fire Ins. Co. of Hartford v. Visual Pak Co. Inc.*, 2023 IL App (1st) 221160, TCF voluntarily dismissed its state court coverage declaratory judgment action. TCF subsequently refiled its action against only C&I in federal court in January 2024, seeking a declaration that C&I owed TCF a duty to defend. In November 2024, Judge Charles Kocoras ruled on TCF's and C&I's dueling motions for summary judgment and held that C&I owed a duty to defend, upon the exhaustion of an underlying policy from a separate carrier. *See Tri City Foods, Inc. v. Commerce & Industry Insurance Company*, No. 24-cv-414, Dkt. 64 (N.D. Ill. Nov. 26, 2024).

N. While TCF was litigating its coverage dispute, the Parties again discussed the possibility of settling the case and agreed that a mediation would aid settlement discussions. The Parties then informed Judge Loftus, who stayed the case pending the outcome of the mediation.

O. On March 18, 2025, the Parties and representatives of TCF's insurers participated in a mediation with the Honorable James F. Holderman (Ret.) of JAMS, which lasted almost ten

hours. The following day, the Parties executed a binding Memorandum of Understanding ("MOU"), outlining the material terms of a class-wide settlement, which had been negotiated during the mediation with Judge Holderman's assistance.

P. 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 he would have ultimately succeeded in obtaining adversarial certification of the proposed Settlement Class, and that he would have prevailed on the merits at summary judgment and/or at trial. However, Plaintiff and Class Counsel recognize that Defendant has raised factual and legal defenses in the Action that presented 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 the difficulty and delay inherent in such litigation. Plaintiff and Class Counsel believe that this Agreement presents an exceptional result for the Settlement Class, and one that will be provided to the Settlement Class without delay. Plaintiff and Class Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, based on good faith negotiations, and in the best interests of Plaintiff and the Settlement Class. Therefore, Plaintiff believes that it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice, and barred pursuant to the terms and conditions set forth in this Settlement Agreement.

Q. 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 the Privacy Act, and believes that it would have prevailed on the merits and that a class would not be certified for trial. Accordingly, any references to alleged Privacy Act violations in this Agreement, any settlement

document, or the related Court hearings and processes will raise no inference with respect to Defendant's compliance or its business practices. Nevertheless, Defendant has similarly concluded that this settlement is desirable to avoid the time, risk, inconvenience, burden, and expense of defending protracted litigation, and to avoid the risk posed by the Settlement Class's claims for statutory damages under the Privacy Act. 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 Court approval 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 *Young v. Tri City Foods, Inc.,* No. 2018 CH 13114 (Cir. Ct. Cook Cty. Ill.).

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

1.3 **"Class Counsel"** means attorneys J. Eli Wade-Scott and Schuyler Ufkes of Edelson PC and David Fish of Workplace Law Partners, P.C.

1.4 "**Class Representative**" or "**Plaintiff**" means the named Plaintiff in the Action, Joe Young.

1.5 **"Court"** means the Circuit Court of Cook County, Illinois, Chancery Division, Calendar 15, or any other calendar this Action may be transferred to.

1.6 **"Defendant"** or **"TCF"** means Tri City Foods, Inc., a Delaware corporation.

1.7 **"Defendant's Counsel"** means attorney Anne E. Larson of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

1.8 "**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.

1.9 **"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 that will constitute a court-approved Qualified Settlement Fund (QSF) for federal tax purposes pursuant to Treas. Reg. § 1.468B-1. The money in the Escrow Account shall be invested in the following types of accounts and/or instruments and no other: (a) demand deposit accounts and/or

(b) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or less. Any interest earned on the Escrow Account shall inure to the benefit of the Settlement Class as part of the Settlement Payment, if practicable. The Settlement Administrator shall be responsible for all tax filings with respect to the Escrow Account.

1.10 "**Exclusion Deadline**" means the date by which a request for exclusion submitted by a person within the Settlement Class must be postmarked to the Settlement Administrator, which shall be designated as a date fifty-six (56) days after the Notice Date, as approved by the Court. The Exclusion Deadline will be set forth in the Notice, the Preliminary Approval Order, and on the Settlement Website.

1.11 "**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.

1.12 "**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, and adequate, and deciding the Fee Award and the incentive award to the Class Representative.

1.13 "**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.

1.14 "**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 A, B and C attached hereto.

1.15 "**Notice Date**" means the date by which the Notice is first disseminated to the

Settlement Class, which shall be a date no later than thirty-five (35) days after entry of the Preliminary Approval Order.

1.16 "**Objection Deadline**" means the date by which a written objection to the Settlement Agreement by a Class Member must be filed with the Court and postmarked to Class Counsel and the Settlement Administrator, which shall be designated as a date fifty-six (56) days after the Notice Date, as approved by the Court. The Objection Deadline will be set forth in the Notice, the Preliminary Approval Order, and on the Settlement Website.

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

1.18 **"Released Claims"** means any and all claims or causes of action for any relief of any kind including, but not limited to, actual damages, liquidated damages, penalties, injunctive relief, declaratory relief, attorneys' fees and costs, expenses and interest, liabilities, demands, or lawsuits, including any violation of the Biometric Information Privacy Act, 740 ILCS 14/1 et seq., and all other related federal, state, and local laws, including the common law, whether known or unknown, whether legal, statutory, equitable, or of any other type or form, and whether brought in an individual, representative, or any other capacity, of every nature and description whatsoever that were or could have been brought in any of the actions filed (or to be filed) by Plaintiff and the Class Members, accrued through the date of the Preliminary Approval Order against the Released Parties (defined below), relating to or arising from Defendant's alleged violations of Sections 15(a), (b), (c), (d), and (e) of BIPA as a result of the use of finger scanners at Defendant's Illinois facilities or from Defendant's alleged collection, possession, capture, purchase, receipt through

trade, obtaining, sale, profit from, disclosure, redisclosure, dissemination, storage, transmittal, and/or protection from disclosure of alleged fingerprints, finger scans, finger templates, or any information derived from the foregoing, regardless of how it is captured, converted, stored, or shared, through the use of finger scanners at Defendant's Illinois facilities.

1.19 "**Released Parties**" means Defendant Tri City Foods, Inc. and its current and former affiliates, parents, subsidiaries, divisions, related entities, joint venturers, predecessors, successors and assigns, and the past and present owners, members, shareholders, officers, directors, trustees, managers, agents, employees, insurers, reinsurers and retrocessionaires, and attorneys of these entities, their benefit plans and the sponsors, fiduciaries and administrators of said employee benefit plans.

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

1.21 "**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, disbursing Settlement Payments by mail and Zelle, related tax expenses, fees of the escrow agent, and other such related expenses, with all such expenses to be paid from the Settlement Fund.

1.22 "**Settlement Administrator**" means Analytics Consulting LLC, subject to approval of the Court, which will provide the Notice, create and maintain the Settlement Website, put reasonable anti-fraud measures in place to prevent theft of Settlement Class Members' Settlement Payments, send Settlement Payments to Settlement Class Members, be responsible for tax withholding and reporting, and perform such other settlement administration matters set forth herein or contemplated by the Settlement.

1.23 **"Settlement Class"** means all individuals who scanned their finger at a restaurant in Illinois operated by Tri City Foods, Inc. between October 22, 2013 and the date of the Preliminary Approval Order. Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this action and members of their families, (2) Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, (3) persons who properly prepare and submit a timely postmarked request for exclusion from the Settlement Class, (4) persons for whom Defendant's records reflect a biometric consent form timely-signed prior to the person's first use of the POS system's finger scanner, and (5) the legal representatives, successors or assigns of any such excluded persons.

1.24 "**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.

1.25 **"Settlement Fund"** means the non-reversionary cash fund that shall be established by the Settlement Administrator and funded by Defendant and its insurers, subject to potential adjustments in Section 7.3, in the amount of Fifteen Million Three Hundred Sixty-Seven Thousand Eight Hundred Dollars ($15,367,800.00) to be deposited into the Escrow Account, plus all interest earned thereon. Within twenty-one (21) days after entry of the Preliminary Approval Order, National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union") shall deposit $29,500 for initial Settlement Administration Expenses into the Escrow Account, provided the Settlement Administrator has timely supplied National Union with the wire or check information needed to transmit said funds to the Escrow Account. Within thirty-five (35) days after the entry of the Final Approval Order, Defendant and its insurers shall transmit the balance of the Settlement Fund, accounting for any upward or downward adjustments per Section 7.3, to the Escrow

Account. The total Settlement Fund represents the total monetary obligations of Defendant and 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. 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.

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

1.28 **"Settlement Website"** means the website to be created, launched, and maintained by the Settlement Administrator, which will allow Settlement Class Members to elect to receive their Settlement Payment through Zelle or check in the mail. The Parties will consult and agree on the website's domain name, URL (*e.g.*, www.TCFBIPASettlement.com), and content, including any Notices and Q&A placed on the website. The website will provide access to relevant settlement administration documents, including the Notices, Settlement Agreement, Motions for Preliminary and Final Approval of Class Settlement, Plaintiff's Fee Petition, the Preliminary Approval and Final Approval Orders, other relevant case documents, and other related material.

2. SETTLEMENT RELIEF

2.1 **Settlement Payments to Settlement Class Members.**

a. Within twenty-eight (28) days of the Effective Date, or such other date as the Court may set, the Settlement Administrator shall send Settlement Payments from the Settlement Fund by check or Zelle, as elected by the Class Member. No claims procedure will be required.

b. Class Members will have the option of having their Settlement Payment

transmitted to them through Zelle or check. Class Members who do not choose a payment method via the Settlement Website by seventy (70) days after the Notice Date 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 and/or skip tracing, if necessary by the Settlement Administrator.

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

d. In the event that a Zelle payment to a Class Member is unable to be processed, the Settlement Administrator shall attempt to contact the Class Member via the email provided by the Class Member, if applicable, within thirty (30) calendar days to correct the problem. If the Settlement Administrator is unable to correct the problem, the Settlement Administrator shall promptly issue the Class Member a check in the mail.

e. To the extent that a check issued to a Settlement Class Member is not cashed within one hundred eighty (180) days after the date of issuance, such funds will first be redistributed to Class Members who cashed their checks or successfully received their Zelle payments, if feasible and in the interests of the Settlement Class. If redistribution is not feasible or if residual funds remain after redistribution, such funds shall be paid to Legal Aid Chicago or any other or additional *cy pres* recipient(s) selected by the Court that are consistent with 735 ILCS 5/2-807(b).

f. If the settlement is not approved because the Court fails to enter the Final Approval Order or the Final Approval Order is reversed on appeal, the Settlement Administrator shall promptly return to Defendant and its insurers the respective amounts

paid by each into the Settlement Fund, plus the *pro rata* interest earned on those specific sums, less Settlement Administrative Expenses already incurred, which shall be paid by National Union pursuant to Section 1.25. In no other event shall any amount paid by Defendant or its insurers into the Escrow Account, or any interest earned thereon, revert to Defendant or its insurers.

g. Plaintiff and each Settlement Class Member shall be solely responsible for the reporting and payment of their share of any federal, state and/or local income or other taxes on payments received pursuant to this settlement. Any taxes, interest, and penalties that may later be imposed with respect to Settlement Payments by the Internal Revenue Service, applicable state taxing authority or court of competent jurisdiction are Plaintiff's and each Settlement Class Member's sole responsibility.

2.2 **Prospective Relief.**

a. Without admitting liability, or agreeing that BIPA requires the following steps, and further expressly maintaining its position that BIPA does not cover finger-scanning technology as it was used by Defendant, Defendant has ended use of biometric Point of Sale (POS) systems in Illinois. However, to prevent unforeseeable BIPA claims, Defendant continues to have its Illinois employees sign its biometric policy and consent form. Defendant further agrees that if it uses finger-scanning technology in Illinois, Defendant shall obtain informed written consent prior to collecting finger-scan data, create a publicly-available retention schedule, and destroy finger-scan data consistent with its retention schedule. If any of the informed-consent, retention schedule, or destruction requirements in BIPA (or their application to finger-scanning technology) are altered, amended, or withdrawn either by legislative, regulatory, or judicial action, Defendant's

obligations under this agreement shall be automatically so amended.

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 all Released Claims against each and every one of the Released Parties.

4. NOTICE TO THE CLASS

4.1 The Notice shall include:

a. *Class List*. Within fourteen (14) days after entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with a list of all names, social security or tax identification numbers, e-mail addresses (to the extent e-mail addresses are available to Defendant), and last-known U.S. mail addresses of all persons in the Settlement Class (the "Class List"). Within two (2) business days after the Class List is provided to the Settlement Administrator, 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 is available on the Class List, the number of unique names for whom no address or email address is available on the Class List, and the total number of social security or tax identification numbers available on the Class List. The Settlement Administrator shall keep the Class List and all personal information obtained therefrom—including the identity, social security or tax identification numbers, mailing addresses, and email addresses of all persons—strictly confidential. The Class List

may not be used by the Settlement Administrator or Class Counsel for any purpose other than advising specific individual Settlement Class members of their rights under this Settlement Agreement, distributing Settlement Payments, complying with applicable tax obligations, and otherwise effectuating the terms of the Settlement Agreement or the duties arising thereunder, including the provision of Notice of the Settlement.

b. *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 mailing 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 0.

c. *Direct Notice.* No later than the Notice Date, the Settlement Administrator shall send Notice (1) via e-email, substantially in the form of Exhibit A, to all persons in the Settlement Class for whom an e-mail is available in the Class List and (2) via First Class U.S. Mail, substantially in the form of Exhibit B, to the physical address of each person in the Settlement Class for whom an address is available in the Class List, as updated through the National Change of Address database and or skip tracing, if necessary by the Settlement Administrator.

d. *Uncashed Checks Reminder*. Thirty (30) days after checks for Settlement Payments have been disbursed, the Settlement Administrator shall identify any Settlement Class Members whose checks have not yet been cashed and shall deliver a reminder via email or mail (if a valid email is not available) that if they do not cash their checks before

the expiration date, the checks will be voided and, subject to Court approval, redistributed to Class Members who cashed their checks or received their Zelle payments, and/or distributed to Legal Aid Chicago or any other or additional charities selected by the Court.

e. *Internet Notice.* Within twenty-one (21) days after the entry of the Preliminary Approval Order, the Settlement Administrator will develop, host, administer, and maintain the Settlement Website, containing the notice substantially in the form of Exhibit C.

4.2 The Notice shall advise the Settlement Class of their rights under the Settlement Agreement, including the right to be excluded from or object to the Settlement Agreement or its terms, and the deadline for each. The Notice shall specify that any objection to this Settlement Agreement, and any papers submitted in support of an objection, shall be received by the Court at the Final Approval Hearing, only if, on or before the Objection 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) file copies of such papers he or she proposes to submit at the Final Approval Hearing with the Clerk of the Court, (b) file 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) deliver copies of such timely-filed papers to Class Counsel and the Settlement Administrator postmarked by the Objection Deadline. The Settlement Administrator shall provide copies to Defense Counsel and Class Counsel within 5 days of receipt or other agreed timeframe.

4.3 **Right to Object or Comment.** Any Settlement Class Member who intends to object to this Settlement Agreement must present the objection in writing, which must be personally signed by the objector and must include: (a) the Settlement Class Member's full name

and current address; (b) a statement that he or she believes himself or herself to be a member of the Settlement Class; (c) 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 timely filed with the Court and delivered to Class Counsel and the Settlement Administrator postmarked by the Objection Deadline. The Settlement Administrator shall provide copies to Defense Counsel and Class Counsel within 5 days of receipt or other agreed timeframe. 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 Class Counsel, 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.

4.4 **Right to Request Exclusion.** Any person in the Settlement Class may submit a request for exclusion from the Settlement on or before the Exclusion Deadline. To be valid, any request for exclusion must (a) be in writing; (b) identify the case name and number, *Young v. Tri City Foods, Inc.,* No. 2018 CH 13114 (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 or their parent or guardian, if a minor; and (e) be postmarked on or before the 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 *Young v. Tri City Foods, Inc.,* No. 2018-CH-13114 (Cir. Ct. Cook Cty.)." A request for exclusion that does not include all of the foregoing information, that is mailed to an address other than that designated in the Notice, or that is not postmarked 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 or Alternative 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, meaning, *inter alia*, that each individual who seeks to opt out must mail an individual, separately signed request to the Settlement Administrator that complies with all requirements of this Paragraph.

5. SETTLEMENT ADMINISTRATION

5.1 Class Counsel and the Released Parties shall have no liability whatsoever for the distribution of the Settlement Fund or the determination, calculation, or payment of any claim, for website set up or website maintenance and compliance, for the payment or withholding of taxes (including interest and penalties) owed by the Settlement Fund, for any losses incurred in connection with Settlement Administration, or for any other acts, omissions, nonperformance, malpractice, or malfeasance of the Settlement Administrator.

5.2 **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 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 promptly available to Class Counsel and Defendant's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with reports every three (3) weeks concerning its efforts at providing Notice, the number of returned and re-delivered Notices, any requests for exclusion or objections, and the administration and implementation of the Settlement, including the number and value of Zelle payments processed and unprocessed, the number and value of checks cashed and uncashed, the amount of residual funds to be redistributed to the Settlement Class, and the amount of residual funds to be distributed to Legal Aid Chicago or any other *cy pres* recipient. Should the Court request, the Settlement Administrator 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 as set forth above.

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 upon request and also within three (3) business days of the Exclusion Deadline. If the Settlement Administrator receives any requests for exclusion or other requests from Settlement Class Members after the 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 number, email, and mailing address through which persons in the Settlement Class may contact the Settlement Administrator and a toll-free telephone number to contact Class Counsel directly. *See also* Section 1.28.

f. *Establishment of the Escrow Account*. The Settlement Administrator shall establish the Escrow Account, pursuant to the terms of Section 1.9, and maintain the Escrow Account as a qualified settlement fund throughout the implementation of the Settlement in accordance with the Court's Preliminary Approval Order and Final Approval Order.

g. *Timing of Settlement Payments.* The Settlement Administrator shall make the Settlement Payments contemplated in Section 2 of this Settlement Agreement to all Settlement Class Members within twenty-eight (28) days of the Effective Date.

h. *Tax Reporting*. The Settlement Administrator shall be responsible for all tax filings related to the Escrow Account, including processing any tax information from the Class List and making any required tax returns.

i. *Anti-Fraud Measures.* The Settlement Administrator shall put in place reasonable anti-fraud measures to protect U.S. Mail and electronic payments from being improperly misdirected.

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;

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 address any requests for exclusion from the Settlement Class, 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. 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;

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

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

g. 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;

h. 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;

i. 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

j. incorporate any other provisions, consistent with the material terms of this Settlement Agreement, as the Court deems necessary and just.

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, DECLARATION, & ADJUSTMENT OF THE SETTLEMENT FUND

7.1 **Termination.** Subject to Section 9 below, if any of the following events occur—(i) the Court refuses to enter the Preliminary Approval Order approving of this Agreement in any material respect; (ii) the Court refuses to enter the Final Approval Order and final judgment in this Action in any material respect (other than an award of attorneys' fees in an amount less than

requested or the failure to award full or partial incentive award); (iii) the appellate court or the Illinois Supreme Court modifies or reverses the Final Approval Order in any material respect; or (iv) the appellate court, the Illinois Supreme Court, or the Supreme Court of the United States modifies or reverses an Alternative Approval Order, as defined in Section 9.1 of this Agreement, in any material respect —the Parties will work together in good faith to address the concerns raised by the relevant court, and if the Parties are unable to jointly agree on solutions to address the relevant court's concerns, then the Parties shall request the assistance of Judge James Holderman of JAMS or another mediator, if Judge Holderman is unavailable, to resolve those concerns. Only after both Parties agree that they have fully exhausted such efforts will this Settlement Agreement become null and void. The parties will then return to their positions immediately prior to the execution of this Settlement Agreement.

7.2 **Defendant's Affidavit.** Defendant represents that, based on its investigation of its records prior to mediation, Twenty-One Thousand Nine Hundred Fifty-Four (21,954) individuals fall within the Settlement Class. Within twenty-one (21) days after entry of the Preliminary Approval Order, Defendant shall provide Class Counsel an affidavit that confirms the size of the Settlement Class, is executed by an individual with knowledge of the methodologies used to determine the size of the Settlement Class, and explains such methodologies.

7.3 **Adjustment of Settlement Fund.**

a. If Defendant's affidavit reveals that there are more than Twenty-One Thousand Nine Hundred Fifty-Four (21,954) persons in the Settlement Class, Defendant shall pay into the Escrow Account Seven Hundred Dollars ($700) per additional person. For example, if there are Twenty-Two Thousand (22,000) persons in the Settlement Class, the total settlement fund would be Fifteen Million Four Hundred Thousand ($15,400,000).

b. The Settlement Fund shall decrease proportionately if any person on the Class List submits a timely and valid request for exclusion from the Settlement. For example, if one person submits a timely and valid request for exclusion, the Settlement Fund will decrease by Seven Hundred Dollars ($700).

c. The Settlement Fund shall decrease proportionately if, prior to the date the Preliminary Approval Order is entered, Defendant finds additional consent forms that were timely signed by the employee prior to the employee's first use of the finger scanner. This decrease shall apply for up to one hundred (100) such consent forms only (i.e., up to a Seventy Thousand Dollars ($70,000) decrease). For example, if Defendant finds fifty (50) such consents, the Settlement Fund shall decrease by Thirty-Five Thousand Dollars ($35,000), and if Defendant finds 101 such consents, the Settlement Fund shall decrease by Seventy Thousand Dollars ($70,000).

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 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 to Class Counsel within fourteen (14) 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 in recognition of his 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 via FedEx overnight) within fourteen (14) 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:

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, consistent with Section 1.8, 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, after the Parties have worked together in good faith to address the concerns preventing approval of the Settlement, and if the Parties are unable to jointly agree on solutions to address those concerns, then the Parties shall request the assistance of Judge James Holderman of JAMS or another mediator, if Judge Holderman is unavailable, to resolve those concerns. Should the Parties resolve the issue, Class Counsel and Defendant may 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 after working in good faith to resolve the issue and requesting the assistance of Judge Holderman or another mediator if he is unavailable, and after a twenty-one (21)-day period to cure. 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, 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, and the Settlement Administrator shall promptly return to Defendant and its insurers the respective amounts paid by each into the Settlement Fund, plus the *pro rata* interest earned on those specific sums, less Settlement Administration Expenses already incurred, which shall be paid by National Union per Section 1.25.

10. MISCELLANEOUS PROVISIONS.

10.1 The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree, subject to Plaintiff's fiduciary obligation and the Parties' 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 work in good faith to negotiate and execute other documentation as may be reasonably required by the Court 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, against the Released Parties. 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 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. 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 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 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 Plaintiff represents and warrants that he has not assigned any claim or right or

interest relating to any of the Released Claims against the Released Parties to any other person or party and that they are fully entitled to release the same.

10.12 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.

10.13 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.

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

10.15 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.

10.16 Where this Settlement Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: For Plaintiff: Schuyler Ufkes, sufkes@edelson.com, EDELSON PC, 350 North LaSalle Street, 14th Floor, Chicago, Illinois 60654. For Defendant: Anne Larson, anne.larson@ogletree.com, OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C., 155 North Wacker Drive, Suite 4300, Chicago, IL 60606.

10.17 This Settlement Agreement shall be binding upon and inure to the benefit of each

of the Released Parties and the Releasing Parties and their respective officers, directors, shareholders, agents, employees, attorneys, legal representatives, heirs, legatees, insurers, reinsurers, retrocessionaires, predecessors, successors, and assigns.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

JOE YOUNG

Dated: 6/29/2025

By (signature): Joe Young

Name (printed): Joe Young

EDELSON PC

Dated: 6/20/25

By (signature): [signature]

Name (printed): Schuyler Ufkes

Its (title): Partner

TRI CITY FOODS, INC.

Dated: 6/29/25

By (signature): [signature]

Name (printed): Scott M Owen

Its (title): General Counsel

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

Dated: 6/30/25

By (signature): [signature]

Name (printed): ANNE LARSON

Its (title): Shareholder

Exhibit A

From: tobedetermined@domain.com
To: JohnDoeClassMember@domain.com
Re: Class Action Settlement for Tri City Foods Employees

Class Action Settlement Notice

Young v. Tri City Foods, Inc.
Case No. 18-CH-13114

Authorized by the Circuit Court of Cook County, Illinois

Did you scan your finger while working at a Tri City Foods, Inc. restaurant in Illinois between October 22, 2013 and [preliminary approval date]?

There is a class action settlement and, if it is approved and you don't opt out, you will be sent a payment for about **$450.**

To be a part of this settlement, you do not need to do anything.

If you do not want to be part of the class action, you need to opt out by [date].

If you disagree with any of the settlement's terms, you need to submit your objection(s) by [date].

Dear [Class Member],

You are receiving this email notice because our records indicate that you scanned your finger while working at a Tri City Foods, Inc. ("TCF" or "Defendant") restaurant in Illinois between October 22, 2013 and [date of Preliminary Approval Order] and are entitled to a payment from a class action settlement. The lawsuit alleges that TCF violated an Illinois law called the Biometric Information Privacy Act ("BIPA") by collecting workers' biometric data through a finger-scanning Point of Sale ("POS") system at TCF's restaurants in Illinois without first complying with the law's informed consent requirements. The settlement does not establish who is right or wrong. TCF denies that it violated any laws. The lawsuit is called *Young v. Tri City Foods, Inc.*, Case No. 18-CH-13114, and is in the Circuit Court of Cook County, Illinois. **Please read this notice carefully. Your legal rights are affected whether you act, or don't**

act.

Am I part of the Settlement Class? Our records indicate that you are included. The Settlement Class includes all individuals who scanned their finger at a restaurant in Illinois owned or operated by TCF between October 22, 2013 and [date of Preliminary Approval Order]. Some exclusions apply. For example, individuals who signed a consent form related to the collection and use of their biometric data prior to their first use of TCF's finger-scanning POS system are not included. See www.TCFBIPASettlement.com, where you can find the **Website Notice** [link to Website Notice] for more details.

What can I get out of the Settlement? If you're included and you do nothing, a check for approximately **$450** will automatically be mailed to you at your last known address below, if the settlement is approved:

«Address»

You can request to update your address or select a Zelle payment (instead of a check) by using the Address Update & Payment Selection page of the Settlement Website **here** [link to Address Update & Payment Selection page]. To login to update your address or select Zelle as your payment method, you must input the following:

Class Member ID: **«SIMID»**
Last Name: **«LastName»**

This payment is an equal share of the $15,367,800.00 Settlement Fund, after the payment of settlement expenses, attorneys' fees and expenses to Class Counsel (identified below), and an incentive award of up to $5,000 to the Class Representative (identified below). TCF has ceased use of its finger-scanning technology in Illinois. As part of the settlement, TCF agrees to comply with BIPA in the future if it uses biometrics in Illinois.

Who represents me? The Court has appointed lawyers from the law firms Edelson PC and Workplace Law Partners, P.C. as "Class Counsel." They represent you and other 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 Joe Young—a class member like you—to represent the Settlement Class as your Class Representative.

What are my options? You have the following options: (1) Do nothing - if you're eligible, you'll receive your Class Member payment (estimated to be **$450**) and you won't be able to sue TCF on this issue in the future; (2) Exclude yourself - you won't receive a payment, but you'll keep whatever rights you currently have to sue TCF on this issue; or (3) Object - if you disagree with any of the settlement's terms, you can submit your objection(s) to the Court and explain why you do not like the settlement but remain a Class Member. ***All Requests for Exclusion and Objections must be postmarked by [Objection/Exclusion Deadline].*** For detailed requirements and instructions on how to exclude yourself, see the Website Notice **here** [link to Website Notice].

When will the Court approve the settlement? The Court will hold a final approval hearing on [date] at [time] before the Honorable William B. Sullivan in Room 2410 at the Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602. Instructions for participating remotely (via Zoom) will be posted on the Settlement Website. During the hearing, the Court will hear objections, determine if the settlement is fair, and consider Class Counsel's request for expenses, fees 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 before the Objection Deadline].

How do I get more information? For more information, visit www.TCFBIPASettlement.com, contact the administrator at [PHONE NUMBER], or write to the *Young v. Tri City Foods, Inc.,* Settlement Action Administrator, [ADDRESS] or [EMAIL]. You can also call Class Counsel at 1-866-354-3015.

Exhibit B

Circuit Court of Cook County, Illinois, Chancery Division
Young v. Tri City Foods, Inc.
Case No. 18-CH-13114

PRESORTED
FIRST CLASS
U S POSTAGE
PAID

Class Action Settlement Notice

Authorized by the Circuit Court of Cook County, Illinois

Our records indicate that you scanned your finger while working at a Tri City Foods, Inc. restaurant in Illinois between October 22, 2013 and [date of Preliminary Approval Order] and are entitled to a payment of approximately **$450** from a class action settlement.

See other side for details or visit www.[WEBSITE].com

Postal Service: Please Do Not Mark Barcode

<<Claim8>>-<<CkDig>>

<<FName>> <<LName>>
<<Addr1>> <<Addr2>>
<<City>>, <<State>> <<Zip>>

gainst Tri-City Foods, Inc. ("TCF"), that impacts many other current and former TCF employees in Illinois. The lawsuit alleges that TCF violated an Illinois law called the Biometric Information Privacy Act ("BIPA") by collecting workers' biometric data through a finger-scanning Point of Sale ("POS") system at TCF's restaurants without first complying with the law's informed consent requirements. TCF denies any wrongdoing or that it violated any laws. The settlement does not establish who is right or wrong. The lawsuit is called *Young v. Tri-City Foods, Inc.*, No. 18-CH-13114, and is in the Circuit Court of Cook County, Illinois. Please read this notice carefully. Your legal rights are affected whether you act, or don't act.

Am I part of the Settlement Class? Our records indicate that you are included. The Settlement Class includes all individuals who scanned their finger at a TCF restaurant in Illinois between October 22, 2013 and [date of Preliminary Approval Order]. Some exclusions apply. For example, individuals who signed a consent form related to the collection and use of their biometric data prior to their first use of TCF's finger-scanning POS system are not included. See www.TCFBIPASettlement.com for all exclusions and details.

What can I get out of the Settlement? If you're included and you do nothing, a check for approximately **$450** will automatically be mailed to you at you're the address this notice was sent to, if the settlement is approved. You can request to update your address or select a Zelle payment (instead of a check) by using the Address Update & Payment Selection page of the Settlement Website, www.TCFBIPASettlement.com. To login to update your address or select Zelle as your payment method, you must input your Class Member ID, which is **«SIMID»**, along with your last name. This payment is an equal share of the $15,367,800.00 Settlement Fund, after the payment of settlement expenses, attorneys' fees and expenses to Class Counsel (identified below), and an incentive award of up to $5,000 to the Class Representative (identified below). TCF has ceased use of its finger-scanning technology in Illinois. As part of the settlement, TCF agrees to comply with BIPA in the future if it uses biometrics in Illinois.

What are my options? You have the following options: (1) Do nothing - if you're eligible, you'll receive your Class Member payment (estimated to be **$450**) and you won't be able to sue TCF on this issue in the future; (2) Exclude yourself - you won't receive a payment, but you'll keep whatever rights you currently have to sue TCF on this issue; or (3) Object - if you disagree with any of the settlement's terms, you can submit your objection(s) to the Court and explain why you do not like the settlement but remain a Class Member. For detailed requirements and instructions on how to exclude yourself or object, see the Internet Notice, available at www.TCFBIPASettlement.com. ***All Requests for Exclusion and Objections must be postmarked by [Objection/Exclusion Deadline].***

Do I have a lawyer? Yes. The Court has appointed lawyers from the law firms Edelson PC and Workplace Law Partners, P.C. as "Class Counsel." They represent you and other 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 Joe Young—a class member like you—to represent the Settlement Class as your Class Representative.

When will the Court approve the settlement? The Court will hold a final approval hearing on [date] at [time] before the Honorable William B. Sullivan in Room 2410 at the Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602. Remote participating instructions (via Zoom) will be posted on the Settlement Website. During the hearing, the Court will hear objections, determine if the settlement is fair, and consider Class Counsel's request for expenses, fees 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 before the Objection Deadline].

Exhibit C

Circuit Court of Cook County, Illinois

Young v. Tri City Foods, Inc.

Case No. 18-CH-13114

Class Action Settlement Notice

Authorized by the Circuit Court of Cook County

Did you scan your finger while working at a Tri City Foods, Inc. restaurant in Illinois between October 22, 2013 and [preliminary approval date]?

There is a class action settlement and, if it is approved and you don't opt out, you will be sent a payment for about **$450.**

To be a part of this settlement, you do not need to do anything.

If you do not want to be part of the class action, you need to opt out by [date].

If you disagree with any of the settlement's terms, you need to submit your objection(s) by [date].

- Keep reading for more details about the settlement and your rights and options. You can also visit the Settlement Website, www.TCFBIPASettlement.com, where you can learn more and—if you're a Class Member—update your address and select your payment method (check or Zelle).
- 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.

About This Notice

Why did I get this notice?

The Court authorized this notice to let you know about a proposed Settlement with Tri City Foods, Inc., which operates several Burger King restaurants in Illinois. 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 William Sullivan of the Circuit Court of Cook County, Illinois is overseeing this class action. The case is called ***Young v. Tri City Foods, Inc.***, Case No. 18-CH-11423. The individual who filed the lawsuit, **Joe Young**, is the Plaintiff. The company he sued, **Tri City Foods, Inc. ("TCF")**, is the Defendant.

What is a class action lawsuit?

A class action is a lawsuit in which an individual called a "Class Representative" bring a single lawsuit on behalf of themself and other people who have similar legal claims. All of these people together are a "class" or "class members." A class action settlement finally approved by the Court resolves the issues for all Settlement Class Members, except for those who ask to be excluded.

What do I do next?

Read this notice to understand the settlement and to determine if you are a class member. Then, decide if you want to:

Options	Information about each option
Do Nothing	You will receive your Class Member payment (estimated to be **$450**) under the Settlement and give up your rights to sue Defendant about the issues in this case.
Exclude Yourself (i.e., Opt Out)	You will receive no payment, but you will retain any rights you currently have to sue Defendant about the issues in this case.
Object	If you are a Class Member, you can write to the Court explaining why you don't like the Settlement. You will remain a Class Member, receive a Class Member payment if the settlement is approved, and give up your rights to sue Defendant about the issues in this case.
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.

What are the most important dates?

- Your deadline to object or opt out: **[Objection/Exclusion Deadline]**
- Your deadline to update your address or select a payment method (check or Zelle): **[Final Approval Hearing Date]**
- Final settlement approval hearing: **[Final Approval Hearing Date]**

What is this lawsuit about?

The Illinois Biometric Information Privacy Act ("BIPA" or "Privacy Act"), 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

Where can I learn more?

You can get a complete copy of the proposed settlement and other key documents in the "Court Documents" section of the settlement website, **here**.

fingerprint, faceprint, or a scan of your iris. This lawsuit alleges that TCF violated BIPA by collecting Illinois employees' biometric data when they scanned their finger on a Point of Sale ("POS") device at TCF's restaurants without first giving notice or getting consent. TCF denies these allegations and denies that it violated BIPA. The Settlement does not establish who is right or wrong. TCF denies that it did anything wrong. You can access Plaintiff's complaint and Defendant's answer and defenses here [link to Important Documents].

Learning About the Settlement

Why is there a settlement in this lawsuit?

In March 2024, the parties agreed to settle, which means they have reached an agreement to resolve the lawsuit. Both sides want to avoid the risk and expense of further litigation. The Court did not decide who was right.

What is a class action settlement?
A class action settlement is an agreement between the parties to resolve and end the case. Settlements can provide money to class members and changes to the practices that caused the alleged harm, but require the final approval of the Court.

Who is included in the Settlement Class?

This Settlement Class includes all individuals who scanned their finger at a restaurant in Illinois owned or operated by Tri City Foods, Inc. between October 22, 2013 and [date of preliminary approval]. Some exceptions to participating apply (see "Who is not included in the Settlement Class?" below). For example, individuals who signed a consent form related to the collection and use of biometric data **prior to their first use of TCF's finger-scanning POS system** are not included.

Who is not included in the Settlement Class?

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, (4) persons for whom Defendant's records reflect an executed consent form related to biometrics prior to their first use of Defendant's POS system and (5) the legal representatives, successors or assigns of any such excluded persons.

How do I know if I am part of this settlement?

If you are a current or former employee of a restaurant owned or operated by TCF in Illinois who scanned your finger in such a restaurant between October 22, 2013 and [date of preliminary approval], and are not subject to any of the exclusions above, then you are a member of the Settlement Class and are entitled to payment. If you received a notice of the Settlement via email or in the mail addressed to your name, 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 info@TCFBIPASettlement.com to ask whether you are a member of the Settlement Class.

The Settlement Benefits

What does the settlement provide?

Payments to Class Members: If the Court approves the Settlement, TCF has agreed to create a Settlement Fund of $15,367,800. Class Counsel expect that each class member will receive a settlement payment of approximately $450 after all fees and costs are deducted.

Agreement on Future Conduct: Without admitting that it did anything wrong, TCF has stopped using finger-scanning technology in Illinois, and TCF has agreed that if it decides in the future to use finger-scanning technology in Illinois, TCF will obtain informed written consent prior to collecting finger-scan data, create a publicly-available retention schedule, and destroy finger-scan data consistent with its retention schedule. If any of the requirements of BIPA change, TCF's obligations will also automatically change consistent with BIPA.

How do I get a payment?

If you are a Class Member and do nothing, you will receive a check in the mail automatically at your last known address. Or you can select to receive your payment electronically, via Zelle (instead of a check), on the Settlement Website **here** [link to Address Update & Payment Selection]. You can also request to update your address on the Settlement Website **here** [link to Address Update & Payment Selection]. For security reasons, you will need to enter your last name and your unique "Class Member ID" to login to update your address or select an electronic payment method. Your Class Member ID is located on the notice you may have received in the mail. If you cannot locate your Class Member ID, email the Settlement Administrator at [info@TBD.com].

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, and there are no objections or appeals, eligible Class Members will automatically be sent their payment within 60 days via check or Zelle, if they select Zelle as their payment method on the Settlement Website (see "How do I get a payment?" above). Please be patient.

All uncashed checks and Zelle payments that are unable to be completed will expire and become void after 180 days.

If any checks become void, they will be redistributed in a second round of payments to Class Members who cashed their first check or successfully received their first Zelle payment. If there are still funds left over after the second round of payments, those funds will be sent to the charity Legal Aid Chicago, subject to Court approval.

The Lawyers Representing You

Do I have a lawyer in this case?

Yes, the Court has appointed lawyers J. Eli Wade-Scott, and Schuyler

Ufkes of Edelson PC and David Fish of Workplace Law Partners, P.C. as the attorneys to represent you and other Class Members. These attorneys are called "Class Counsel." In addition, the Court appointed Plaintiff Joe Young to serve as the Class Representative. He is a Class Member like you. Class Counsel can be reached by calling 1-866-354-3015.

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.

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. The Court will determine the proper amount of any expenses and attorneys' fees 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.

Your Rights and Options

How do I weigh my options?

You have three options. You can do nothing (and thus remain in the settlement), you can exclude yourself from (or opt out of) the settlement, or you can object to the settlement. This chart shows the effects of each option:

	Opt out	Object	Do Nothing
Can I receive settlement money if I . . .	NO	YES	YES
Am I bound by the terms of this lawsuit if I . . .	NO	YES	YES
Can I pursue my own case if I . . .	YES	NO	NO
Will the class lawyers represent me if I . . .	NO	NO	YES

What happens if I do nothing at all?

If you do nothing, you will be a Settlement Class Member, and if the Court approves the Settlement, you will automatically be sent a payment via check to your last known address (or via Zelle, if you selected that option), and you will also be bound by all orders and judgments of the Court. Unless you exclude yourself from the Settlement, you also won't be able to start a lawsuit or be part of any other lawsuit against TCF, or any other Released Parties (a term defined in the Settlement Agreement) for the claims or legal issues being resolved by this Settlement.

What happens if I ask to be excluded?

You may exclude yourself from the Settlement. If you do so, you will not receive any payment, but you will not release any claims you may have against TCF or the Released Parties and can pursue whatever legal rights you may have against TCF and the Released Parties at your own risk and expense.

How do I ask to be excluded?

You can mail a letter stating that you want to be excluded from the Settlement. Your letter must: (a) be in writing; (b) identify the case name *Young v. Tri City Foods, Inc.*, Case No. 18-CH-13114 (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 seeking exclusion or their parent or guardian, if a minor; and (e) be sent to the Settlement Administrator postmarked on or before [Exclusion Deadline]. Your request to be excluded must also include a statement to the effect that: "I hereby request to be excluded from the proposed Settlement Class in *Young v. Tri City Foods, Inc.*, Case No. 18-CH-13114 (Cir. Ct. Cook Cty. Ill.)."

You must mail your exclusion request no later than [Exclusion deadline] to:

TCF BIPA Settlement Administrator
P.O. Box 0000
Santa Ana, CA 92799-0000

You can't exclude yourself over the phone or by email. No person may request to be excluded from the Settlement Class through "mass" or "class" opt-outs, meaning that each individual who seeks to exclude themself must mail an individual, signed, separate request to the Settlement Administrator that complies with all requirements listed above. Each request for exclusion must be separately signed and submitted.

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

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

If I exclude myself, can I get anything from the settlement?

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

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 *Young v. Tri City Foods, Inc.*, Case No. 18-CH-13114 (Cir. Ct. Cook Cty. Ill.), no later than [Objection Deadline]. Your objection must be e-filed or delivered to the Court at the following address:

Clerk of the Circuit Court of Cook County - Chancery Division
Richard J. Daley Center
50 West Washington Street, Suite 802
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 yourself to be a member of the Settlement Class, (c) the specific grounds for your objection, (d) all documents or writings that you desire the Court to consider, (e) the name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with the preparation or submission of your objection or who may profit from the pursuit of your objection, and (f) a statement indicating whether you (or your counsel) intend to appear at the Final Approval Hearing. You must submit any objection in writing postmarked by [Objection 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 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 timely submitting or filing your objection with the Court, by no later than [Objection Deadline], you must send via mail or delivery service copies of your objection and any supporting documents to Class Counsel at the address listed below:

Schuyler Ufkes
sufkes@edelson.com
Edelson PC
350 North LaSalle Street, 14th Floor
Chicago, IL 60654

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

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 (and you will not receive payment).

The Court's Final Approval Hearing

When and where will the Court decide whether to approve the settlement?

The Court will hold the Final Approval Hearing on [**Final Approval Hearing Date**] at [**time**] before the Honorable William Sullivan in Room 2410 of the Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602 or via remote means (via Zoom) as instructed by the Court. Instructions for participating remotely will be posted on the Settlement Website. 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 Class Members. **At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed Settlement, including those related to the amount requested by Class Counsel for attorneys' fees and expenses and the incentive award to the Class 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.TCFBIPASettlement.com.

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 do so.

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* "How do I object to the Settlement?" above) and intend to appear at the hearing, you must state your intention to do so in your objection.

Getting More Information

How do I get more information?

This notice provides only a summary of the proposed settlement. The complete settlement with all its terms can be found **here** [link to Settlement Agreement]. To get a copy of important documents in the case, click **here** [link to Important Documents]. To get answers to your questions:

- Visit the case website at [website]
- Contact the Settlement Administrator at [phone number] or [email address]
- Contact Class Counsell at 1-866-354-3015 (additional contact information below)

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.

Resource	Contact Information
Case website	[website]
Settlement Administrator	[Settlement Administrator] [Email Address] [Street address] [City, State, Zip Code] [Phone Number]
Your Lawyers	Schuyler Ufkes Edelson PC 350 N LaSalle St, 14th Floor Chicago, IL 60654 Tel. 312.589.6370 Firm ID: 62075 David Fish Workplace Law Partners, P.C. 155 N. Michigan Ave. Suite 719 Chicago, IL 60601 Tel: 312-861-1800 Fax: 630.778.0400 Firm ID: 44086
Court (DO NOT CONTACT)	Circuit Court of Cook County, Illinois Chancery Division Richard J. Daley Center 50 West Washington St., Room 802 Chicago, IL 60602

EXHIBIT 2

12-Person Jury

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

JOE YOUNG, individually and on behalf of all others similarly situated, *Plaintiff*, v. TRI CITY FOODS, INC., a Delaware corporation, *Defendant,* and NCR CORPORATION, a Maryland Corporation, *Respondent in Discovery.*	Case No.: 2018CH13114

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Joe Young brings this Class Action Complaint and Demand for Jury Trial against Defendant Tri City Foods, Inc., ("Tri City") to put a stop to its unlawful collection, use, and storage of Plaintiff's and the putative Class members' sensitive biometric data. Plaintiff, for his Class Action Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences and, as to all other matters, upon information and belief.

NATURE OF THE ACTION

1. Defendant Tri City is a franchisee of the Burger King restaurant chain.

2. When employees first begin their jobs at one of Tri City's restaurants, they are required to scan their fingerprints in its time clocks. That's because Tri City uses a biometric time tracking system that requires employees to use their fingerprints as a means of authentication, instead of key fobs or 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, Tri City disregards its employees' statutorily protected privacy rights and unlawfully collects, stores, and uses their biometric data in violation of the BIPA. Specifically, Tri City has violated (and continues to violate) the BIPA because it did not (and continues not to):

- 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 members' 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 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 Joe Young is a natural person and citizen of the State of Illinois.

8. Defendant Tri City Foods, Inc., is a Delaware corporation with its principal place of business located at 1400 Opus Place, Suite 900, Downers Grove, Illinois 60515.

9. Respondent in Discovery NCR Corporation ("NCR") provides Defendant Tri City Foods with the hardware and software for its employee time tracking service. As such, Plaintiff has a good faith basis to believe that NCR possesses information essential to determine proper additional defendants in this action. For instance, Plaintiff believes NCR possesses information that can identify additional individuals or entities that may have collected, used, and stored Plaintiff's and the putative Class members' biometric information.

JURISDICTION AND VENUE

10. The Court has jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because Defendant conducts business transactions in Illinois, owns and operates restaurants in Illinois, and has committed tortious acts in Illinois.

11. Venue is proper in Cook County because Defendant conducts business transactions in Cook County, and the events giving rise to this claim occurred in Cook County.

FACTUAL BACKGROUND

I. The Biometric Information Privacy Act.

12. 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.

13. 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 fingerprint scanners were completely unaware that the scanners were not actually transmitting fingerprint 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.

14. 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.

15. 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).

16. 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.

17. Biometric identifiers include retina and iris scans, voiceprints, scans of hand and face geometry, and—most importantly here—fingerprints. *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*.

18. The BIPA also establishes standards for how employers must handle Illinois employees' biometric identifiers and biometric information. *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).

19. 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. Tri City Foods Violates the Biometric Information Privacy Act.

20. By the time the BIPA passed through the Illinois Legislature in mid-2008, many companies who had experimented using biometric data as an authentication method stopped doing so. 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.

21. Unfortunately, Tri City failed to take note of the trend recognizing the dangers in storing biometric identifiers and the passage of Illinois law governing the collection and use of biometric data. Tri City continues to collect, store, and use its employees' biometric data in violation of the BIPA.

22. Specifically, when employees first begin work at Tri City, they are required to have their fingerprints scanned in order to enroll them in its fingerprint database.

23. Tri City uses an employee time tracking system that requires employees to use their fingerprints as a means of authentication. Unlike a traditional time clock, employees have to use their fingerprints to "punch" in to or out of work.

24. Unfortunately, Tri City fails to inform its employees the extent of the purposes for which it collects their sensitive biometric data or to whom the data is disclosed, if at all.

25. Tri City similarly fails to provide its employees with a written, publicly available policy identifying its retention schedule, and guidelines for permanently destroying its employees' fingerprints when the initial purpose for collecting or obtaining their fingerprints is no longer relevant, as required by the BIPA. An employee who leaves the company does so without any knowledge of when their biometric identifiers will be removed from Tri City'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 Tri City's—whose employees are aware that they are providing biometric identifiers but are not aware of to whom or the full extent of the reasons they are doing so—is so dangerous. That bankruptcy spurred Illinois citizens and legislators into realizing 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 Tri City disregards these obligations, and instead unlawfully collects, stores, and uses its employees' biometric identifiers and information.

27. Ultimately, Tri City disregards its employees' statutorily protected privacy rights by violating the BIPA.

FACTS SPECIFIC TO PLAINTIFF YOUNG

28. Plaintiff Young worked for Tri City from July 2017 through January 2018 at one of Tri City's restaurants in Cook County.

29. As a new employee, Tri City required Young to scan his fingerprint so that it could use it as an authentication method to track his time. Tri City subsequently stored Young's fingerprint data in its databases.

30. Each time Young began and ended his workday he was required to scan his fingerprint.

31. Tri City never informed Young of the specific limited purposes or length of time for which it collected, stored, or used his fingerprint.

32. Similarly, Tri City never informed Young of any biometric data retention policy it developed, nor whether it will ever permanently delete his fingerprint.

33. Young never signed a written release allowing Tri City to collect or store his fingerprint.

34. Young has continuously and repeatedly been exposed to the risks and harmful conditions created by Tri City's violations of the BIPA alleged herein.

35. Plaintiff seeks liquidated damages under BIPA as compensation for the injuries Tri City has caused.

CLASS ALLEGATIONS

36. **Class Definition**: Plaintiff Joe Young brings this action pursuant to 735 ILCS 5/2-801 on behalf of himself and a Class of similarly situated individuals, defined as follows:

> All residents of the State of Illinois who had their biometric identifiers or biometric information collected, captured, received, otherwise obtained, or disclosed by Tri City 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.

37. **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 hundreds of employees who fall into the definition of the Class. Ultimately, the Class members will be easily identified through Defendant's records.

38. **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 complies with any such written policy (if one exists); and

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

39. **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 his 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 his counsel has any interest adverse to those of the other members of the Class.

40. **Appropriateness**: This class action is appropriate for certification because class proceedings are superior to all others 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)

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

42. 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).

43. 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).

44. Unfortunately, Tri City fails to comply with these BIPA mandates.

45. Tri City Foods is a corporation and thus qualifies as a "private entity" under the BIPA. *See* 740 ILCS 14/10.

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

47. 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.

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

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

50. Tri City violated 740 ILCS 14/15(b)(2) by negligently 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.

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

52. By negligently collecting, storing, and using Plaintiff's and the Class's biometric identifiers and biometric information as described herein, Tri City 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*.

53. On behalf of himself 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 $1,000 per violation for each of Defendant's negligent violations of the BIPA pursuant to 740 ILCS 14/20(1); and (3) reasonable attorneys' fees and costs and expenses pursuant to 740 ILCS 14/20(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Joe Young, on behalf of himself 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 Young as representative of the Class, and appointing his counsel as Class Counsel;

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

C. Awarding statutory damages of $1,000 for each of Defendant's violations of the 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;

F. Awarding Plaintiff and the Class their reasonable litigation expenses and

attorneys' fees;

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

H. 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,

JOE YOUNG individually and on behalf of all others similarly situated,

Dated: October 22, 2018

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

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EXHIBIT 3

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

JOE YOUNG, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	**No. 2018CH13114**
v.	)	**Calendar 15**
TRI CITY FOODS, INC., a Delaware corporation,	)	
Defendant.	)	

ANSWER AND AFFIRMATIVE AND OTHER DEFENSES
TO PLAINTIFF'S CLASS ACTION COMPLAINT

For its Answer and Affirmative and Other Defenses to plaintiff Joe Young's ("plaintiff") Class Action Complaint, defendant Tri City Foods, Inc. ("TCF" or "defendant"), states as follows:

NATURE OF THE ACTION

1. Defendant Tri City is a franchisee of the Burger King restaurant chain.

ANSWER: Defendant admits the allegations in Paragraph 1.

2. When employees first begin their jobs at one of Tri City's restaurants, they are required to scan their fingerprints in its time clocks. That's because Tri City uses a biometric time tracking system that requires employees to use their fingerprints as a means of authentication, instead of key fobs or identification cards.

ANSWER: Defendant denies the 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: Defendant denies the allegations in Paragraph 4.

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: Defendant admits that Illinois enacted the Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.* ("BIPA"), to regulate *inter alia* the collection and storage of biometric identifiers and biometric information but denies that Paragraph 4 accurately describes the General Assembly's legislative intent. The statutory language and legislative history speak for themselves.

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

- 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 members' 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: Defendant denies the allegations in Paragraph 5.

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

ANSWER: Defendant denies that plaintiff is entitled to any of the requested relief and respectfully requests the Court to dismiss plaintiff's claims with prejudice, enter judgment in defendant's favor, and award defendant its costs and attorneys' fees and any such further relief as this Court deems appropriate.

PARTIES

7. Plaintiff Joe Young is a natural person and citizen of the State of Illinois.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 and, therefore, denies them.

8. Defendant Tri City Foods, Inc., is a Delaware corporation with its principal place of business located at 1400 Opus Place, Suite 900, Downers Grove, Illinois 60515.

ANSWER: Defendant admits that TCF is a Delaware corporation with an office at 1400 Opus Place, Suite 900, Downers Gove, Illinois 60515. Defendant denies the remaining allegations in Paragraph 8.

9. Respondent in Discovery NCR Corporation ("NCR") provides Defendant Tri City Foods with the hardware and software for its employee time tracking service. As such, Plaintiff has a good faith basis to believe that NCR possesses information essential to determine proper additional defendants in this action. For instance, Plaintiff believes NCR possesses information that can identify additional individuals or entities that may have collected, used, and stored Plaintiff's and the putative Class members' biometric information.

ANSWER: Defendant admits that it uses Point of Sale ("POS") devices sold by NCR Corporation but denies the remaining allegations in Paragraph 9. Plaintiff dismissed NCR Corporation as a respondent in discovery because NCR does not collect, use or store plaintiff's or the putative class members' biometric information or possess information essential to determine additional defendants in this action.

JURISDICTION AND VENUE

10. The Court has jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because Defendant conducts business transactions in Illinois, owns and operates restaurants in Illinois, and has committed tortious acts in Illinois.

ANSWER: Defendant admits that this Court has jurisdiction over this action because it conducts business within the State and owns and operates restaurants in Illinois but denies the remaining allegations in Paragraph 10.

11. Venue is proper in Cook County because Defendant conducts business transactions in Cook County, and the events giving rise to this claim occurred in Cook County.

ANSWER: Defendant admits that venue is proper in Cook County because defendant conducts business within the county but denies the remaining allegations in Paragraph 11.

FACTUAL BACKGROUND

I. The Biometric Information Privacy Act.

12. 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: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and, therefore, denies them.

13. 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 fingerprint scanners were completely unaware that the scanners were not actually transmitting fingerprint 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: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and, therefore, denies them.

14. 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: Defendant admits that Illinois enacted BIPA in 2008 and that Paragraph 14 quotes a few words from 2008 Reg. Sess. No. 276 but denies the remaining allegations in Paragraph 14.

15. 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 15 sets forth legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations in Paragraph 15. The statute speaks for itself.

16. 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: Defendant admits that BIPA applies to some employees who work in Illinois but denies that BIPA applies to employees of financial institutions, to employees of state or local government agencies, or to employees of government contractors. Defendant further admits that plaintiff quoted a portion of the definition of "written release" in 740 ILCS 14/10 but denies the remaining allegations in Paragraph 16.

17. Biometric identifiers include retina and iris scans, voiceprints, scans of hand and face geometry, and—most importantly here—fingerprints. *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 17 sets forth legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations in Paragraph 17. The statute speaks for itself.

18. The BIPA also establishes standards for how employers must handle Illinois employees' biometric identifiers and biometric information. *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: Paragraph 18 sets forth legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations in Paragraph 18. The statute speaks for itself.

19. 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: Paragraph 19 sets forth legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations in Paragraph 19. The statute speaks for itself.

II. Tri City Foods Violates the Biometric Information Privacy Act.

20. By the time the BIPA passed through the Illinois Legislature in mid-2008, many companies who had experimented using biometric data as an authentication method stopped doing so. 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: Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 and, therefore, denies them.

21. Unfortunately, Tri City failed to take note of the trend recognizing the dangers in storing biometric identifiers and the passage of Illinois law governing the collection and use of biometric data. Tri City continues to collect, store, and use its employees' biometric data in violation of the BIPA.

ANSWER: Defendant denies the allegations in Paragraph 21.

22. Specifically, when employees first begin work at Tri City, they are required to have their fingerprints scanned in order to enroll them in its fingerprint database.

ANSWER: Defendant denies the allegations in Paragraph 22.

23. Tri City uses an employee time tracking system that requires employees to use their fingerprints as a means of authentication. Unlike a traditional time clock, employees have to use their fingerprints to "punch" in to or out of work.

ANSWER: Defendant denies the allegations in Paragraph 23.

24. Unfortunately, Tri City fails to inform its employees the extent of the purposes for which it collects their sensitive biometric data or to whom the data is disclosed, if at all.

ANSWER: Defendant denies the allegations in Paragraph 24.

25. Tri City similarly fails to provide its employees with a written, publicly available policy identifying its retention schedule, and guidelines for permanently destroying its employees' fingerprints when the initial purpose for collecting or obtaining their fingerprints is no longer relevant, as required by the BIPA. An employee who leaves the company does so without any knowledge of when their biometric identifiers will be removed from Tri City's databases—or if they ever will be.

ANSWER: Defendant denies the allegations in Paragraph 25.

26. The Pay By Touch bankruptcy that catalyzed the passage of the BIPA highlights why conduct such as Tri City's—whose employees are aware that they are providing biometric identifiers but are not aware of to whom or the full extent of the reasons they are doing so—is so dangerous. That bankruptcy spurred Illinois citizens and legislators into realizing 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 Tri City disregards these obligations, and instead unlawfully collects, stores, and uses its employees' biometric identifiers and information.

ANSWER: Defendant denies the allegations in Paragraph 26.

27. Ultimately, Tri City disregards its employees' statutorily protected privacy rights by violating the BIPA.

ANSWER: Defendant denies the allegations in Paragraph 27.

FACTS SPECIFIC TO PLAINTIFF YOUNG

28. Plaintiff Young worked for Tri City from July 2017 through January 2018 at one of Tri City's restaurants in Cook County.

ANSWER: Defendant admits that TCF hired Young in July 2017, and denies the remaining allegations in Paragraph 28.

29. As a new employee, Tri City required Young to scan his fingerprint so that it could use it as an authentication method to track his time. Tri City subsequently stored Young's fingerprint data in its databases.

ANSWER: Defendant denies the allegations in Paragraph 29.

30. Each time Young began and ended his workday he was required to scan his fingerprint.

ANSWER: Defendant denies the allegations in Paragraph 30.

31. Tri City never informed Young of the specific limited purposes or length of time for which it collected, stored, or used his fingerprint.

ANSWER: Defendant denies the allegations in Paragraph 31.

32. Similarly, Tri City never informed Young of any biometric data retention policy it developed, nor whether it will ever permanently delete his fingerprint.

ANSWER: Defendant denies the allegations in Paragraph 32.

33. Young never signed a written release allowing Tri City to collect or store his fingerprint.

ANSWER: Defendant denies that it collected or stored plaintiff's fingerprint and therefore denies the allegations of Paragraph 33.

34. Young has continuously and repeatedly been exposed to the risks and harmful conditions created by Tri City's violations of the BIPA alleged herein.

ANSWER: Defendant denies the allegations in Paragraph 34.

35. Plaintiff seeks liquidated damages under BIPA as compensation for the injuries Tri City has caused.

ANSWER: Defendant denies that it injured plaintiff or that he is entitled to the requested relief.

CLASS ALLEGATIONS

36. **Class Definition:** Plaintiff Joe Young brings this action pursuant to 735 ILCS 5/2-801 on behalf of himself and a Class of similarly situated individuals, defined as follows:

> All residents of the State of Illinois who had their biometric identifiers or biometric information collected, captured, received, otherwise obtained, or disclosed by Tri City 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: Defendant admits only that plaintiff asserts class action claims and denies the remaining allegations in Paragraph 36.

37. **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 hundreds of employees who fall into the definition of the Class. Ultimately, the Class members will be easily identified through Defendant's records.

ANSWER: Defendant denies the allegations in Paragraph 37.

38. **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 complies with any such written policy (if one exists); and

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

ANSWER: Defendant denies the allegations in Paragraph 38.

39. **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 his 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 his counsel has any interest adverse to those of the other members of the Class.

ANSWER: Defendant denies the allegations in Paragraph 39.

40. **Appropriateness:** This class action is appropriate for certification because class proceedings are superior to all others 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: Defendant denies the allegations in Paragraph 40.

CAUSE OF ACTION

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

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

ANSWER: Defendant restates and incorporates its answers to Paragraphs 1 through 40 as if fully set forth herein.

42. 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 14115(b) (emphasis added).

ANSWER: Paragraph 42 sets forth legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations in Paragraph 42. The statute speaks for itself.

43. 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 43 sets forth legal conclusions to which no response is required. To the extent a response is required, defendant denies the allegations in Paragraph 43. The statute speaks for itself.

44. Unfortunately, Tri City fails to comply with these BIPA mandates.

ANSWER: Defendant denies the allegations in Paragraph 44.

45. Tri City Foods is a corporation and thus qualifies as a "private entity" under the BIPA. *See* 740 ILCS 14/10.

ANSWER: Defendant admits the allegations in Paragraph 45.

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

ANSWER: Defendant denies the allegations in Paragraph 46.

47. 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: Defendant denies the allegations in Paragraph 47.

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

ANSWER: Defendant denies the allegations in Paragraph 48.

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

ANSWER: Defendant denies the allegations in Paragraph 49.

50. Tri City violated 740 ILCS 14/15(b)(2) by negligently 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.

ANSWER: Defendant denies the allegations in Paragraph 50.

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

ANSWER: Defendant denies the allegations in Paragraph 51.

52. By negligently collecting, storing, and using Plaintiff's and the Class's biometric identifiers and biometric information as described herein, Tri City 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: Defendant denies the allegations in Paragraph 52.

53. On behalf of himself 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 $1,000 per violation for each of Defendant's negligent violations of the BIPA pursuant to 740 ILCS 14/20(1); and (3) reasonable attorneys' fees and costs and expenses pursuant to 740 ILCS 14/20(3).

ANSWER: Defendant denies that plaintiff is entitled to any of the requested relief and respectfully requests the Court to dismiss plaintiff's claims with prejudice, enter judgment in defendant's favor, and award defendant its costs and attorneys' fees and any such further relief as this Court deems appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Joe Young, on behalf of himself 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 Young as representative of the Class, and appointing his counsel as Class Counsel;

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

C. Awarding statutory damages of $1,000 for each of Defendant's violations of the 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;

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

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

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

ANSWER: Defendant denies that plaintiff is entitled to any of his requested relief and respectfully requests the Court to dismiss plaintiff's claims with prejudice, enter judgment in defendant's favor, and award defendant its costs and attorneys' fees and any such further relief as this Court deems appropriate.

JURY TRIAL

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

ANSWER: Defendant admits that plaintiff requested a trial by jury but denies that BIPA provides for a jury trial or that plaintiff's claims are entitled to reach trial.

AFFIRMATIVE AND OTHER DEFENSES

Defendant submits the following affirmative and other defenses to the Class Action Complaint. By pleading these defenses, defendant does not alter the burden of proof and/or burden of persuasion that exists with respect to any issues in this lawsuit. Moreover, all defenses are pled in the alternative and do not constitute an admission of liability or an admission that plaintiff or any member of the putative class is entitled to any relief whatsoever.

1. Defendant does not possess biometric identifiers or biometric information, and therefore, defendant is not required to comply with 740 ILCS 14/15(a).

2. Plaintiff has no standing to bring his Section 15(a) claim because he failed to allege (and cannot) allege a required injury-in-fact to any cognizable personal or property interest such as defendant's failure to timely destroy his alleged biometric data.

3. Defendant timely destroyed plaintiff's alleged biometric data, which moots his Section 15(a) claim.

4. Defendant does not collect, capture, purchase, receive through trade, or otherwise obtain any biometric identifiers or biometric information, as defined under BIPA, and therefore, defendant is not required to comply with 740 ILCS 14/15(b).

5. The Class Action Complaint is barred in whole or in part because plaintiff and the putative class members implicitly or expressly consented to the conduct now alleged to violate BIPA because they knowingly and repeatedly used the scanner each day they worked.

6. The Class Action Complaint is barred in whole or in part by the doctrines of estoppel, waiver, ratification and acquiescence. Plaintiff and the putative class members knew they were using a finger scanner but did nothing to object, complain or seek to opt out of its use.

7. Plaintiff's and the putative class' purported injuries were accidental, occurred in the workplace, arising out of their employment, and are compensable under the Illinois Workers' Compensation Act. Accordingly, plaintiff's and the putative class' claims are preempted or otherwise barred by the Illinois Workers' Compensation Act, which provides the exclusive remedy for injuries that arise in the workplace or in connection with employment.

8. To the extent plaintiff alleges violations of Section 15(b) of BIPA, plaintiff's claims accrued with defendant's first collection and first dissemination without allegedly complying with Section 15's requirements.

9. Plaintiff's and the putative class' claims are barred by the one-year statute of limitations in 735 ILCS 5/13-201, to the extent their claims were not brought within this one-year period.

10. The applicable putative class members' claims are barred by the two-year statute of limitations in 735 ILCS 5/13-202, to the extent their claims were not brought within this two-year period.

11. The applicable putative class members' claims are barred by the five-year statute of limitations in 735 ILCS 5/13-205, if applicable, to the extent their claims were not brought within this five-year period.

12. The claims are barred in whole or in part by defendant's good faith, and the absence of negligent, intentional or reckless conduct. To the extent that BIPA applies to defendant's conduct, defendant is not liable because it relied in good faith upon a reasonable interpretation of BIPA's statutory language and any alleged violation was not negligent, intentional, or reckless.

13. The Class Action Complaint is barred in whole or in part because defendant substantially complied with BIPA.

14. Plaintiff and the putative class members have not suffered any harm as a result of the conduct alleged. The statutory damages potentially available under BIPA are grossly excessive and disproportionate in light of the absence of any injury or harm to plaintiff and the putative class members. Therefore, any award of statutory damages to plaintiff or the putative class members would violate defendant's due process rights under the Illinois and/or United States Constitutions and the Eighth Amendment's Excessive Fines Clause. *See* IL Const., Art. I, §2; U.S. Const. Amend. V, VIII and XXIV.

15. To the extent that plaintiff and the putative class members suffered an alleged injury, they are subject to Illinois' "single recovery rule," which permits an individual to recover only once for a single, indivisible injury.

16. Plaintiff and the putative class had actual or constructive knowledge of the risks inherent in their use of a time-tracking system to clock in and clock out for work. Nonetheless, plaintiff and the putative class voluntarily undertook such risks and to the extent that plaintiff and the putative class suffered any injury, the proximate cause of such injury was not a negligent action or omission by defendant.

17. Plaintiff and/or the putative class members do not satisfy the requirements of 735 ILCS § 2-801, and thus, plaintiff's claims are not appropriate for class action treatment.

18. Defendant reserves the right to amend its defenses or add additional defenses in the event that discovery or developments in the law indicate they would be appropriate.

DATED: February 24, 2021

Respectfully submitted,

By: /*s*/ Anne E. Larson
One of the Attorneys for Defendant
TRI CITY FOODS, INC.

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that on February 24, 2021, she filed the foregoing ***Answer and Affirmative and Other Defenses to Plaintiff's Class Action Complaint*** electronically with the Clerk of Court using the ECF system, which will send electronic notification to the following:

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Attorneys for Plaintiff

/s/ Anne E. Larson

EXHIBIT 4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TRI CITY FOODS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	24 C 414
	)	
COMMERCE & INDUSTRY INSURANCE COMPANY,	)	
	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

CHARLES P. KOCORAS, District Judge:

In this insurance coverage dispute, Plaintiff Tri City Foods, Inc. ("TCF") filed suit for breach of contract and declaratory judgment, seeking a declaration that its liability umbrella insurance carrier, Defendant Commerce & Industry Insurance Company ("C&I"), owes a duty to defend TCF in a class action lawsuit currently pending in the Circuit Court of Cook County, Illinois, that C&I breached that duty to defend, and that C&I is estopped from reserving rights to deny indemnification. Before the Court are the parties' cross-motions for summary judgment. For the following reasons, TCF's motion is granted in part and denied in part, and C&I's cross-motion is granted in part and denied in part.

BACKGROUND

As an initial matter, at the time this case was filed, TCF sought coverage under two C&I umbrella policies: one covering the period of November 20, 2015, to November 20, 2016, and the other covering the period of November 20, 2016, to November 20, 2017. However, TCF concedes that based on the Seventh Circuit's recent decision in *Thermoflex v. Waukegan, LLC v. Mitsui Sumitomo Ins. USA, Inc.*, 102 F.4th 438 (7th Cir. 2024), the "access to and disclosure of" exclusion of the 2016–2017 policy forecloses coverage under that policy. *See* Dkt. # 49, at 6 n.1. Accordingly, the Court denies TCF's motion for summary judgment and grants C&I's cross-motion for summary judgment with respect to the 2016–2017 policy. The discussion below pertains only to the 2015–2016 umbrella policy (hereafter, the "C&I Policy").

The following facts are taken from the record and are undisputed unless otherwise noted.

The *Young* Lawsuit

On October 22, 2018, Joe Young filed a complaint on behalf of himself and a putative class of individuals (the "*Young* Lawsuit") against TCF for violations of the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1 *et seq*. Young named NCR Corporation ("NCR"), a third-party vendor of TCF's timekeeping equipment, as a respondent-in-discovery.[1] In his complaint, Young alleges that he worked for TCF from July 2017 through July 2018. Young alleges that TCF required

[1] NCR was dismissed as a party on May 2, 2019. *See* Dkt. # 53-1, at 2.

him to scan his fingerprint at the beginning and end of each workday, but that he was never informed of the specific purposes or length of time for which TCF collected, stored, or used his fingerprint. Additionally, Young alleges that TCF never informed Young of any biometric data retention policy or sought a written release from Young to collect and store his fingerprint data. Young specifically alleges violations of Sections 15(a) and 15(b) of BIPA.

Young seeks to certify a class of similarly situated individuals, which he defined in his complaint as "All residents of the State of Illinois who had their biometric identifiers or biometric information collected, captured, received, otherwise obtained, or disclosed by Tri City while residing in Illinois." Dkt. # 36, ¶ 24. Among the common questions of fact raised by Young is "whether [TCF] has sold, leased, traded, or otherwise profited" from Young's and the class members' biometric information. *Id.* ¶ 25. Finally, Young alleges that TCF "violated Plaintiff's and the class's rights to privacy" in their biometric information. *Id.* ¶ 23.

TCF's Employment Practices Liability Insurer

On November 12, 2018, TCF tendered the *Young* Lawsuit to its employment practices liability insurer, National Union Insurance Company of Pittsburgh ("National Union"). TCF sought coverage under its Employment Practices Liability Insurance Policy, for the policy period January 1, 2018, to January 1, 2019 (the "EPL Policy").

The EPL Policy provides coverage on a claims-made basis for "wrongful acts," defined by the EPL Policy to include risks such as wrongful termination, harassment,

or discrimination. The limit of liability for the EPL Policy is $5,000,000 for covered judgments, settlements, and defense costs. The retention applicable to the *Young* Lawsuit and the EPL Policy was $200,000.

On December 28, 2018, National Union determined that the EPL Policy was potentially triggered by the *Young* Lawsuit and began defending TCF under a reservation of rights.

TCF's Commercial General Liability Insurer

On March 25, 2019, TCF tendered the *Young* Lawsuit to its primary commercial general liability insurer, Travelers Property Casualty Company of America ("Travelers"). Travelers issued to TCF commercial general liability ("CGL") policies for the policy periods of November 20, 2015, to November 20, 2016, and November 20, 2016, to November 20, 2017. By agreement, the 2016–2017 policy period was extended to January 1, 2018. Travelers then issued to TCF a new CGL policy for the policy period January 1, 2018, to January 1, 2019.

The three Travelers policies each included an endorsement that revised the definition of "personal and advertising injury" to mean: "'personal injury' or 'advertising injury.'" Dkt. # 53, ¶ 15. The three Travelers policies, as amended by the endorsement, eliminated from the definitions of "personal injury" and "advertising injury" the following offense: "Oral or written publication, in any manner, of material that violates a person's right to privacy[.]" Dkt. # 53, ¶ 16. All three Travelers policies included the following exclusion: "'Personal injury' or 'advertising injury' arising out

of any access to or disclosure of any person's or organization's confidential or personal information." Dkt. # 53, ¶ 17.

On May 13, 2019, Travelers denied coverage of the *Young* Lawsuit under the Travelers policy for the 2018–2019 policy period. Travelers denied coverage on the grounds that the *Young* Lawsuit did not allege a covered personal injury or advertising injury.

The C&I Policy

On or about May 21, 2023, TCF tendered the *Young* Lawsuit to C&I. The Insuring Agreement of the C&I Policy states that C&I "will pay on behalf of the Insured those sums in excess of the Retained Limit that the Insured becomes legally obligated to pay as damages by reason of liability imposed by law because of Bodily Injury, Property Damage or Personal Injury and Advertising Injury to which this insurance applies or because of Bodily Injury or Property Damage to which this insurance applies assumed by the Insured under an Insured Contract." Dkt. # 47, ¶ 36 (emphases denoting defined terms omitted[2]).

The Defense Provisions of the C&I Policy provide that C&I:

> will have the right and duty to defend any Suit against the Insured that seeks damages for . . . Personal Injury and Advertising Injury covered by this policy, even if the Suit is groundless, false or fraudulent when . . . the total applicable limits of Scheduled Underlying Insurance have been exhausted by payment of Loss to which this policy applies and the total applicable limits of Other Insurance have been exhausted; or . . . the damages sought because of . . . Personal Injury and Advertising Injury

[2] Emphases denoting defined terms are omitted throughout this Memorandum Opinion.

> would not be covered by Scheduled Underlying Insurance or any applicable Other Insurance, even if the total applicable limits of either the Scheduled Underlying Insurance or any applicable Other Insurance had not been exhausted by the payment of the Loss.

Dkt. # 47, ¶ 38. The C&I Policy lists the Travelers policies for the respective years as the "Scheduled Underlying Insurance."

"Other Insurance" is defined to mean "a valid and collectible policy of insurance providing coverage for damages covered in whole or in part by this policy." Dkt. # 1-1, at 26. However, "Other Insurance does not include Scheduled Underlying Insurance, the Self-Insured Retention or any policy of insurance specifically purchased to be excess of this policy affording coverage that this policy also affords." *Id.*

"Personal Injury and Advertising Injury" is defined, in relevant part, as "injury arising out of your business, including consequential Bodily Injury," arising out of the enumerated offense of "[o]ral or written publication, in any manner, of material that violates a person's right of privacy." Dkt. # 36, ¶ 13.

"Retained Limit" is defined to mean either "the total applicable limits of Scheduled Underlying Insurance and any applicable Other Insurance providing coverage to the Insured" or "the Self-Insured Retention applicable to each Occurrence that results in damages not covered by the Scheduled Underlying Insurance nor any applicable Other Insurance providing coverage to the insured." Dkt. # 47, ¶ 37.

The C&I Policy contains the following provision: "The descriptions in the headings of this policy are solely for convenience and form no part of the terms and conditions of coverage." Dkt. # 36, ¶ 15.

The C&I Policy contains two exclusions which C&I contends apply to preclude coverage in this case. The "Violation of Laws Exclusion" provides:

> W. Violation of Communication or Information Law
>
> This insurance does not apply to any liability arising out of any act that violates any statute, ordinance or regulation of any federal, state or local government, including any amendment of or addition to such laws, that prohibits or limits the sending, transmitting or communicating of material or information.

Dkt. # 36, ¶ 16.

The "Employment Practices Exclusion" provides:

> J. Employment Practices
>
> This insurance does not apply to any liability arising out of:
>
> 1. failure to hire any prospective employee or any applicant for employment;
>
> 2. dismissal, discharge or termination of any employee;
>
> 3. failure to promote or advance any employee; or
>
> 4. employment-related practices, policies, acts, omissions or misrepresentations directed at a present, past, future or prospective employee, including, but not limited to:
>
> a. coercion, harassment, humiliation or discrimination;
> b. demotion, evaluation, reassignment, discipline, or retaliation;
> c. libel, slander, humiliation, defamation, or invasion of privacy; or
> d. violation of civil rights.

Dkt. # 1-1, at 11.

TCF filed this lawsuit on January 17, 2024, asserting a claim for breach of contract, as well as seeking a declaration that C&I: owed TCF a duty to defend the *Young* Lawsuit, breached that duty, and is estopped from reserving rights to deny indemnification in the event of a settlement or adverse judgment in the *Young* Lawsuit.

C&I asserted a counterclaim, seeking a declaration that it owes no defense or indemnity obligation to TCF concerning the *Young* Lawsuit, which the Court struck as redundant. *See* Dkt. # 61. These cross-motions for summary judgment followed.

LEGAL STANDARD

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). To defeat summary judgment, a nonmovant must produce more than a "mere scintilla of evidence" and come forward with "specific facts showing that there is a genuine issue for trial." *Johnson v. Advocate Health and Hosps. Corp.*, 892 F.3d 887, 894, 896 (7th Cir. 2018). The Court considers the entire evidentiary record and must view all of the evidence and draw all reasonable inferences from that evidence in the light most favorable to the nonmovant. *Horton v. Pobjecky*, 883 F.3d 941, 948 (7th Cir. 2018). The Court does not "weigh conflicting evidence, resolve swearing contests, determine credibility, or ponder which party's version of the facts is most likely to be

true." *Stewart v. Wexford Health Sources, Inc.*, 14 F.4th 757, 760 (7th Cir. 2021). Ultimately, summary judgment is warranted only if a reasonable jury could not return a verdict for the nonmovant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

DISCUSSION

In its motion, TCF seeks summary judgment in its favor in the form of a declaration that C&I owes a duty to defend TCF in the *Young* Lawsuit and that C&I breached its duty. In C&I's cross-motion, C&I seeks summary judgment in its favor in the form of a declaration that it owes no duty to defend or indemnify TCF in connection with the *Young* Lawsuit because TCF has not proven that all "Underlying Insurance" and "Other Insurance" policies have been exhausted or do not cover the lawsuit, the allegations in the *Young* complaint do not allege a covered injury, and certain policy exclusions apply to bar coverage.

Under Illinois law[3], "the proper interpretation of an insurance policy is a question of law." *Citizens Ins. Co. of Am. v. Wynndalco Enters., LLC*, 70 F.4th 987, 995 (7th Cir. 2023); *Zurich Am. Ins. Co. v. Infrastructure Eng'g, Inc.*, 2024 IL 130242, ¶ 31 ("Construction of the terms of an insurance policy is a question of law properly decided on a motion for summary judgment."). In examining the terms of the policy, "the

[3] The parties appear to agree that Illinois law governs the Court's interpretation of the C&I Policy, as both parties cite to Illinois law in their briefs. C&I notes that it cites to Illinois law because it "has not identified any substantive difference between the law of Illinois, where the *Young* Lawsuit was filed, and the law of Texas, where it issued the Umbrella Policies, with respect to the legal arguments concerning the scope of coverage in the parties' cross-motions for summary judgment." Dkt. # 35, at 12 n.7. Thus, C&I does not ask the Court to conduct a choice-of-law analysis, and the Court will not endeavor to do so.

normal rules of contract interpretation apply." *Wynndalco*, 70 F.4th at 995; *see also Hess v. Est. of Klamm*, 2020 IL 124649. The primary objective in interpreting an insurance policy is "to ascertain and give effect to the intention of the parties, as expressed in the policy language." *Mashallah, Inc. v. W. Bend Mut. Ins. Co.*, 20 F.4th 311, 319 (7th Cir. 2021) (citing *Sanders v. Ill. Union Ins. Co.*, 2019 IL 124565, ¶ 22). The policy's provisions must be viewed as a whole, and meaning must be given to each provision. *Wynndalco*, 70 F.4th at 995 (citing *Founders Ins. Co. v. Munoz*, 237 Ill. 2d 424, 433 (2010)). If the terms of the insurance contract are clear and unambiguous, the court will give them their plain and ordinary meaning. *Sanders*, 2019 IL 124565, ¶ 23; *W. Bend Mut. Ins. Co. v. Krishna Schaumburg Tan, Inc.*, 2021 IL 125978, ¶ 32. Conversely, if the terms are susceptible to more than one meaning, they are considered ambiguous and will be construed strictly against the insurer who drafted the contract. *Krishna*, 2021 IL 125978, ¶ 32.

I. The Duty to Defend

In determining a duty to defend, the Court compares the allegations in the underlying complaint with the relevant portions of the insurance policy. *Nat'l Fire Ins. Co. of Hartford v. Visual Pak Co.*, 2023 IL App (1st) 221160, ¶ 31. If the facts alleged in the underlying complaint even *potentially* fall within the policy's coverage, the insurer must defend the insured in the underlying lawsuit. *Id.* As noted above, C&I argues it owes no duty to defend because the *Young* Lawsuit does not allege a covered injury, certain exclusions apply to bar coverage, and TCF has not exhausted its

Scheduled Underlying Insurance or Other Insurance. The Court addresses each argument in turn.

A. Personal Injury and Advertising Injury

As relevant to this case, the C&I Policy defines "Personal Injury and Advertising Injury" to include "an injury arising out of . . . [o]ral or written publication, in any manner, of material that violates a person's right of privacy." Dkt. # 36, ¶ 13. C&I argues it has no duty to defend or indemnify TCF because the *Young* Lawsuit does not allege a "personal injury and advertising injury" because it does not allege a "publication" within the meaning of the C&I Policy and as that term is defined by Illinois law.

Specifically, C&I points out that the *Young* Lawsuit asserts claims for violations of Sections 15(a) and 15(b) of BIPA only, neither of which have anything to do with "publication."[4] TCF accuses C&I of looking to the legal label of Young's claims, rather than the factual allegations. *See Santa's Best Craft, LLC v. St. Paul Fire & Marine Ins. Co.*, 611 F.3d 339, 346 (7th Cir. 2010) (in determining whether a duty to defend exists, Illinois law "give[s] little weight to the legal label that characterizes the underlying allegations."). In response, C&I argues that the statutory sections of BIPA under which

[4] Section 15(a) of BIPA requires that "[a] private entity in possession of biometric identifiers or biometric information must develop a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying the biometric identifiers or biometric information." 740 ILCS 14/15(a). Under Section 15(b) of BIPA, a private entity may not "collect, capture, purchase, receive through trade, or otherwise obtain" biometric identifiers without first obtaining written, informed consent. 740 ILCS 14/15(b).

Young asserts his claims govern the relief and damages that can be sought, as well as the type of conduct for which TCF can be liable. Because the claims in the *Young* Lawsuit are asserted under Sections 15(a) and 15(b) only, C&I says, Young only seeks to hold TCF liable "for failing to disclose and obtain a written release to collect and store biometric data, but not the dissemination (i.e. publication) of such data." Dkt. # 54, at 7.

TCF points out that NCR was originally named as a respondent in discovery, and any transfer of biometric data between TCF and NCR would constitute "publication" and thereby trigger coverage. With respect to NCR, the *Young* complaint alleges:

> Respondent in Discovery [NCR] provides [TCF] with the hardware and software for its employee time tracking service. As such, Plaintiff has a good faith basis to believe that NCR possesses information essential to determine proper additional defendants in this action. For instance, Plaintiff believes NCR possesses information that can identify additional individuals or entities that may have collected, used, and stored Plaintiff's and the putative Class members' biometric information.

Dkt. # 1-3, ¶ 9.

C&I claims that none of the *Young* complaint's allegations regarding NCR suggest that biometric information was actually shared with NCR. TCF disagrees, arguing that this allegation puts the issue of publication "directly at issue" and "implicates NCR as a recipient of Young's biometric information by virtue of its role as [TCF's] vendor of the biometric systems and hardware." Dkt. # 49, at 10. TCF further asserts the *Young* complaint's allegation that TCF never informed Young "of the purposes for which it collected, stored, or used his fingerprint" is sufficient because

"[s]torage could have occurred with a third-party vendor such as NCR." Dkt. # 23, at 7.

TCF also argues that publication is alleged because the proposed class definition includes individuals who had their biometric information "disclosed" by TCF. C&I says the class definition is irrelevant since Young, as the lead plaintiff, must have suffered the same injury, and there is no allegation of publication of Young's biometric information. However, the complaint identifies as a common question of fact "whether [TCF] has sold, leased, traded, or otherwise profited from" Young's and the class's biometric information. Dkt. # 1-3, ¶ 38.

In the Court's view, these allegations, combined with the allegation that NCR has information that would help determine "proper additional defendants" that "may have collected, used, and stored" Young's and the class members' biometric information, suggest potential improper disclosure (i.e., publication). Again, the Court must construe the *Young* complaint liberally in favor of TCF. In doing so, the Court cannot say that it is *clear* from the face of the underlying complaint that the *Young* Lawsuit does not *potentially* fall within the C&I Policy's coverage.

B. Policy Exclusions

C&I next argues that, even if the *Young* Lawsuit alleges publication, two exclusions in the C&I Policy nevertheless bar coverage for TCF. "An insurer bears not only the burden of showing that an exclusion from coverage applies but that its applicability is 'clear and free from doubt.'" *Mashallah, Inc. v. W. Bend Mut. Ins. Co.*,

20 F.4th 311, 320 (7th Cir. 2021) (citing *4220 Kildare, LLC v. Regent Ins. Co.*, 2020 IL App (1st) 181840, ¶ 32).

1. Violation of Laws Exclusion

The Violation of Laws Exclusion provides, in relevant part:

> W. Violation of Communication or Information Law
>
> This insurance does not apply to any liability arising out of any act that violates any statute . . . ***that prohibits or limits the sending, transmitting or communicating of material or information.***

Dkt. # 36, ¶ 16 (emphasis added).

In *Krishna*, the Illinois Supreme Court considered an exclusion — titled "Violation of Statutes that Govern E-Mails, Fax, Phone Calls or Other Methods of Sending Material or Information" — with similar language. There, the exclusion blocked coverage of:

> (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
> (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
> (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, ***that prohibits or limits the sending, transmitting, communicating or distribution of material or information.***

2021 IL 125978, ¶ 9 (emphasis added). Applying the *ejusdem generis* canon, the court held that the third part of this exclusion — "[a]ny statute . . . that prohibits or limits the sending [etc.] of material or information" — did not apply to BIPA claims because BIPA "does not regulate methods of communication." *Id.* ¶¶ 58–59.

The exclusion in this case is arguably broader than the one at issue in *Krishna* because it does not enumerate specific statutes to which the exclusion would apply. C&I urges the Court to follow *Westfield Ins. Co. v. UCAL Sys., Inc.*, 2024 WL 3650118 (N.D. Ill. Aug. 5, 2024), and find that the catch-all nature of the Violation of Laws Exclusion applies to BIPA claims. In that case, the exclusion — titled "Recording and Distribution of Material or Information In Violation of Law Exclusion" — applied to claims under the TCPA, the CAN-SPAM Act, the FCRA, and FACTA, and also had a catch-all provision that barred coverage for injury arising out of any law (other than those enumerated) "that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information." But that catch-all provision encompasses far more than C&I's exclusion, which applies only to a law "that prohibits or limits the sending, transmitting or communicating of material or information." That is precisely the language considered in *Krishna*.[5]

In the end, the Court cannot say that the applicability of the Violation of Laws Exclusion to BIPA claims is "clear and free from doubt." At a minimum, there exists an ambiguity that must be resolved in the insured's favor.

[5] C&I attempts to distinguish its exclusion from the one in *Krishna*, the title of which gave specific examples of methods of communication, including e-mails, faxes, and phone calls. In contrast, the Violation of Laws Exclusion is titled, "Violation of Communication or Information Law." True, the *Krishna* court began its analysis by considering the title of the exclusion. However, the C&I Policy specifically provides that "[t]he descriptions in the headings of this policy are solely for convenience and form no part of the terms and conditions of coverage." Dkt. # 36, ¶ 15.

2. Employment Practices Exclusion

The Employment Practices Exclusion provides, in relevant part:

J. Employment Practices

This insurance does not apply to any liability arising out of: ***

4. employment-related practices, policies, acts, omissions, or misrepresentations directed at a present, past, future or prospective employee, including, but not limited to:

a. coercion, harassment, humiliation or discrimination;
b. demotion, evaluation, reassignment, discipline, or retaliation;
c. libel, slander, humiliation, defamation, or ***invasion of privacy***; or
d. violation of civil rights.

Dkt. # 36, ¶ 18 (emphasis added).

The Court agrees with TCF's characterization of C&I's reliance on the Employment Practices Exclusion as "halfhearted." C&I relies on a single case in support of its position, *Am. Fam. Mut. Ins. Co. v. Caremel, Inc.*, 2022 WL 79868 (N.D. Ill. 2022), and ignores TCF's citations to numerous subsequent cases in which courts have considered similar (but not identical) exclusions and decided in favor of the insured. *See* Dkt. # 23, at 13 (collecting cases). A key distinction between C&I's Employment Practices Exclusion and those evaluated in the cases cited by TCF is that the C&I exclusion includes "invasion of privacy" as an example of an employment-related practice that is not covered. TCF asserts that the inclusion of "invasion of privacy" renders the exclusion ambiguous. This is because, TCF says, the insuring agreement provides coverage for publication "of material that violates a person's right

of privacy," yet the exclusion disclaims "precisely that same coverage." Dkt. # 23, at 14.

In the Court's view, the key is how the policy, practice, act, or omission is defined. Other courts considering similar employment-related practices exclusions (albeit without the "invasion of privacy" language) viewed the policy or practice at issue to be requiring workers to clock-in and clock-out with their fingerprint – something that "isn't the type of practice or policy envisioned by the full text of the provision." *State Auto. Mut. Inc. Co. v. Tony's Finer Foods Enters., Inc.*, 589 F. Supp. 3d 919, 9330 (N.D. Ill. 2022). In *Caremel*, on the other hand, the court framed its definition of the practice in question as a BIPA violation, rather than a timekeeping policy.

Here, because "the conduct at issue could be framed, for example, as a policy of biometric time keeping, a practice of collecting, storing, and transmitting biometric information, an act of violating BIPA [(i.e., an "invasion of privacy")], or the omission of obtaining authorization," an ambiguity exists in the Employment Practices Exclusion as applied. *See Thermoflex Waukegan, LLC v. Mitsui Sumitomo Ins. USA, Inc.*, 2023 WL 319235, at *10 (N.D. Ill. Jan. 19, 2023), *aff'd,* 102 F.4th 438 (7th Cir. 2024). The Court agrees. That ambiguity must be construed in TCF's favor and against C&I.

Because the *Young* Lawsuit is potentially within the scope of coverage and neither the Violation of Laws Exclusion nor the Employment Practices Exclusion act to

definitively bar coverage, the Court finds that C&I owes TCF a duty to defend – with one caveat, addressed below.

C. Exhaustion

C&I next argues that it has no duty to defend because TCF's primary insurance policies—the Travelers policies—are not exhausted and one of TCF's other insurers—National Union—is already providing coverage under the EPL Policy, which C&I asserts falls within the definition of "Other Insurance."

With respect to the Travelers policies, C&I argues that the record evidence does not support TCF's claim that Travelers denied coverage under its CGL policies. As evidence that Travelers denied coverage, TCF put forth a denial letter from Travelers which refers only to the 2018–2019 policy. Thus, C&I argues there is no evidence Travelers denied coverage under the earlier Travelers policies that directly underlie the C&I Policy, so there is no evidence of exhaustion. C&I further asserts that TCF has not established that the *Young* Lawsuit would not be covered by the earlier Travelers policies or any Other Insurance.

However, C&I admits that Travelers denied coverage under the 2018–2019 CGL policy on the grounds that the *Young* Lawsuit did not allege a covered "Personal Injury" or "Advertising Injury." The definitions and exclusion Travelers relied on in denying coverage under the 2018–2019 Travelers policy are found in each of the relevant Travelers policies (but not the C&I Policy). Therefore, TCF says it has established that

the "Scheduled Underlying Insurance" does not cover or even potentially cover the claims at issue in the *Young* Lawsuit. The Court agrees.

As for whether the EPL Policy constitutes "Other Insurance," TCF argues that it does not because the policies cover different risks. Specifically, TCF says the EPL Policy is written on a claims-made basis, whereas the C&I Policy provides occurrence-based coverage. Additionally, the subject matter covered by the two policies is disparate, because the C&I Policy covers the risk of liability for "bodily injury," "property damage," or "personal injury and advertising injury" to third parties caused by the insured's negligence, whereas the EPL Policy covers risks of liability for "wrongful acts" such as wrongful termination, harassment, or discrimination.

In response, C&I accuses TCF of conflating the operation of "Other Insurance" conditions in policies for disputes concerning priority of coverage, which is not at issue in this case because the C&I Policy explicitly requires exhaustion of all Other Insurance before that policy responds to a loss. C&I further argues that the fact that the two policies cover different risks is irrelevant.

Again, C&I's duty to defend is triggered if either: (1) the limits of the relevant Travelers policies and any Other Insurance policy are exhausted, or (2) the relevant Travelers policies and any Other Insurance policy would not cover the damages sought. National Union is defending the *Young* Lawsuit, and the EPL Policy squarely falls within the definition of "Other Insurance"—it is "a valid and collectible policy of insurance providing coverage for damages covered in whole or in part by this policy."

Dkt. # 1-1, at 26. So, while the Court concludes C&I owes a duty to defend, that duty does not begin until the limits of the Other Insurance have been exhausted.[6] *See Thermoflex*, 102 F.4th at 443–44; *Metzger v. Country Mut. Ins. Co.*, 2013 IL App (2d) 120133, ¶ 20 ("Thus, if there is even potential coverage, the insurer must assume the defense of the underlying lawsuit, unless the insurer is secondary or excess, in which case the insurer's duty to defend will not arise until the limits in the primary policy are reached.").

II. Estoppel

One final issue remains. In its complaint, TCF seeks a declaration that C&I is estopped from reserving rights to deny indemnification in the event of a settlement or adverse judgment in the *Young* Lawsuit. However, TCF's sole reference to estoppel in its memorandum in support of its motion for summary judgment is a single sentence in the introductory paragraphs: "Furthermore, because C&I had actual notice as early as November 12, 2018, and yet failed to acknowledge the claim, let alone defend or deny coverage, C&I is now estopped from denying coverage defenses with regard to its

[6] In its reply brief, C&I argues that, even if it owes a duty to defend, that duty is only triggered after TCF proves that the limits of the underlying policy and Other Insurance have been exhausted *and* that the total applicable Self-Insured Retention ("SIR") has been satisfied by the payment of "Loss." C&I argues "Loss" by its definition "does not include defense or investigative costs – it includes only those amounts paid by Plaintiff for settlements or judgments." Dkt. # 54, at 9. However, arguments raised for the first time in a reply brief are waived. *United States v. Williams*, 85 F.4th 844, 849 (7th Cir. 2023). Even if the Court were to consider the argument, a reading of the C&I Policy reveals that the SIR clause applies to C&I's duty to indemnify; C&I's defense obligations do not depend on the exhaustion of the SIR.

eventual duty to indemnify Tri City Foods for any adverse verdict that may result from the *Young* Class Action." Dkt. # 23, at 2.

Unfortunately for TCF, "perfunctory and undeveloped arguments, and arguments that are unsupported by pertinent authority, are waived." *Crespo v. Colvin*, 824 F.3d 667, 674 (7th Cir. 2016) (citation omitted). TCF attempts to argue the issue in its reply brief, but, "[j]ust as undeveloped arguments are waived, so are arguments raised for the first time in reply briefs." *Williams*, 85 F.4th at 849 (citation omitted). In any event, the estoppel doctrine applies only "where an insurer has breached its duty to defend." *Employers Ins. v. Ehlco Liquidating Tr.*, 186 Ill. 2d 127, 151 (1999). C&I's duty to defend has not yet been triggered, so there can be no finding that C&I breached its duty.

The Court makes no finding with respect to C&I's duty to indemnify because, at this point, C&I's indemnity obligations are speculative and depend on the outcome of the litigation. *See Lear Corp. v. Johnson Elec. Holdings Ltd.*, 353 F.3d 580, 583 (7th Cir. 2003) (a "declaration that A must indemnify B if X comes to pass has an advisory quality," so "decisions about indemnity should be postponed until the underlying liability has been established"). Because the Court declines to declare a duty to indemnify because the insured has incurred no liability yet, to the extent that TCF seeks declaratory relief regarding C&I's indemnity obligations, that claim is dismissed without prejudice. *See Med. Assur. Co. v. Hellman*, 610 F.3d 371, 375 (7th Cir. 2010); *Nationwide Ins. Co. v. Zavalis*, 52 F.3d 689, 693 (7th Cir. 1995).

CONCLUSION

For the foregoing reasons, TCF's Motion for Summary Judgment [22] is granted in part and denied in part, and C&I's Cross-Motion for Summary Judgment [33] is granted in part and denied in part. With respect to the duty to defend under the 2016–2017 C&I Policy, TCF's motion for summary judgment is denied, and C&I's cross-motion for summary judgment is granted. C&I owes no duty to defend TCF under the 2016–2017 C&I Policy.

With respect to the duty to defend under the 2015–2016 C&I Policy, TCF's motion for summary judgment is granted, and C&I's cross-motion for summary judgment is denied. C&I owes a duty to defend under the 2015–2016 C&I Policy once the limits of the Other Insurance have been exhausted

Because C&I's duty to defend under the 2015–2016 C&I Policy has not yet been triggered, TCF's motion for summary judgment as to its breach of contract claim is denied, and that claim is dismissed without prejudice as premature. Additionally, Count II of TCF's complaint, to the extent it seeks declaratory relief related to C&I's duty to indemnify, is dismissed without prejudice.

By 12/11/2024, the parties shall file a Joint Status Report regarding what issues, if any, remain pending in light of the above.

It is so ordered.

Charles P. Kocoras
United States District Judge

Date: November 26, 2024

EXHIBIT 5

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

JOE YOUNG, individually and on behalf of all others similarly situated, Plaintiff, v. TRI CITY FOODS, INC., a Delaware corporation, Defendant.	Case No. 2018 CH 13114 Calendar 15

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 and Memorandum in Support of Preliminary Approval of Class Action Settlement.[1] 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.

[1] Unless otherwise specified, all capitalized terms are defined in the Class Action Settlement Agreement (the "Agreement" or "Settlement"), which is attached as Exhibit 1 to Plaintiff's Motion and Memorandum in Support of Preliminary Approval of Class Action Settlement.

2. I am a partner at Edelson PC (also referred to as the "Firm"), which has been retained to represent the named Plaintiff in this matter, Joe Young.

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

4. Edelson PC is a national leader in high stakes plaintiffs' work ranging from class and mass actions to public client investigations and prosecutions. The Firm holds records for the largest consumer privacy settlement ($650 million) and the largest Telephone Consumer Protection Act ("TCPA") settlement ($76 million).

5. The Firm filed the first-ever class action under BIPA, *Licata v. Facebook, Inc.*, No. 2015-CH-05427 (Cir. Ct. Cook Cty. Apr. 1, 2015), secured the first-ever adversarially certified BIPA class in that case and defended the ruling in the Ninth Circuit, *Patel v. Facebook, Inc.*, 932 F.3d 1264, 1277 (9th Cir. 2019) (upholding adversarial BIPA class certification), *cert. denied Facebook, Inc. v. Patel*, 140 S. Ct. 937 (2020), 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."), *aff'd* No. 21-15553, 2022 WL 822923 (9th Cir. Mar. 17, 2022). The Firm is also responsible for the first-ever BIPA settlement, *see Sekura v. L.A. Tan Enters., Inc.*, No. 2015-CH-16694 (Cir. Ct. Cook Cty. Dec. 1, 2016), and has secured many favorable appellate decisions for BIPA plaintiffs. *Sekura v. Krishna Schaumburg Tan, Inc.*, No. 2018 IL App (1st) 180175 (pre-*Rosenbach*, holding violation of statute sufficient for plaintiff to be "aggrieved"); *Rottner v. Palm Beach Tan, Inc.*, 2019 IL App (1st) 180691-U (violation of statute sufficient to claim liquidated damages); *McDonald v. Symphony Bronzeville Park, LLC*, 2022 IL 126511 (holding that the Illinois Workers'

Compensation Act does not preempt BIPA claims against employers); *Sosa v. Onfido, Inc.*, 8 F. 4th 631 (7th Cir. 2021) (affirming district court's denial of motion to compel arbitration).

6. Several courts have noted Edelson PC's high levels of experience and competence, as well as the extraordinary results the Firm delivers for its clients. *See, e.g.*, *McCormick v. Adtalem Glob. Educ., Inc.*, 2022 IL App (1st) 201197-U, ¶ 30 (citing the trial judge's findings that Edelson PC is "highly experienced and more than competent[,]" that they had performed "an extraordinary job to secure the amount of money for the class," and that the settlement was "truly an extraordinary resolution to the great benefit of the class").

7. I believe that the Settlement is in the best interest of the Settlement Class and is fair, reasonable, adequate, and deserving of preliminary approval. For the reasons discussed in Plaintiff's motion for preliminary approval, the Settlement provides outstanding monetary and prospective relief without the uncertainty and delay that years of additional litigation would bring.

* * *

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

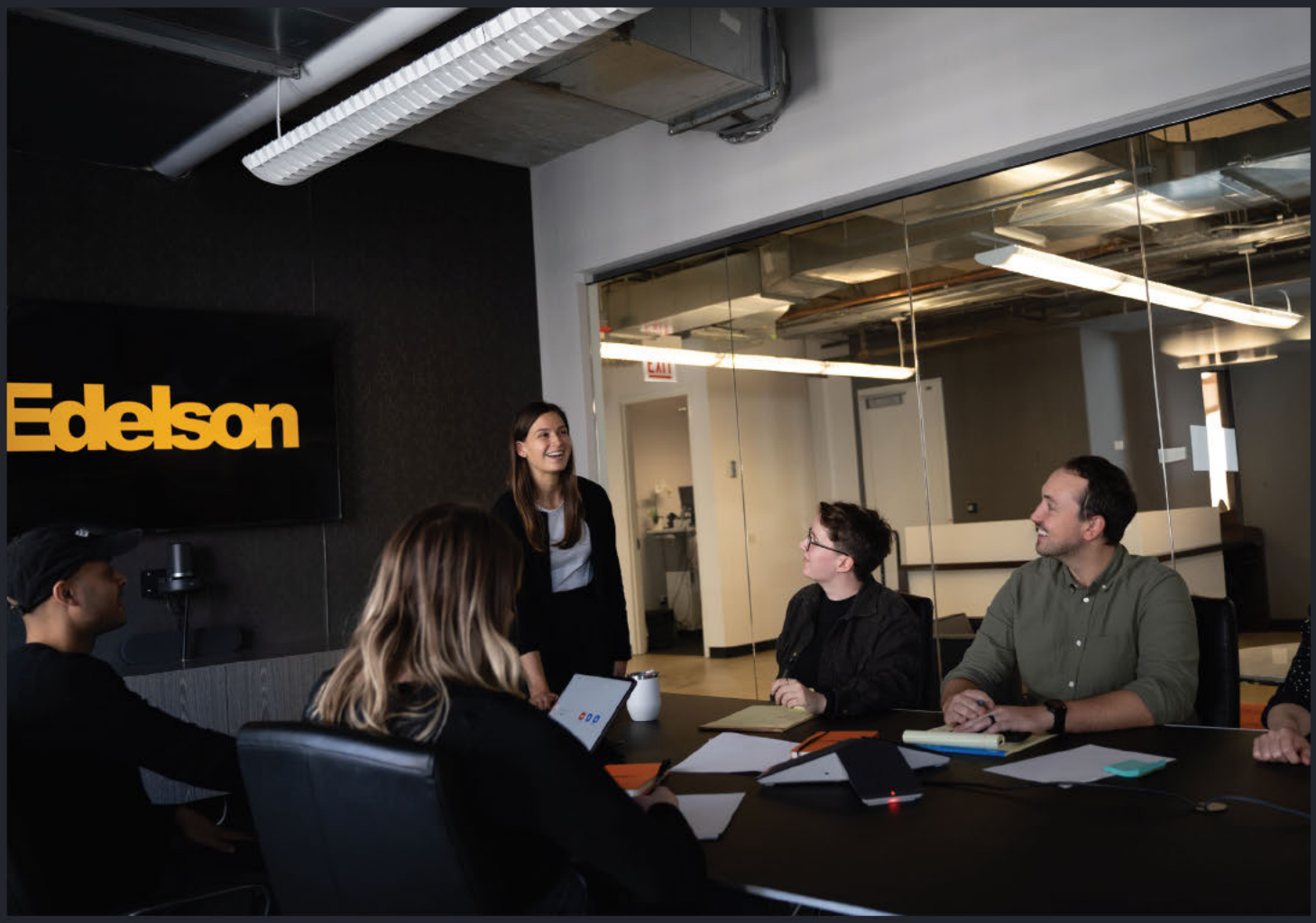
Executed on July 1, 2025 at Chicago, Illinois.

s/ Schuyler Ufkes
Schuyler Ufkes

EXHIBIT 5-A

Edelson

June 2025



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

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

—Law360

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Who We Are

EDELSON PC is a law firm concentrating on high stakes plaintiff's work ranging from class and mass actions to public client investigations and prosecutions. The cases we have litigated—as either lead counsel or as part of a broader leadership structure—have resulted in settlements and verdicts totaling over $45 billion.

- We hold records for the largest jury verdict in a privacy case ($925m), the largest single-state 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 $651 million. We've also won a first-of-its kind trial verdict for every cent that consumers lost to one such casino. 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, 2022, 2023), 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. Edelson was a two time finalist (2021 and 2022) and one-time winner of the Diversity Initiative Award (2021) 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 repeatedly recognized as a "Titan of the Plaintiff's Bar" by Law360, one of "America's Top 200 Lawyers" by Forbes in 2024, one of "America's Top Trial Lawyers" in the mass action arena, a LawDragon 2020 and 2023 Leading Plaintiff Financial Lawyer, a top "Class Action and Mass Tort Plaintiff's" Lawyer in Illinois by Leading Lawyers, one of "Chicago's Top Ten Startup Founders Over Age 45" by Tech.Co (the only law firm founder to win such an award) and as one of Fast Company's "Most Creative People in Business"—the first plaintiffs' attorney to ever receive the award.
- 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 Grilled Chicken Coupon Mktg. & Sales Practs. Litig.*, No. 09-cv-07670, MDL 2103 (N.D. Ill. Apr. 04, 2012). 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 represent thousands of wildfire survivors across the country, thousands of families experiencing the adverse effects of air and water contamination in their communities, and other victims of mass torts. We've won historic verdicts and hundreds of millions for our mass tort clients.

Representative cases and settlements include:

- Serving as lead trial counsel, our firm secured a historic classwide jury verdict on behalf of survivors of the 2020 Labor Day Fires in Oregon establishing classwide liability and punitive damages—the first known jury verdict holding a utility provider, PacifiCorp, accountable for a wildfire. (James v. PacifiCorp, No. 20-CV-33885). So far in subsequent damages trials, we have secured $315 million in damages to 51 plaintiffs, charting a course to billions in liability.
- Representing over 1,000 victims of the Northern California "Camp Fire," allegedly caused by utility company Pacific Gas & Electric. Served as counsel to a member of the 11-person Tort Claimants' Committee in the PG&E Bankruptcy, resulting in a historic $13.5 billion settlement.
- We currently represent hundreds of survivors of the Marshall Fires in Colorado.
- *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, its conferences, and member institutions alleging personal injury claims on behalf of college football players resulting from repeated concussive and sub-concussive hits.

Environmental Litigation

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

Representative cases and settlements include:

- Representing three Attorneys General in their investigations into contamination and exposure issues resulting from a “forever chemical” commonly referred to as PFAS.
- Representing a state Attorney General in investigating and potentially litigating matters related to the problematic use of a pesticide used in homes, on agricultural crops, lawns, and gardens, and as a fumigating agent—that is now known to have contaminated soil and groundwater.
- Representing thousands 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 individuals who have been exposed through their own drinking water and otherwise to PFAS and related "forever chemicals" used in various applications. This exposure has allegedly led to serious health issues, including cancer, as well as the devaluation of private property due to, among other things, the destruction of the water supply. In conjunction with our work in this space, we have been appointed to the Plaintiff's Executive Committee in *In re: Aqueous Film-Forming Foams (AFFF) Prods. Liability Litig.*, 18-mn-2873-RMG, MDL No. 2873 (D.S.C.).
- Representing property owners on Whidbey Island, Washington, whose homes sit directly in the flightpath of dozens of Navy fighter planes. The Navy is alleged to have significantly increased the number of these planes at the bases at issue, as well as the frequency of their flights, to the detriment of our clients’ privacy and properties. *Pickard v. USA,* No. 19-1928L (Ct. Fed. Claims); *Newkirk v. USA,* No. 20-628L (Ct. Fed. Claims).
- Representing putative class of students who were exposed to polychlorinated biphenyls (PCBs) while attending contaminated schools in Vermont under Vermont's groundbreaking statute providing for medial monitoring. *Neddo v. Monsanto,* 23-cv-396 (D.Vt.)

Banking, Lending, and Finance Litigation

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

Representative cases and settlements include:

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

Privacy and Data Security

The New York Times has explained that our "cases read like a time capsule of the last decade, charting how computers have been steadfastly logging data about our searches, our friends, our bodies." Courts have described our attorneys as "pioneers in the electronic privacy class action field, having litigated some of the largest consumer class actions in the country on this issue." *See In re Facebook Privacy Litig.,* No. 10-cv-02389 (N.D. Cal. Dec. 10, 2010) (order appointing us interim co-lead of privacy class action); *see also In re Netflix Privacy Litig.,* No. 11-cv-00379 (N.D. Cal. Aug. 12, 2011) (appointing us sole lead counsel due, in part, to our "significant and particularly specialized expertise in electronic privacy litigation and class actions"). In *Barnes v. 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. (The verdict was vacated on appeal in the Ninth Circuit, with instructions to determine whether the result violated Due Process.)

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.
- Secured key victories establishing the liability of employers and vendors under the Illinois Biometric Information Privacy Act, resulting in the largest-ever settlement with a timeclock vendor ($25 million), the largest-ever settlement with a technology vendor ($28.5 million), and more than $150 million in total settlements.
- *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.

Privacy and Data Security

- *American Civil Liberties Union et al. v. Clearview AI, Inc.*, No. 2020-CH-04353 (Cir. Ct. Cook Cty., Ill.): Successfully represented ACLU and other public interest organizations as lead outside counsel in a lawsuit adainst Clearview, Inc., resulting in consent decree. The conscent decree permanently enjoins Clearview from selling access to its massive database of facial vertors to any private person or company, as well as prohibits Clearview from sales to any entity within Illinois for five years, including government agencies or police departments. The settlement has been called a "milestone for civil rights."
- *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 $651 million.
- The firm has been appointed lead counsel in multidistrict litigation seeking to hold the platforms accountable for their role in profiting from and facilitating online gambling, in which the plaintiffs allege that the tech giants effectively operate as "bookies." In re Apple Inc. App Store Simulated Casino-Style Games Litigation, No. 5:21 md-02985 (N.D. Cal.); In re Google Play Store Simulated Casino Style Games Litigation, No. 5:21-md-03001 (N.D. Cal.); In re Facebook Simulated Casino-Style Games Litigation, No. 3:21-cv 02777 (N.D. Cal.).
- Prosecuted over 100 cases alleging that unauthorized charges for mobile content were placed on consumer cell phone bills. *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.

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.
- *In re Pet Food Prods. Liability Litig.*, No. 07-cv-2867 (D.N.J.): Part of mediation team in class action involving largest pet food recall in United States history. Settlement provided $24 million common fund and $8 million in charge backs.

☆ ☆ ☆ ☆ ☆ ☆ ☆

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

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

Insurance Matters

We have successfully represented individuals and companies in a multitude of insurance related actions. 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:

- *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.
- *Barak v. California FAIR Plan*, 25STCV10670 (L.A. Super. Ct.): Representing wildfire survivors against California's "insurer of last resort" for allegedly refusing to compensate plaintiffs for partial loss and smoke damage in the wake of the 2025 Los Angeles wildfires.

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.): Successfully represented the District of Columbia in a suit against e-cigarette giant Juul Labs, Inc. for alleged predatory and deceptive marketing resulting in a multistate settlement.
- *State of New Mexico, ex. rel. Hector Balderas v. Google, LLC*, No. 20-cv-00143 (D.N.M): Successfully represented 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: Represented 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.): Represented Columbus and Cincinnati in litigation against First Energy over the largest political corruption scandal in Ohio's history. Obtained preliminary injunction, which prevented electric utilities from collecting more than $1 billion of new fees from being collected from ratepayers
- *Village of Melrose Park v. Pipeline Health Sys. LLC, et al.*, No. 19-CH-03041 (Cir. Ct. Cook Cty., Ill.): Successfully represented the Village of Melrose Park in litigation arising from the closure of Westlake Hospital in what has been called "one of the most complicated hospital closure disputes in the state's history."
- *In re Marriott Int'l, Inc. Customer Data Security Breach Litig.*, 19-md-02879, MDL 2879 (D. Md.): Representing the City of Chicago in the ongoing Marriott data breach litigation.
- *In re Equifax, Inc., Customer Data Security Breach Litig.*, 17-md-02800 (N.D. Ga.): Successfully represented the City of Chicago in the Equifax data breach litigation, securing a landmark seven-figure settlement under Chicago's City-specific ordinance.
- *City of Chicago, et al. v. Uber Techs., Inc.*, No. 17-CH- 15594 (Cir. Ct. Cook Cty., Ill.): Successfully represented 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.
- Social Media Addiction: Representing several states in investigations and litigation against social media companies for harming a generation of their citizens with social media addiction.

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.

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Our Team

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Jay Edelson

Founder, Board Chair

Secured over $5 billion in settlements and verdicts for his clients while serving as lead counsel, and over $45 billion in total.

Jay has been consistently recognized as one of the most innovative and influential plaintiff's attorneys in the United States. His work includes a variety of high stakes litigation, from wildfire and environmental mass torts to opioid lawsuits, corporate fraud, and pioneering privacy and technology cases. Jay was named one of Forbes's "Top 200 Lawyers in America" in 2024, a three-time "Titan of the Plaintiffs' Bar" by Law 360 (2014, 2021, 2023), and was named one of Fast Company's "Most Creative People in Business" in 2022—the only plaintiff's attorney to ever receive that award. 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 Profess or of Law at the University of Chicago Law School, opined that when thinking about "who's the most innovative lawyer in the U.S. . . . [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 at the forefront of developing modern consumer privacy law, securing over $1.5 billion in settlements in this area of law alone, including the landmark $650 million Facebook biometric privacy settlement—the largest of its kind for a single state. This work has led him to be called "probably the best-known, and most innovative, consumer privacy lawyer on the planet," and, according to the New York Times, tech's "babyfaced ... boogeyman."

Jay Edelson

Founder, Board Chair

- Both inside and outside the courtroom, Jay actively advocates for systematic reforms within the legal profession. He spearheaded efforts exposing attorney Tom Girardi's decades-long Ponzi scheme. At the time, Girardi was one of the nation's most powerful plaintiffs' attorneys, best known for the PG&E case depicted in Erin Brockovich, and had stolen over $100 million from clients and others. Jay's work led to Girardi's disbarment, criminal conviction, and significant reforms for greater transparency in the legal system. Jay also promotes legislation designed to protect clients by strengthening attorney oversight and combating unethical practices such as fraudulent marketing and misuse of client funds.

- 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 and his firm have won hundreds of millions of dollars for victims of mass torts. In 2023, the firm successfully obtained a landmark jury verdict against an Oregon utility on behalf of thousands of survivors of the Labor Day 2020 wildfires, finding that the utility caused the wildfires and awarding punitive damages to the entire class. The firm represents thousands of individuals in litigation arising from wildfires across the country. Furthermore, the firm represents thousands of individuals suffering from the effects of ethylene oxide exposure.

- Jay is a sought-after speaker and educator, lecturing at leading law schools nationwide and frequently appearing on major news outlets such as Fox, CNN, and NewsNation. His advocacy for reform, innovation and ethical practices provides unique leadership within the plaintiffs' bar and the legal industry more generally.

- Jay received his JD from the University of Michigan Law School.

- For a more complete bio, see https://edelson.com/team/jay-edelson/.

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Rafey S. Balabanian

Partner, Chief Financial Officer
Board Member

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.

- 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.

- 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 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 S. Balabanian

Partner, Chief Financial Officer
Board Member

- 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.

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Todd Logan

Partner, Board Member, Chair Mass Torts Group

Since 2020, Todd has recovered more than $1 billion for his clients.

Todd focuses his practice on mass torts and class actions.

- Todd represents wildfire survivors and mass tort victims across the country. Todd represents survivors of the Labor Day 2020 fires in Oregon, where in 2023, the firm won a landmark jury verdict against an Oregon utility on behalf of thousands of survivors of the Labor Day 2020 wildfires, finding that the utility caused the wildfires and awarding punitive damages to the entire class. *James v. PacifiCorp*, No. 20-cv-33885 (Mult. Cty., Or.). In subsequent damages trials, juries have awarded more than $315 million to 51 survivors so far. Todd also represents thousands of people that allege their cancers were wrongfully caused by ethylene oxide (EtO) emissions.

- Todd has repeatedly been appointed class counsel in actions alleging that online "social casinos" too money from consumers through illegal gambling, returning $651 million to consumers so far. *Kater et al. v. Churchill Downs Downs Inc. et al.*, No. 15-cv-00612 (W.D. Wash.); *Thimmegowda v. Big Fish Games, Inc. et al.*, No. 19-cv-00199 (W.D. Wash.); *Reed v. Light & Wonder, Inc.*, No. 18-cv-00565 (W.D. Wash.); *Benson et al. v. Double Down Interactive, LLC et al.*, No. 18-cv-00525 (W.D. Wash.); *Wilson v. Huuuge, Inc.*, No. 18-cv-05276 (W.D. Wash.); *Wilson v. Playtika Ltd. et al.*, No. 18-cv-05277 (W.D. Wash.); *Ferrando v. Zynga Inc.*, No. 22-cv-214 (W.D. Wash.). The firm obtained a first-ever jury verdict against one such "social casino" operator, winning every dollar to the victims as well as enhanced damages. *Larsen v. PTT LLC*, 3:18-cv-05275 (W.D. Wash.). Todd has been appointed law and briefing counsel in subsequent MDLs against the platforms, where plaintiffs allege that the platforms act as the de facto "bookies." *In re Apple Inc. App Store Simulated Casino-Style Games Litigation*, No. 5:21-md-02985 (N.D. Cal.); *In re Google Play Store Simulated Casino-Style Games Litigation*, No. 5:21-md-03001 (N.D. Cal.); *In re Facebook Simulated Casino-Style Games Litigation*, No. 3:21-cv-02777 (N.D. Cal.).

- 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.

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J. Eli Wade-Scott

Global Managing Partner
Chair, Class Action Practice Group

Brought in to litigate novel questions of law in privacy and consumer protection.

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 has been appointed class counsel in dozens of class actions pressing novel questions of law, returning over $200 million to his clients.

- Successfully represented ACLU and other public interest organizations as lead outside counsel in a lawsuit against Clearview, Inc., resulting in consent decree. The consent decree permanently enjoins Clearview from selling access to its massive database of facial vectors to any private person or company, as well as prohibits Clearview from sales to any entity within Illinois for five years, including government agencies or police departments. *American Civil Liberties Union v. Clearview AI, Inc.,* No. 20 CH 4353 (Cir. Ct. Cook Cty.). The settlement has been called a "milestone for civil rights."

- 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. Successfully resolved action.

- 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.

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David I. Mindell

Senior Managing Partner
Chair, Investigations Group

Counsels governments and state and federal lawmakers on a range of policy issues, and leads the firm's investigations team.

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 oversees the firm's class and mass action investigations, including 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; claims on behalf of survivors of 2025 Los Angeles fires, 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.

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Ryan D. Andrews

Managing Partner, Chicago

Litigated issues of first impression nationwide securing pathmarking victories.

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.

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Eve-Lynn J. Rapp

Managing Partner, Boulder

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

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

- Specific to her Public Client and Government Affairs practice, Eve is presently leading the litigation on behalf of the City of Chicago in the Marriott data breach litigation, which seeks to hold the hotel giant accountable for a massive data breach where attackers stole the personal 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 was part of the team representing the District of Columbia in its litigation against Juul for its deceptive e-cigarette manufacturing and sales and the State of New Mexico in its suit against Google alleging that its G-Suite for Education product and services illegally collected data from New Mexico school children in violation of COPPA. Eve also counsels governments on a range of issues involving consumer protection, privacy, technology, and data security and was recently designated a Panel Member of Delaware's Department of Justice's Environmental Counsel Panel.

- Eve devotes a considerable amount of her practice to consumer technology and privacy cases. Eve was appointed Class Counsel in *Wakefield v. ViSalus, Inc.*, No. 15-cv-01857 (D. Or.), where she led and coordinated Edelson's litigation efforts, achieved certification of an adversarial TCPA class, and paved the way to a $925 million jury verdict. She also led Edelson's efforts in *Birchmeier v. Caribbean Cruise Line, Inc. et al.*, No. 12-cv-04069 (N.D. Ill.), where, after obtaining class certification and partial summary judgment, she secured a $76 million settlement—the largest ever for a TCPA case—four days before trial. She is also responsible for leading one of the first "Internet of Things" cases under the Federal 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.

Eve-Lynn Rapp

Managing Partner, Boulder

- 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.

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Jimmy Rock

Managing Partner, Washington, DC
Chair, Public Client Group

Litigating actions on behalf of governments across the country.

Jimmy Rock is a partner at Edelson PC where his work focuses on consumer protection and environmental cases. He also leads the firm's Public Clients litigation group.

- Prior to joining Edelson PC, Jimmy spent twelve years with the Office of the Attorney General for the District of Columbia where he helped to start OAG's Office of Consumer Protection and transform it into once of the preeminent State AG consumer practices.

- Jimmy served for five years as an Assistant Deputy Attorney General managing OAG's Public Advocacy Division, a 40+ lawyer group that enforced the District's consumer protection, antitrust, workers' rights, housing, nonprofit and environmental laws.

- Jimmy led a trial team against one of the largest online travel companies for failing to pay District sales taxes on service fees charged for selling hotel rooms, recovering more than $90 million in unpaid taxes and fees. To this day, this remains the largest litigated affirmative judgment obtained by the D.C. Attorney General's Office. *D.C. v. Expedia, Inc.*, 120 A.3d 623 (D.C. 2015).

- Jimmy was the lead attorney on a consumer protection enforcement case stemming from a multistate investigation into Marriott's deceptive advertising of hotel rooms with mandatory resort fees included in the nightly room rate. *D.C. v. Marriott Int'l, Inc.*, No. 2019 CA-004497 B (D.C. Super. Ct.).

- In 2015, Jimmy recived the Attorney General's Distinguished Service Award for Trial of Affirmative Litigation.

- From 2014-2018, Jimmy served as an Adjunct Professor at Georgetown University Law Center teaching a year-long course on Civil Litigation Practice and Procedure.

- Jimmy recieved his J.D. with honors from Emory University school of law.

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Brandt Silver-Korn

Managing Partner, California

Representing wildfire survivors, mass tort plaintiffs, and consumers in class actions.

Brandt represents individuals in a broad array of mass torts and class actions, with a focus in utility-caused wildfire litigation, toxic torts, and lawsuits against technology companies over illegal gambling operations. Brandt has helped his clients recover more than $1 billion.

- Brandt's clients include thousands of wildfire victims across the United States, including thousands of victims of the 2020 Labor Day Fires in Oregon, more than 1,000 victims of the 2018 Camp Fire in Northern California, and more than 500 victims of the 2021 Marshall Fire in Colorado. In litigation arising from the Oregon fires, the firm secured a landmark jury verdict finding that the utility caused the fires, paving the way to billions in damages—and more than $315 million in individual verdicts so far.

- In litigation against so-called "social casinos," Brandt has helped win $651 million in settlements to consumers in litigation to date. *Kater et al. v. Churchill Downs Downs Inc. et al.*, No. 15-cv-00612 (W.D. Wash.); *Thimmegowda v. Big Fish Games, Inc. et al.*, No. 19-cv-00199 (W.D. Wash.); *Reed v. Light & Wonder, Inc.*, No. 18-cv-00565 (W.D. Wash.); *Benson et al. v. Double Down Interactive, LLC et al.*, No. 18-cv-00525 (W.D. Wash.); *Wilson v. Huuuge, Inc.*, No. 18-cv-05276 (W.D. Wash.); *Wilson v. Playtika Ltd. et al.*, No. 18-cv-05277 (W.D. Wash.); *Ferrando v. Zynga Inc.*, No. 22-cv-214 (W.D. Wash.). The firm obtained a first-ever jury verdict against one such "social casino" operator, winning every dollar to the victims as well as enhanced damages. *Larsen v. PTT LLC*, 3:18-cv-05275 (W.D. Wash.).

- 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.

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Shawn Davis

Chief Information Officer

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.

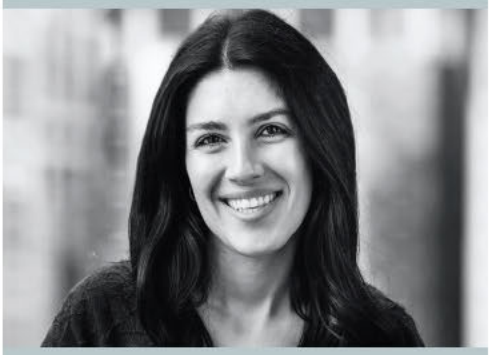
- Shawn has experience testifying in federal court, briefing members of U.S. Congress on Capitol Hill, and is routinely asked to testify before legislative bodies on critical areas of cybersecurity and privacy, including those impacting the security of our country's voting system, issues surrounding 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.



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Kelsey McCann

Chief of Staff

National thought leader on law firm management, recruitment and training.

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

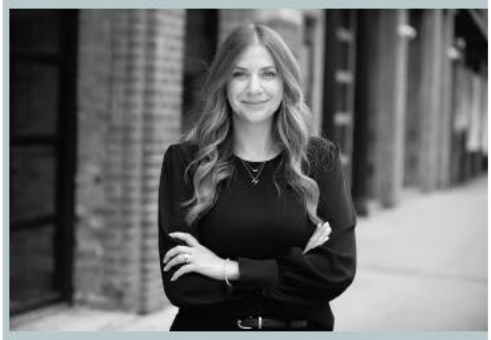
- As the Chair of the Hiring Committee, Kelsey develops and executes the firm's recruitment efforts, including screening and evaluating lateral hires (including attorneys and non-attorneys) for both permanent and temporary work. She also leads the Summer Associate committee, where she evaluates law students and college interns for the firm's summer program and structuring the various aspects of the summer program, including the firm's unique training model.

- Kelsey's views on law firm management, recruitment and training has made her a national thought leader. She created novel outreach programs to law schools, law school groups, and attorney organizations in order to broaden the pool of applicants the firm was seeing The firm also has been recognized as having the second highest lawyer satisfaction rate in the country by Law360 and the highest one nationally by Above the Law. In 2025, it was ranked in the Top 5 Best Mid-Sized Firms by Vault for Selectivity, Career Outlook, Quality of Work, Compensation, Informal Training and Mentorship, Associate & Partner Relations, and was recognized as the top firm in its category for Technology & Innovation.

- In 2022, Kelsey was recognized as a DEIA Visionary by the LA Times.

- Published commentary pieces in the National Law Journal, Above the Law, and others, including "OCI is Broken—And Big Law is Losing Its Grip," Above the Law (Apr. 17, 2025).

- Kelsey graduated summa cum laude with dual degrees from DePaul University.



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Hilary Berg

Human Resources Director

Excels in managing HR operations, policy development, and performance management.

Hilary's work focuses on the day-to-day HR management of the firm.

- Hilary is the Director of Human Resources at Edelson PC where her work focuses on all things people related. She is responsible for HR operations, process and policy development, benefits administration, performance management, and all other HR initiatives.

- Hilary graduated with a degree in Communications - Public Relations & Advertising from DePaul University

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Natasha Fernández-Silber

Partner
Chair, Antitrust Practice Group

Focuses on complex antitrust litigation involving anticompetitive practices in the healthcare and pharmaceutical industries.

- Currently litigating numerous actions seeking damages and a stop to anticompetitive practices in the healthcare and tech industries: Appointed Interim Co-Lead Class Counsel representing healthcare providers alleging price-fixing among major insurers and MultiPlan. *In re Multiplan*, No. 24-md-6795 (N.D. Ill.). Represents proposed class of independent pharmacies alleging price-fixing among prominent PBMs and GoodRx. *Community Care v. GoodRx*, No. 24-cv-09490 (C.D. Cal.). Serves as Special Acting Attorney General to the Michigan Attorney General's Office in a public enforcement action alleging that the PBMs Express Scripts and Prime have engaged in price-fixing at the expense of independent pharmacies. *Michigan v. Express Scripts et al.*, No. 25-cv-11215 (E.D. Mich.). Represents proposed class of indirect purchasers alleging drug manufacturer Boehringer Ingelheim has unlawfully monopolized major inhaler markets via wrongful patent listings in FDA's Orange Book. *Mass. Laborers' Health & Welfare Fund v. Boehringer Ingelheim*, No. 24-cv-10565 (D. Mass). Represents proposed class of renters alleging price-fixing among major construction equipment rental companies and RB Global. In re Construction Equipment Antitrust Litigation, No. 25-cv-3487 (N.D. Ill.).

- Extensive experience litigating antitrust actions across industries. For example, Natasha was a Steering Committee member representing direct purchasers of Juul products in suit alleging an anticompetitive agreement between *Juul and Altria. Reece v. Altria Group*, No. 20-02345 (N.D. Cal.). She was also appointed Co-Lead Interim Counsel on behalf of college students alleging textbook publishers and retailers conspired to restrict sales of course materials to specific online format to foreclose competition and raise prices. *In re Inclusive Access Course Materials Antitrust Litig.*, No. 20-02946 (S.D.N.Y.). She was counsel for direct purchasers in suit alleging Takeda delayed generic competition for diabetes drug by misrepresenting scope of patents listed in Orange Book. *In re Actos Antitrust Litig.*, No. 15-03278 (S.D.N.Y). She was also counsel for direct purchasers in suit alleging Ranbaxy fraudulently obtained tentative ANDA approvals (and first-to-file exclusivities). *In re Ranbaxy Generic Drug Application Antitrust Litig.*, No. 19-02878 (D. Mass.)

- Natasha received her J.D. from the New York University School of Law.

Natasha Fernández-Silber

Partner
Chair, Antitrust Practice Group

- Prior to joining Edelson PC, Natasha was a partner at a litigation boutique specializing in generic drug suppression cases involving "pay-for-delay" deals and other anticompetitive schemes. She has also represented purchasers of e-cigarettes, textbooks, pesticides, and other consumer products. Previously, Natasha clerked for the Honorable Ann Claire Williams on the Seventh Circuit Court of Appeals. She was also an associate at the law firm Wachtell, Lipton, Rosen & Katz, where she focused on restructuring and finance matters.

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Amy B. Hausmann

Partner

Represents thousands of victims of mass torts across the country.

Amy's practice focuses on mass torts and consumer class actions.

- Leading all phases of litigation on behalf of hundreds of individuals alleging their cancers were wrongfully caused by EtO emissions in Lake County, Illinois, including pleadings motions, depositions, all discovery motions and hearings, expert reports, summary judgment and punitive damages briefing, pretrial motions, and settlement-related briefing.

- Won groundbreaking affirmative summary judgment finding that online "social casino" violated Washington gambling law, resulting in first-ever class action jury verdict against such a casino, awarding 100% of damages to class and additional enhanced damages *Larsen v. PTT LLC*, 3:18-cv-05275 (W.D. Wash.)

- In litigation against so-called "social casinos," Amy has helped win $651 million in settlements to consumers in litigation to date. *Kater et al. v. Churchill Downs Downs Inc. et al.*, No. 15-cv-00612 (W.D. Wash.); *Thimmegowda v. Big Fish Games, Inc. et al.*, No. 19-cv 00199 (W.D. Wash.); *Reed v. Light & Wonder, Inc.*, No. 18-cv-00565 (W.D. Wash.); *Benson et al. v. Double Down Interactive, LLC et al.*, No. 18-cv-00525 (W.D. Wash.); *Wilson v. Huuuge, Inc.*, No. 18-cv-05276 (W.D. Wash.); *Wilson v. Playtika Ltd. et al.*, No. 18-cv-05277 (W.D. Wash.); *Ferrando v. Zynga Inc.*, No. 22-cv-214 (W.D. Wash.).

- Representing wildfire survivors in historic class action against PacifiCorp, where the firm secured a first-of-its-kind jury verdict holding PacifiCorp liable to an entire class of plaintiffs for causing the fires, and subsequent jury verdicts exceeding $315 million to date. *James v. PacifiCorp*, No. 20-cv-33885 (Mult. Cty., Or.).

- 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 more than $1 billion from avoided fees. *City of Cincinnati v. FirstEnergy Corp.*, No. 20 CV 7005 (Ohio Ct. Common Pleas).

- Amy is involved in the firm's efforts to reform the plaintiffs' bar, including by conducting a high-profile evidentiary hearing seeking contempt of court against former Girardi | Keese attorneys—Tom Girardi's former firm—for defrauding their injured clients.

- Before joining Edelson, Amy served as a law clerk to the Honorable Michael P. Shea of the U.S. District Court for the District of Connecticut.

- Amy received her J.D. from Yale Law School and a degree in History & Literature, magna cum laude, from Harvard College.

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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).

- 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.).

- 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.

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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.

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Nicholas Rosinia

Partner

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 secured a historic jury verdict holding PacifiCorp liable for causing the fires to an entire class of Oregonians, and awarding punitive damages classwide. In subsequent damages trials, survivors have been awarded nearly $320 million to 51 plaintiffs so far, charting the course to billions in liability.

- Nick successfully represented 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 (Court of Federal Claims 2015). Along the way, Nick drafted the complaint, worked directly with the class representatives, and helped devise a novel statute of

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Ari J. Scharg

Partner
Chair, Public Impact Group

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

Ari J. Scharg is a Partner at Edelson PC, where he leads the Public Impact team and works with the New Matters team to investigate and file new cases for the firm.

- Ari has spearheaded high-impact litigation on behalf of consumers and governments alike. As chair of the Public Impact team, he represents survivors and families of mass shootings, including victims of the July 4 Highland Park parade in a landmark suit challenging Smith & Wesson's marketing of AR-15 rifles to adolescents. Ari has worked with his teams to investigate and develop a wide array of cutting-edge cases, including litigation against predatory "sweepstakes casinos" and other illegal online gambling sites, bad-faith insurance mass actions against the California FAIR Plan on behalf of Los Angeles wildfire victims, complex privacy and data mining cases under state and federal law, and environmental pollution suits on behalf of public clients.

- As Special Counsel to the cities of Columbus and Cincinnati, Ari led litigation alleging money laundering and corruption by FirstEnergy, securing a preliminary injunction that blocked more than $1 billion in improper fees from being charged to ratepayers. As Special Counsel for the Village of Melrose Park, Ari served as lead trial counsel in a first-of-its-kind suit to block the closure of Westlake Hospital, a critical safety-net facility serving medically and socially vulnerable minority populations. In what has been called "one of the most complicated hospital closure disputes in the state's history," Ari obtained a temporary restraining order preventing service shutdowns and, after a full-day evidentiary hearing, secured a contempt order against the hospital's owners for premature closure attempts.

- Over his career, Ari has litigated hundreds of privacy and consumer-protection cases under federal and state laws and has helped shape policy through testimony before the Michigan House and Nevada Assembly on emerging privacy issues. Ari served on the Executive Oversight Council for the Array of Things Project, founded and chaired the Illinois State Bar Association's Privacy and Information Security Section, and co-chaired the Illinois Blockchain and Distributed Ledgers Task Force.

- Outside the office, Ari is active in his community, serving on both the Ravinia Elementary School and Edgewood Middle School Parent Teacher Organizations. Ari loves coaching his daughter's softball team, cheering for his son's football team, and watching Michigan football every Saturday with his family.

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Alexander G. Tievsky

Partner, General Counsel

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

Alex concentrates on complex motion practice and appeals, and serves as the Firm's General Counsel.

- 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 is involved in the firm's efforts to reform the plaintiffs' bar, including by conducting a high-profile evidentiary hearing seeking contempt of court against former Girardi Keese attorneys—Tom Girardi's former firm—for defrauding their injured clients, litigating actions against professional objectors, and writing on reform efforts.
- 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 with general honors from the College of the University of Chicago.

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Schuyler Ufkes

Partner

Appointed class counsel in more than a dozen privacy and consumer protection class actions.

Schuyler focuses on consumer and privacy-related class actions.

- Recovered more than $150 million for his clients in privacy class actions, including groundbreaking, direct-payment settlements under the Illinois Biometric Information Privacy Act. In actions brought by employees, Schuyler obtained some of the highest monetary relief per-person in a class greater than 10,0000 people. *See Owens v. Wendy's International, LLC*, 18-CH-11423 (Cir. Ct. Cook Cnty.). Successfully resolved class actions under the Telephone Consumer Protection Act cases brought by recipients harassing debt-collection calls as well as spam text messages.

- Representing individuals alleging that the California FAIR Plan failed to adequately investigate partial loss and smoke damage claims in the wake of the 2025 Los Angeles wildfires.

- Recognized as a Rising Star of the Plaintiffs Bar by The National Law Journal (2024).

- 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.

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Aaron Colangelo

Partner

Investigating and litigating environmental actions on behalf of consumers and governments.

Aaron's practice focuses on redressing environmental harms and protecting public health.

- Before joining Edelson PC, Aaron spent two decades litigating environmental cases with the Natural Resources Defense Council. At NRDC, Aaron served as counsel in more than 150 cases, including lawsuits related to drinking water contamination, migrant farmworker health, hazardous waste cleanup, coastal water quality, food safety, energy efficiency, air pollution, climate change, and toxics in consumer products. Aaron also spent five years as NRDC's litigation co-director, where he helped lead a team of 40 lawyers and paralegals and oversaw a nationwide litigation docket. He has argued in dozens of federal and state courts, including in the U.S. Supreme Court, and he taught environmental litigation for four years as an adjunct professor at the Howard University School of Law.

- Prior to working with Edelson PC, Aaron acted as lead counsel in several high-impact environmental lawsuits, including actions to strengthen federal standards for lead in drinking water *NRDC v. EPA*, No. 21-1020 (D.C. Cir.), enforce the Clean Water Act to abate stormwater pollution *L.A. County Flood Control District v. NRDC*, 568 U.S. 78 (2013), protect children from toxic exposures (*NRDC v. EPA*, 658 F.3d 200 (2d Cir. 2011); *NRDC v. Consumer Product Safety Commission*, 597 F. Supp. 2d 370 (S.D.N.Y. 2009)), and reduce pathogens in coastal waters (*NRDC v. Johnson*, 2008 WL 11343609 (C.D.Cal. 2008), 2008 WL 11342972 (C.D.Cal. 2008), 2007 WL 1121799 (C.D.Cal. 2007)).

- Represented environmental interests in litigation against major federal entities, challenging the U.S. Navy's munitions testing program (*Potomac Riverkeeper v. U.S. Department of the Navy*, No. 23-cv-1650 (D.Md.)) and advocating for safer consumer products and environmental practices to ensure public health and environmental safety.

- Recognized as a leader in environmental law, with inclusion in the Lawdragon Green 500 (2023) and the Lawdragon 500 Leading Environmental and Energy Lawyers (2021).

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Caitlin Vaughn

Partner

Responsible for the management, identification, and investigation of public client cases.

Caitlin's practice focuses on investigating and developing civil cases that are targeted at protecting consumers, workers, government interests and vulnerable communities for the Investigations team.

- Caitlin previously served as the Director of Public Client Case Development for a prominent plaintiffs firm where she was responsible for the management, identification, and investigation of public client cases.

- Caitlin has extensive state government experience having worked for the New York State Senate for ten years in the capacity of Counsel to Chairs of the Senate Aging, Codes and Health Committees. She also served as the Director of the bipartisan Joint Legislative Commission on Rural Resources. In those roles she was responsible for the management of the legislative and policy agendas of various state senators. Her work has resulted in the passage of statewide laws related to concussion management policies in schools, telehealth parity, Lyme disease prevention, and elder abuse, among other things.

- In addition to her legal work, Caitlin completed her Ph.D. at Georgetown University with a dissertation that studied the potential for political bias in state retirement system investment strategies. During her graduate school tenure, she also worked as a Duke University Health Policy Fellow at the World Health Organization in Geneva, Switzerland While there, she worked on research and presentations for WHO Member States and advocacy organizations focusing on tobacco control policy and prevention.

- Caitlin received her J.D. from Syracuse University College of Law.

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Michael Ovca

Partner

Led more than two dozen privacy and tech class actions.

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

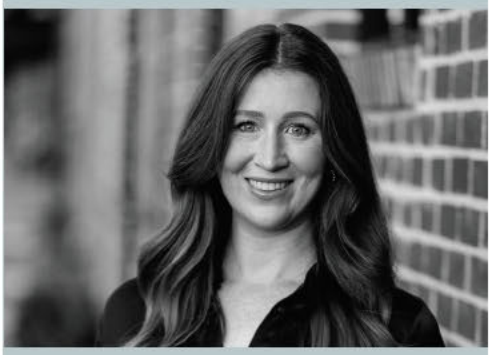
- Michael leads groundbreaking work in seeking to protect consumer genetic privacy under state genetic information privacy laws. Michael secured the first-ever adversarial class certification in such a case, and was appointed class counsel there. *Melvin v. Sequencing LLC,* 344 F.R.D. 231 (N.D. Ill. 2023).

- Litigated numerous first-of-their-kind cases under state right of publicity statutes, including through adversarial class certification. Secured first settlements under these statutes. To date, secured more than $50 million in relief to consumers in class action settlements, with many class members receiving nearly a thousand dollars in cash relief. E.g., *Ramos v. ZoomInfo Technologies, LLC*, No. 1:21-cv-02032 (N.D. Ill.) (~$30M settlement reached after litigating case to class certification); *Fischer v. Instant Checkmate*, No. 19-cv-4892 (N.D. Ill.) ($10M fund reached after adversarial class certification); *Butler v. Whitepages, Inc.*, 19-cv-04871 (N.D. Ill.) (first such case, combined settlement fund of $4M).

- Michael has also represented governments, representing the City of Chicago against Uber; various cities and towns in Illinois against opiate manufacturers, distributors, and prescribes, and a village seeking to prevent closure of a 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.



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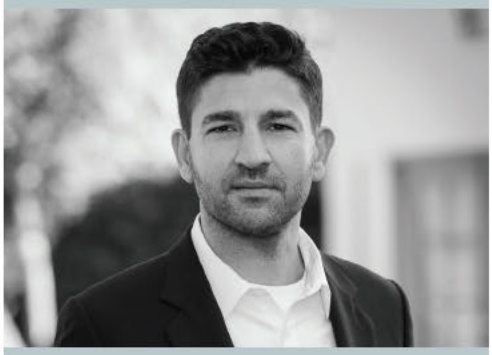
Meredith Drukker Stratigopoulos

Partner

An advocate for survivors of sexual assault.

Meredith focuses on mass tort litigation and sexual assault litigation.

- Before joining Edelson PC, Meredith was a partner at a prominent mass tort and litigation law firm, where she established the firm's sexual assault practice in addition to handling a variety of wrongful death and personal injury dockets to and through trial.
- In the mass tort world, Meredith participated in wildfire litigation against PG&E, litigated against opioid manufacturers and distributors in *In re National Prescription Opiate Litig*, and has been involved in various other pharmaceutical mass torts.
- Most recently, Meredith was appointed to the Plaintiffs' Steering Committee in *In re: Uber Technologies, Passenger Sexual Assault Litigation*, where she represents individuals who have been sexually assaulted by Uber drivers.
- Meredith graduated cum laude from Texas Christian University with a degree in English and a minor in Political Science and received her J.D. from the University of Texas School of Law.



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Ali Moghaddas

Partner

Former federal prosecutor litigating cases for wildfire survivors.

Ali focuses on wildfires cases and mass torts.

- Ali represents individuals affected by the 2020 Oregon Labor Day wildfires. In 2023, Edelson PC achieved a groundbreaking jury verdict in that case, holding PacifiCorp liable to a certified class of thousands of Oregonians, paving the way to billions in damages to the class. Through subsequent damages trials, Edelson has already secured $220 million in jury verdicts. Ali and the firm are preparing to take dozens more of those actions to trial in the coming year. Ali also represents hundreds of wildfire victims in Colorado, pursuing claims against Xcel Energy for the 2021 Marshall Fire.

- Prior to joining Edelson PC, Ali worked as a federal prosecutor in the Central District of California. During his time as a prosecutor, Ali secured a conviction of infamous plaintiffs' lawyer Thomas Girardi arising from the theft of over $15 million in client settlement funds. Ali also achieved a first-of-its-kind jury verdict in a case involving insider trading, and led a nearly four-month trial in a case concerning almost $1 billion in fraudulent healthcare claims.

- Before joining the U.S. Attorney's Office, Ali worked at a prominent international law firm. He began his legal career clerking for the Honorable Manuel L. Real at the U.S. District Court for the Central District of California.

- Ali graduated summa cum laude from Loyola Law School, where he was recognized for his academic excellence and advocacy skills. He holds a Bachelor of Science in Finance from San Diego State University.

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Steven L. Woodrow

Partner

Litigating class action cases and working on reform in the plaintiffs' bar.

Steven litigates cases on behalf of homeowners, plaintiffs in privacy and consumer protection actions, and other class actions.

- In addition to his litigation practice, Steven also serves as a State Representative in the Colorado House of Representatives, where he represents Colorado House District 2.
- Member of the team that secured the 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. *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547 (7th Cir. 2012).
- Steven graduated with high honors with a Juris Doctorate degree from Chicago-Kent College of Law.

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Sarah R. LaFreniere

Partner

Tireless litigator in antitrust actions.

Sarah's practice focuses on cartel prosecution and price-fixing cases.

- Sarah's practice focuses on cartel prosecution and price-fixing cases. Sarah also represents small businesses in unilateral conduct claims where she helps companies navigate exclusionary tying agreements, restrictive exclusive deals, and other unlawful exercises of monopoly power.

- Prior to joining Edelson PC, Sarah was a Partner at an international claimant's litigation firm, where she represented technology start-ups, non-profit organizations, financial institutions, and consumers. Sarah clerked for Judge Victor J. Wolski at the United States Court of Federal Claims.

- Sarah graduated summa cum laude with a degree in history and political science from McMaster University; and has her J.D.'s from American University Washington College of Law (summa cum laude), and the University of Ottawa.

- Sarah has worked on critical antitrust matters in a variety of areas of antitrust law. Sarah represented market participants in the foreign exchange market against international banks alleged to have fixed the price of foreign exchange instruments. *In re Foreign Exchange Benchmarks Rates Antitrust Litigation*, 1:13-cv-07789 (S.D.N.Y.). Sarah also represented PHHHOTO Inc., an upstart photo app that alleges Facebook engaged in an anticompetitive course of conduct to force PHHHOTO out of business. *PHHHOTO Inc., v. Meta Platforms, Inc. (F/K/A Facebook, Inc.)*, 1:21-cv-06159 (E.D.N.Y.). She represented a class of manufacturers in claims against major industrial suppliers for conspiring to artificially inflate prices of the chemicals methylene diphenyl diisocyanate (MDI) and toluene diisocyanate (TDI). *In re Diisocyanates Antitrust Litigation*, 2:18-mc-1001 (W.D. Pa.). And her work helped successfully resolve a case on behalf of art house cinemas against a nationwide theater chain for monopolizing the market for specialty films. *2301 M Cinema LLC d/b/a West End Cinema et al v. Silver Cinemas Acquisition Co. et al.*, 1:17-cv 01990 (D.D.C.).

- She also worked on litigation arising from Volkswagen's alleged "clean-diesel" fraud, representing European consumers seeking damages from Volkswagen AG. Sarah had been at the forefront of litigation pursuant to 28 U.S.C. § 1782, obtaining evidence through U.S. discovery mechanisms European consumers to use in their litigation abroad. She has also represented whistleblowers, bringing claims on behalf of the Commonwealth of Virginia alleging fraudulent sales of guardrail end terminals in violation of the Virginia Fraud Against Taxpayers Act. *See Commonwealth of Virginia, ex. rel. Joshua Harman, v. Trinity Industries, Inc.*, CL13000698-00 (Va. Cir. Ct.)

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Omar Qureshi

Senior Counsel

Focuses on wildfire litigation.

Omar is the Senior Counsel of Edelson PC's Pasadena office.

- Omar runs our town halls, client outreach efforts, and more.
- Omar was the lead trial lawyer in $45 million verdict on behalf of two children who were victims of child abuse. *Wong v. Santa Monica-Malibu Unified School District et al.*, Case No. 19STCV05418 (Los Angeles County)
- Omar graduated with his J.D. from Stanford Law School and B.A. from Johns Hopkins University.

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Jamie Renner

Senior Counsel

Investigates new matters in groundbreaking areas of law.

Jamie is responsible for uncovering and filing suit over some of the biggest issues facing the country today.

- Prior to Edelson PC, Jamie served as Assistant Attorney General for Vermont and Senior Litigation Counsel for the Consumer Financial Protection Bureau (CFPB), prosecuting high-profile consumer protection cases. At Vermont, Jamie led the groundbreaking national investigation against Meta Platforms regarding Instagram's youth addiction issues and safety misrepresentations.

- While at the CFPB, he co-led the successful prosecution of Capital One for unfair and deceptive practices resulting in $2.5 billion in consumer damages.

- Jamie graduated magna cum laude with a Bachelor of Arts in English Literature from Middlebury College and has a J.D. from American University's Washington College of Law.

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Shantel Chapple Knowlton

Senior Litigation Counsel

Served for six years as a Deputy Attorney General at the Office of the Idaho Attorney General.

Shantel's practice focuses on environmental mass tort and consumer protection litigation.

- Prior to joining Edelson, Shantel served for six years as a Deputy Attorney General at the Office of the Idaho Attorney General in both the Natural Resources and Consumer Protection Divisions. In the Natural Resources Division, Shantel represented the State of Idaho in water-rights adjudications, primarily litigating federal-reserved and Indian water rights. In the Consumer Protection Division, Shantel represented the State of Idaho in several multistate consumer protection actions. Most notably, Shantel pursued investigations and litigation against a variety of companies to hold them accountable for their contribution to the opioid crisis.

- Prior to serving at the Idaho Attorney General's Office, Shantel clerked for the Honorable Justice Jim Jones at the Idaho Supreme Court.

- Shantel graduated *summa cum laude* with a J.D. from Lewis & Clark Law School. During law school, Shantel externed for the Honorable B. Lynn Winmill at the U.S. District Court for the District of Idaho and served as a Law Clerk at the Oregon Department of Justice in the Special Litigation Unit. Shantel was also a member of the Lewis & Clark Law Review and a founding member of the Lewis & Clark chapter of Law Students for Reproductive Justice (If/When/How).

- Shantel received dual B.S. degrees in Psychology and Sociology from the University of Idaho.

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John Feeney-Coyle

Senior Litigation Counsel

Focuses on groundbreaking healthcare fraud and consumer protection litigation.

John is part of the Public Client litigation group, focusing on complex consumer protection and fraud cases.

- Prior to joining Edelson PC, John served twelve years as a Senior Assistant Attorney General for the Colorado Department of Law investigating and prosecuting complex consumer protection, fraud, and health care cases. Most notably, John started the Colorado Attorney General's Opioid Unit, leading state and national investigations, litigation, and settlement negotiations with several pharmaceutical opioid manufacturers, distributors, and chain pharmacies. John led Colorado's investigation and prosecution of Purdue Pharma and the Sackler family; co-led the national investigation of Johnson & Johnson/Janssen Pharmaceuticals and negotiated a $5 billion national opioid settlement; and was a member of the national Executive Committee that negotiated a $21 billion settlement with AmerisourceBergen, Cardinal Health, and McKesson.

- The Attorney General also appointed John to lead negotiations with Colorado's cities and counties for distributing over $700 million in opioid settlement funds, which resulted in Colorado being awarded the Johns Hopkins Bloomberg School of Public Health's inaugural Award for Excellence in the Application of the Opioid Litigation Principles.

- While in law school, John was Candidacy Editor for the Denver Journal of International Law and Policy, a student attorney in the University of Denver's Civil Rights Clinic, a Research Assistant for Professor Michael Sousa (Bankruptcy), and a Legislative Fellow for Colorado State Senator Mike Johnston (now Mayor of Denver).

- Prior to law school, John spent time in the Jesuit Volunteer Corp, working for a prisoner re-entry nonprofit in Tennessee, and worked for Legal Services NYC advocating for victims of predatory mortgage lending. John earned his undergraduate degree in History from the College of the Holy Cross where he was a member of the varsity football team and the mock trial team.

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Pete DeMarco

Senior Litigation Counsel

Investigates environmental cases and toxic pollution across the country.

Pete litigates cases to protect the environment and public health.

- Prior to joining Edelson PC, Pete worked for seven years at the Natural Resources Defense Council (NRDC) litigating environmental cases. At NRDC, Pete served as counsel in lawsuits related to pesticides, greenhouse gases, trash, discriminatory zoning, lead in drinking water, and highway expansion.

- Before joining NRDC, Pete clerked for the Honorable Theodore Chuang on the United States District Court for the District of Maryland. He also worked as a staff attorney in the environmental law clinic at Georgetown University Law Center's Institute for Public Representation.

- Pete received his J.D. from Stanford Law School and graduated summa cum laude with a degree in Political Science from Furman University.

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Devin R. Conley

Mass Torts Counsel

Focuses on environmental mass torts and consumer class actions.

Devin helps wildfire survivors across the country.

- One of her first significant cases involved the 2018 Camp Fire in California, where she helped over 1,000 clients with their claims and appeals, enabling them to secure millions of dollars in compensation for their losses.
- Devin is also assisting thousands of survivors following the 2020 Labor Day Fires in Oregon, which caused massive damage to homes and businesses. Devin also works on he 2021 Marshall Fire in Colorado, helping clients take action against the utility after the fire.
- Devin supports cancer victims and survivors in Lake County, Illinois harmed by unknown exposure to ethylene oxide, providing legal assistance to guide them through their claims.
- Devin earned her bachelor's and master's degrees in Journalism and Mass Communications from Arizona State University and her J.D. from the University of Illinois–Chicago.

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Megan Stoltz

Mass Torts Counsel

Focuses on mass torts.

Megan is also currently supporting litigators in government enforcement actions on behalf of the District of Columbia.

- Currently, Megan assists clients impacted by the 2018 Camp Fire in Northern California. Megan assisted hundreds of clients in preparing claim submissions, and helps maintain all aspects of client's claims to the Fire Victim Trust.

- In law school, Megan worked as a student attorney in the International Human Rights Clinic at the University of Illinois Chicago School of Law assisting clients primarily from Syria and Venezuela with asylum applications. Megan also assisted in extensive research and contributed to a White Paper Report on the electronic surveillance of Syrian human rights activists.

- Megan graduated with a degree in Political Science and a minor in Sociology from DePaul University. She received her J.D. from the University of Illinois Chicago School of Law.

cgivens@edelson.com

Chandler Givens

Of Counsel

Focuses on consumer protection in the data privacy and technology space.

Chandler investigates and litigates consumer fraud cases, particularly in privacy and emerging technologies.

- He began his career at Edelson PC, helping to establish the firm's technical investigations group and litigating many early high-profile data privacy cases.

- Chandler took nearly a decade-long break from the firm to co-found and lead a data privacy software startup in Baltimore. As CEO, he managed product strategy, fundraising, hiring, and other executive responsibilities. Under his leadership, the startup rapidly expanded to serve hundreds of thousands of users globally and was ultimately acquired by the largest consumer cybersecurity company. Following the acquisition, Chandler became the Head of Consumer Privacy, overseeing a portfolio of privacy software products used by millions worldwide.

- Representive Cases:
  - *In re Netflix Privacy Litigation*, Case No. 5:11-CV-00379 EJD (N.D. Cal. 2013), Netflix was alleged to have retained subscribers' personally identifiable information (PII) and viewing histories beyond the necessary period under the VPPA.
  - *Dunstan, et al. v. comScore, Inc.*, No. 11-cv-5807 (N.D. Ill.), groundbreaking lawsuit which at the time was the largest adversarial class to be certified in a privacy case in the history of US jurisprudence.
  - Involved in investigating and litigating various cases involving the unlawful collection of consumer data under federal and state statute equivalents, such as the Electronic Communications Privacy Act (ECPA), Stored Communications Act (SCA), and Video Privacy Protection Act (VPPA).

- Chandler graduated cum laude from Virginia Tech with a B.S. in Business Information Technology and received a JD from the University of Pittsburgh School of Law.

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Theo Benjamin

Senior Associate

Litigates critical cases on behalf of governments nationwide.

Theo represents governments on consumer protection matters ranging from toxic pollution to fighting against youth marketing of tobacco products.

- Theo is a member of the firm's Public Client and Government Affairs teams. Since joining the firm, Theo has litigated a variety of complex actions on behalf of state attorneys general, including over youth vaping, e-cigarettes, big-tech data breaches, misuses of consumer data, and environmental actions over water and land contamination and natural resources damages from toxic chemicals. These efforts have led to multimillion dollar settlements for government clients, including a $462 million multistate settlement against JUUL Labs. The District of Columbia's portion was the largest litigated settlement the District of Columbia has ever secured under the Consumer Protection and Procedures Act ("CPPA").

- Theo is currently litigating several government consumer protection and environmental actions against tech-industry giants and chemical companies, including Meta Platforms, Inc. and Velsicol Chemical LLC.

- Theo received his J.D. from Northwestern Pritzker School of Law, where he served as a Comment Editor for Northwestern's Journal of Criminal Law & Criminology and founded Northwestern's chapter of the International Refugee Assistance Project where he helped provide legal aid, representation, and policy research to refugees and asylum seekers undergoing the U.S. resettlement process.

- Theo has represented clients in complex class action litigation, including on behalf of consumers under the Illinois Biometric Information Privacy Act ("BIPA") and the California Invasion of Privacy Act ("CIPA").

- Theo received his J.D. from Northwestern Pritzker School of Law, where he served as a Comment Editor for Northwestern's Journal of Criminal Law & Criminology and founded Northwestern's chapter of the International Refugee Assistance Project where he helped provide legal aid, representation, and policy research to refugees and asylum seekers undergoing the U.S. resettlement process.

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Lauren Blazing

Associate

Mass tort and class action litigator.

Lauren's practice focuses on mass torts and class actions. Lauren represents wildfire survivors and individuals who allege their cancers were caused by ethylene oxide.

- Lauren represents thousands of individuals seeking to recover damages from emitters of ethylene oxide ("EtO"), who plaintiffs allege caused cancer in clusters around medical sterilization facilities. Lauren also represents survivors of wildfires in cases against utility providers across the country.

- Lauren received her J.D. from Yale Law School, where she co-chaired the Title IX Working Group and served as a research assistant studying Intentional Violence in International Sport with Professor Alice M. Miller.

- At Yale, Lauren co-directed the HAVEN Medical Legal Partnership, which provides legal services to underserved and undocumented patients at the university's community health clinic. She also participated in the Jerome S. Frank Veterans Legal Services Clinic, where her team worked to combat racial and gender inequities in the U.S. Military Service Academies.

- Before joining Edelson, Lauren clerked for the Honorable Janet C. Hall in the U.S. District Court for the District of Connecticut.

- Lauren graduated *summa cum laude* from Duke University with a degree in Political Science Cultural Anthropology.

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Megan Delurey

Associate

Member of the firm's trial team, putting our client's stories before juries across the country.

Megan's practice focuses on representing the firm's clients at trial.

- Megan received her J.D. from the University of Chicago Law School, where she was involved in the school's clinical programs in both environmental and immigration law. While working in the Immigrants' Rights Clinic, Megan provided legal aid services to immigrant communities in Chicago. In the environmental law clinic, Megan advocated on behalf of an environmental justice and renewable energy nonprofit in state administrative proceedings

- At the University of Chicago Law School, Megan was an editor for *The University of Chicago Legal Forum* and organized the journal's annual symposium.

- Prior to joining Edelson, Megan worked at a prominent international law firm where she gained significant trial experience. She also maintained an active pro bono practice, including representing women who were forced to flee Afghanistan during the fall of Kabul in their asylum proceedings.

- Megan graduated from Washington University in St. Louis, where she earned her B.A. in Anthropology and her MSW from the top-ranked Brown School of Social Work. Upon earning her master's degree, Megan worked for a research lab applying systems sciences to social issues and taught a graduate-level course in participatory system dynamics. In this role, she founded the Changing Systems Summit, an annual event that trains students to use systems thinking tools to address equity issues in their communities.

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Hannah Hilligoss

Associate

Co-authored a report analyzing the impacts of AI on human rights for the Berkman Klein Center for Internet and Society.

Hannah focuses on consumer and privacy-related class actions.

- Hannah received her J.D. from Harvard Law School, where she was a Student Editor on the American Journal of Law and Equality and was on the Public Interest Committee for the Women's Law Association.
- At Harvard, Hannah participated in the Cyberlaw Clinic, where she counseled an anti disinformation e-newsletter on their response to a cease and desist letter alleging Lanham Act violations; drafted an amicus brief opposing national digital identity laws for a large NGO; and worked with a documentary filmmaker to determine what third party footage in his film was fair use and what needed to be licensed.
- Prior to law school, Hannah worked at Harvard's Berkman Klein Center for Internet and Society, developing ethical approaches to AI development and deployment and combatting algorithmic discrimination in hiring and in the criminal justice system.
- Hannah graduated magna cum laude from Boston College with a degree in International Studies.

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Emily Penkowski Perez

Associate

Experienced litigator for governments.

Emily's practice focuses on representing governments, as well as privacy- and tech-related class actions.

- Emily litigates cases on behalf of attorneys general across the country arising from Big Tech's alleged efforts to addict a generation to social media. Emily successfully represented the District of Columbia in litigation against JUUL, resulting in the largest litigated settlement the District has ever secured under its consumer protection act."

- 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.

- 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.

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Demi Moore

Associate

Litigating groundbreaking cases for government clients.

Demi focuses on consumer protection, privacy, and environmental litigation.

- Demi received her J.D. from Yale Law School, where she was the chief speechwriter for Dean Heather K. Gerken. At Yale, Demi worked on behalf of low-income tenants through affirmative conditions and fair housing litigation in the Jerome N. Frank Legal Services Organization.

- She spent her first law school summer at the Natural Resources Defense Council. In her second year, Demi served as a Symposium Editor for the *Yale Journal of Law & Feminism* and Outreach Chair for Yale Law Women+ while also serving on the executive boards of the Yale Environmental Law Association and Law Students for Climate Accountability at Yale. Demi also participated in the Access to Law School Program as an admissions coach for prospective law students from underrepresented backgrounds and served as a teaching assistant for Federal Indian Law.

- Prior to law school, Demi studied political theory at Yale University and the University of Chicago.

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Schuyler Daum

Associate

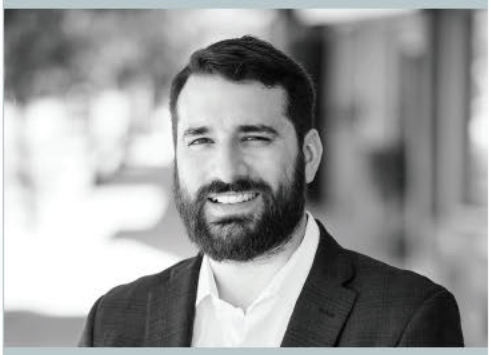
Litigating on behalf of wildfire survivors.

Schuyler works on the mass torts and trial teams.

- Before working at Edelson, she was an Assistant Attorney General in the Massachusetts Attorney General's Office, where she led the Consumer Protection Division's Fringe Lending Team and was the lead attorney on investigations and litigation that resulted in millions of dollars returned to consumers.

- Schuyler started her career as a public defender with the Massachusetts Committee for Public Counsel Services. In that role, she personally tried two jury cases to verdict, litigated numerous evidentiary hearings and motions to suppress, successfully appealed a petition for extraordinary relief to the Massachusetts Supreme Judicial Court, and won the Peter J. Muse award for best defense attorney in the statewide trial tournament.

- Schuyler clerked for the Honorable Rya Zobel of the District of Massachusetts.



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Max Hantel

Associate

Representing survivors of the 2025 Los Angeles wildfires.

Max works in the Trial Practice and Mass Torts group in Los Angeles.

- Representing residents whose homes burned in the Eaton fire against Southern California Edison.
- Prior to law school, Max taught Women's and Gender Studies at Rutgers University and Dartmouth College.
- Received a Ph.D from Rutger's University in Women's and Gender Studies and a J.D. from Harvard Law School.

rkannan@edelson.com

Radhika Kannan

Associate

Investigating and litigating environmental cases.

Radhika's work focuses on consumer protection and environmental cases at the firm's San Francisco office.

- Before joining Edelson, Radhika clerked for the Honorable Jon S. Tigar in the U.S. District Court for the Northern District of California.
- She graduated from U.C. Berkeley with a degree in Economics and received her J.D. from Columbia Law School.

alemert@edelson.com

Abby Lemert

Associate

Experience in the fields of data privacy, digital market competition, antitrust, the regulation of social media, artificial intelligence, and other emerging technologies.

Abby's primary focus is antitrust cases.

- Before joining Edelson, Abby served as a law clerk to the Honorable David F. Hamilton of the U.S. Court of Appeals for the Seventh Circuit.

- Abby received her J.D. from Yale Law School, where she co-founded a new clinic, the Tech Accountability & Competition (TAC) Project, supported by Professor Jack Balkin and the Yale Information Society Project. TAC's mission, as the only second-generation tech clinic, is to hold public and private actors accountable for the power they wield through emerging technologies. In its first two years, TAC established partnerships with the Center for Democracy & Technology, Consumer Reports, and the D.C. Attorney General. In Gonzalez v. Google, the Supreme Court's first-ever case interpreting Section 230, TAC was hired to prepare an amicus brief on behalf of Section 230's authors, Senator Ron Wyden and former Representative Joseph Cox.

- In addition to her work with TAC, Abby was Submissions Editor on the Yale Journal of Law & Technology, a regular contributor to Lawfare on tech-related issues, and a Kerry Fellow on digital authoritarianism. She served as a research assistant to David Dinielli and Professor Fiona Scott-Morton on digital regulation in the European Union.

- At Purdue, Abby co-founded Purdue Immigrant Allies and was the College of Engineering student commencement speaker. As Purdue's only Marshall Scholar in the past 30 years, Abby earned an M.Sc. in Informatics from the University of Edinburgh and an M.A. in Public Diplomacy & Global Communications from University College London, both with distinction. Abby has completed internships with the Facebook Oversight Board, Harvard's Cyberlaw Clinic, Privacy International, Ethical Intelligence, the U.S. Department of State, and the National Security Agency's Civil Liberties & Privacy Office.

mmuller@edelson.com

Melissa Muller

Associate

Represents individuals in environmental mass torts and consumer protection class actions.

Melissa graduated magna cum laude from Claremont McKenna College with a degree in Philosophy, Politics, and Economics and received my J.D. from Yale Law School.

- She served on the board of the Yale Plaintiffs' Law Student Association and as a Coker Fellow for Professor Daniel Markovits' Contracts small group. At Yale, Melissa contributed to the Private Law Clinic's consumer protection projects, focusing on cryptocurrency and medical debt. She also completed an externship with Chief Judge James E. Boasberg (D.D.C.), served as a Research Assistant and Constitutional Law Teaching Assistant for Professor Akhil Amar, and edited submissions for the Yale Journal of Law and Humanities.

- Prior to law school, Melissa audited courses at Heidelberg University and interned at the Max Planck Institute for Comparative Public and International Law in Germany on a Fulbright Research Grant. She has accepted a clerkship with Judge Barrington D. Parker of the U.S. Court of Appeals for the Second Circuit beginning in 2026.

sross@edelson.com

Sarah Ross

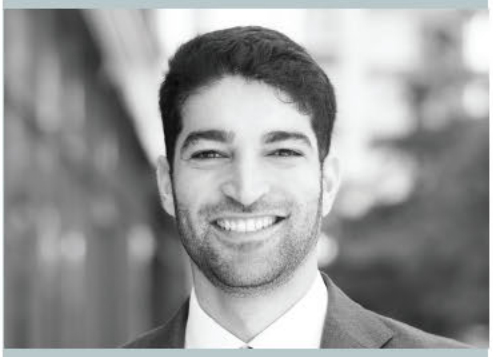
Associate

Representing wildfire survivors and mass tort plaintiffs.

Sarah handles mass tort litigation at the firm.

- She was the Senior Note and Comment Editor of the Wisconsin Law Review at the University of Wisconsin Law School. She was also a clinical student in the University of Wisconsin's Remington Center, working on behalf of incarcerated people seeking post conviction relief. Additionally, she did research for the State Democracy Research Initiative and was a member of the Moot Court Board.

- Prior to law school, she worked as a paralegal at the Spence Law Firm in Jackson Hole, Wyoming, where she developed a passion for plaintiffs' side law and saw its potential to help those in serious need.



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Brandon Baum-Zepeda

Associate*

Represents consumers, workers, and small businesses in the firm's Antitrust practice group.

Brandon handles antitrust litigation cases.

- Before joining Edelson, Brandon served as an attorney in the Bureau of Competition at the Federal Trade Commission and as a law clerk to the Honorable Tiffany P. Cunningham of the U.S. Court of Appeals for the Federal Circuit.

- Brandon earned his J.D. from Yale Law School. While at Yale, he was a member of the Veterans Legal Services Clinic, where he represented thousands of veterans experiencing post-traumatic stress disorder in a nationwide class action. He also served as Editor-in-Chief of the Yale Journal on Regulation, the top-ranked corporate and administrative law journal in the country.

- Prior to law school, Brandon was Chief of Staff at a San Francisco–based FinTech startup and an associate in the Hong Kong office of an international investment bank.

*Barred only in California. Practice limited to matters authorized by D.C. Rule 49(c)(3).

EXHIBIT 6

AFFIDAVIT OF DAVID FISH

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 Affidavit 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.

3. With respect to BIPA litigation, our law firm has been involved in approximately 100 cases and helped recover tens of millions of dollars for Illinois residents. Examples of recent BIPA class-wide settlements for Fish Potter Bolaños clients include: *Crumpton v. Octapharma Plasma*, 19-cv-8402 (N.D. Ill) ($9.9 million); *Devose v. Ron's Temporary Help Services, Inc.*, 2019L1022 (Cir. Ct. Will Cty)($5.375 million); *Labarre v. Ceridian HCM, Inc.*, 2019 CH 06489 (Cir. Ct. Cook Cty)($3.49 million); *Johnson v. Resthaven/Providence Life Servs*., 2019-CH-1813 (Cir. Ct. Cook Cnty.) ($3 million); *Marsh v. CSL Plasma, Inc.* 19-cv-07606 ($9.9 million); *Philips v. Biolife* Plasma, 2020 CH 5758, (Cir. Ct. Cook Cnty.) ($5.98 million); *Davis v. Heartland Emp. Servs.,* No. 19-cv-00680, dkt. 130 (N.D. Ill.) ($5.4 million); *Figueroa v. Kronos Incorporated,* 2019-CV-01306 ($15.2 million); *Martinez v. Nando's Peri Peri*, 2019CV07012 (N.D. Ill. 2020)($1.78 million); *O'Sullivan, et. al. v. WAM Holdings, Inc*., 2019-CH-11575 (Cir. Ct. Cook Cnty.) ($5.85 million); *Barnes v. Aryzta LLC*, 2017CH11312(Cook Cty. Cir. Ct.)($2.9 million); *Burlinski v. Top Golf USA, No. 19*-cv-*06700*, dkt. 103 (N.D. Ill.) ($2.6 million); *Diller v. Ryder*

Integrated Logistics, 2019-CH-3032 (Cir. Ct. Cook Cnty.) ($2.25 million); *Jones v. Rosebud Rests., Inc*., 2019 CH 10620 (Cir. Ct. Cook Cnty.) ($2.1 million).

4. 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 dozens of cases in the United States District Court for the Northern District of Illinois.

5. My law firm's resume is attached hereto.

6. 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.

7. 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.

8. I have authored, or co-authored, many articles, including: "Enforcing Non-Compete Clauses in Illinois after Reliable Fire", Illinois Bar Journal (April 2012); "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", Univ. 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).

9. 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

10. Plaintiffs' Counsel took this case on a contingent fee basis and assumed the risk that they would receive no fee for their services.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies that the statements set forth in this instrument are true and correct. FURTHER AFFIANT SAYETH NOT.

_____/s/ David Fish_____

Dated: June 18, 2025

WORKPLACE LAW PARTNERS

FIRM OVERVIEW

Workplace Law Partners, P.C. represents workers in labor and employment disputes. Our lawyers have also handled hundreds of class action cases for employees to recover unpaid wages, fight workplace discrimination and harassment, and protect workplace privacy rights. Our lawyers regularly practice before the Department of Labor, the Illinois Department of Human Rights, the National Labor Relations Board, the EEOC, and in state and federal courts. Our lawyers have recovered hundreds of millions of dollars 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 online 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. In 2022, we were awarded the Illinois State Bar Association's *pro bono* award for our outstanding commitment to public service.

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.

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. III. 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.

DAVID FISH

For over two decades, Mr. Fish has counseled clients in labor and employment disputes. He originally represented employers and then found, after representing a client in a terrible sexual harassment dispute, that he preferred to represent workers. Representing employees is now his passion and his love of his work has helped him recover hundreds of millions of dollars for his clients.

For years, Mr. Fish has also volunteered almost every week to provide *pro bono* legal services to low income and elderly clients at Prairie State Legal Services. His firm was presented with the Illinois State Bar Association's *pro bono* award in 2022.

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, paralegal, and 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.

JOHN KUNZE

John C. Kunze was born and raised in the south-west side of Chicago and 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. He has worked in employment and class action litigation since 2016 and is the Class Action Department Leader at Workplace Law Partners, P.C.

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, and 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.

MARTIN STAINTHORP

Martin has over a decade of experience advocating for workers' rights, both as a union organizer and representative, and as an employment law attorney since 2021. He primarily represents employees in wage and hour, discrimination, harassment, retaliation, FMLA, and other employment cases. He has litigated in the Chicago state and federal courts and before agencies such as the Equal Employment Opportunity Commission, the Illinois Department of Human Rights, and the Illinois Department of Employment Security.

Martin received his B.A. from the University of Richmond in 2007 and graduated cum laude from Chicago-Kent College of Law in 2021 with a certificate in Labor and Employment Law.

Martin is a member of the National Employment Lawyers Association – Illinois. He is admitted to the Illinois State Bar and the United States District Court for the Northern District of Illinois.

REPRESENTATIVE CASES

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

a. *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).

b. *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).

c. *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).

d. Biometric Class Action Settlements: *See, e.g., Crumpton v. Octapharma Plasma*, 19-cv-8402 (N.D. Ill) ($9.9 million); *Philips v. Biolife Plasma*, 2020 CH 5758, (Cir. Ct. Cook Cnty.) ($5.98 million); *O'Sullivan, et. al. v. WAM Holdings, Inc*., 2019-CH-11575 (Cir. Ct. Cook Cnty.) ($5.85 million); *Davis v. Heartland Emp. Servs.,* No. 19-cv-00680, dkt. 130 (N.D. Ill.) ($5.4 million); *Johnson v. Resthaven/Providence Life Servs*., 2019-CH-1813 (Cir. Ct. Cook Cnty.) ($3 million); *Burlinski v. Top Golf USA, No. 19-cv-06700*, dkt. 103 (N.D. Ill.) ($2.6 million); *Diller v. Ryder Integrated Logistics*, 2019-CH-3032 (Cir. Ct. Cook Cnty.) ($2.25 million); *Jones v. Rosebud Rests., Inc*., 2019 CH 10620 (Cir. Ct. Cook Cnty.) ($2.1 million); *Barnes v. Aryzta, LLC,* 288 F. Supp. 3d 834 (N.D. Ill and Cook County)($2.9 million class action recovery under BIPA); *Ralph/Memoli v. Get Fresh Produce Inc.,* 2019CH2324 ($675,000 settlement on a class wide basis for claims under Biometric Information Privacy Act); *Parker v. DaBecca Natural Foods*, 2019CH1845 ($999,975 settlement on a class wide basis for claims under Biometric Information Privacy Act)

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

f. *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)

g. *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)

h. *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).

i. *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);

j. *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).

k. *De La Cruz v. Metro Link IL, LLC,* 17-cv-08661 (class and collective claims under the FLSA and IMWL; final approval of class settlement o for over 400 class members entered)

l. *Smith v. DTLR, Inc.,* 18-cv-7628 (class and collective claims under the FLSA and IMWL; final approval of class settlement for 141 class members entered).

m. *Carrasco v. Freudenberg Household Products LP,* 19-L-279 (Kane County, Illinois) (class and collective claims under the FLSA, IMWL, and BIPA; final approval of class settlement for over 300 class members entered.)

n. *Wickens v. Thyssenkrupp Crankshaft Co., LLC,* 19-cv-6100 (class and collective claims under FLSA and IMWL for 792 class members; final approval of $894,000)

o. *Tidwel, et al v. Dyson,* 20-cv-06929 (final approval granted for FLSA and IMWL settlement for 510 class members.)

Sawyer v. OSL Retail Servies Corp. 20-cv-2442 (final approval grated for $375,000 FLSA and IMWL settlement for nearly 13,000 settlement class members)

EXHIBIT 7

1995 WL 17009594
Only the Westlaw citation is currently available.
United States District Court,
N.D. Illinois, Eastern Division.

David GOLDSMITH, et al., on behalf of themselves and all persons similarly situated, Plaintiff,
v.
TECHNOLOGY SOLUTIONS CO., et al, Defendant.

No. 92 C 4374.

Oct. 10, 1995.

REPORT AND RECOMMENDATION
of Magistrate Judge Ronald A. Guzmán

GUZMAN, Magistrate J.

INTRODUCTION

***1** This case comes before us on the referral of the Honorable Blanche Manning to conduct a fairness hearing in regards to the proposed settlement of this class action lawsuit. At the hearing plaintiff's counsel characterized the case as an open market fraud case which came about as a result of an initial offering and a secondary offering of stock in the defendant's corporation for sale to the public. The "class period" runs from the date of the initial offering of September 20, 1991 to September of 1992 when press releases first came out announcing the write offs of previously claimed income due by the defendant. It was this announcement, according to the plaintiff's case, that triggered a drop in the price of defendant's stock which in turn caused the losses of which plaintiffs complain. Plaintiffs allege that defendant misrepresented and overstated its revenues and the collectibility of its predicted revenues to the public. These misrepresentations in turn distorted and inflated the price of the defendant's stock which the plaintiff and other class members purchased. When the truth of the misstatements became known, the defendant's stock prices dropped significantly thereby causing damages to the class members.

The terms of the settlement are set forth in the Agreement of Settlement dated June 2, 1995 ("Settlement Agreement"), which has previously been filed and was preliminarily approved by the Court on June 14, 1995.[1] The parties have agreed to settle this securities fraud class action for $4,600,000 in cash with interest thereon (the "Settlement"). Interest has been accruing on the entire $4.6 million since July 3, 1995. In their brief in support of the settlement plaintiff's counsel point out that the proposed Settlement was achieved as a result of intensive arm's-length bargaining by experienced counsel who fully understood the relative strengths and weaknesses of the claims and defenses asserted in this action. In agreeing to the terms of the Settlement Agreement, plaintiffs' counsel evaluated the risks of an unfavorable result inherent in complex litigation such as this, as well as the specific risks associated with this particular action. They also considered the expense and time that would have been necessary to prosecute this action through trial and the inevitable appeal. Confirming plaintiffs' view is the total lack of objections from class members who were notified of the terms of the Settlement Agreement pursuant to the notice approved by this Court. In addition no one opted out of the class. Likewise, as of August 18, 1995, no class members have objected to plaintiffs' proposed Plan of Distribution which was described in full in the Court-approved notice which was sent to Class members.

DISCUSSION

With respect to settlement of class actions the Seventh Circuit's position is well known:

> "It is axiomatic that the federal courts look with great favor upon the voluntary resolution of litigation through settlement. *U.S. v. McInnes,* 556 F.2d 436, 441 (9th Cir.1977); *Du Puy v. Director, Office of Workers' Compensation Programs,* 519 F.2d 536, 541 (7th Cir.1975), *cert. denied,* 424 U.S. 965, 96 S.Ct. 1459, 47 L.Ed.2d 732 (1976). In the class action context in particular, "there is an overriding public interest in favor of settlement." *Cotton v. Hinton,* 559 F.2d 1326, 1331 (5th Cir.1977)."

***2** *Armstrong v. Board of School Directors of the City of Milwaukee,* 616 F.2d 305, 312 (7th Cir.1980).

The court in *Armstrong* also discusses, however, the strong countervailing public policies that counsel against automatic judicial acceptance of such settlement agreements. Since most of the members of the class are not involved in the negotiation of a settlement and never have a direct voice in court, they are entirely dependant upon the class representatives, and

particularly in the counsel for the class representatives to protect their interests. There exists therefore the possibility that the class representatives may determine that what is best for them in terms of a settlement is not what is in the best interests of the class as a whole. There is also the possibility that the attorneys for the class may be lured by the promise of a substantial fee payable immediately if the case is settled and thereby lose sight of what is in the best interests of the class members in the long run. Finally, in many class action cases there is an issue or issues of broad public interest implicated. This of course is more likely to be present in civil rights actions where the outcome is likely to establish a foundation for broad economic or social policies. It is not however limited to civil rights cases, but exists to some extent in cases such as this one where there are broad issues of consumer rights necessarily involved. The beneficial effects of the vindication of such rights go far beyond the making whole of the individual class members. Such cases will necessarily have a deterrent and instructive impact upon the future actions of others who may be similarly situated. It is because of considerations such as this that Rule 23(e) of the Federal Rules of Civil Procedure requires notice of a proposed settlement to all class members and judicial approval of all such settlements.

The standard for such judicial approval is that the court must find the settlement to be fair, reasonable and adequate. A district court's finding that a settlement is fair, reasonable and adequate will not be reversed unless there is a clear showing of abuse of discretion. *Armstrong, supra,* at 313. The *Armstrong* court goes on to describe the procedure the district court should use in reviewing proposed class action settlements.

> "District court review of a class action settlement proposal is a two-step process. The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is "within the range of possible approval." This hearing is not a fairness hearing; its purpose, rather, is to ascertain whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing. *Manual for Complex Litigation* § 1.46, at 53–55 (West 1977). If the district court finds a settlement proposal "within the range of possible approval," it then proceeds to the second step in the review process, the fairness hearing. Class members are notified of the proposed settlement and of the fairness hearing at which they and all interested parties have an opportunity to be heard. The goal of the fairness hearing is to adduce all information necessary to enable the judge intelligently to rule on whether the proposed settlement is "fair, reasonable, and adequate." *Manual for Complex Litigation* at 57. On the basis of all information available to him, the trial judge must decide whether or not to approve the proposed settlement."

***3** *Armstrong, supra,* at 314.

In determining whether to approve the proposed settlement the court should consider the following factors: (1) the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement; (2) the defendants ability to pay; (3) the complexity, length and expense of trial (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the stage of the proceedings and the amount of discovery completed. *Armstrong, supra,* at 314; *Manual for Complex Litigation* at 56; 3B *Moore's Federal Practice* ¶ 23.80(4) at 23–488 (2d ed.). [2]

EVALUATION OF THE PROPOSED SETTLEMENT

The Risks of Litigation

a. *Liability*

The risks in this case are very real. Plaintiffs would face substantial difficulties both in proving liability and in establishing damages. To succeed on their claims under Rule 10b–5, plaintiffs would have to establish, *inter alia,* that the defendants were responsible for an omission or a misstatement that was material, that the misstatement in fact caused damage to the Class, and that the defendants acted with scienter. *See TSC Indus., Inc. v. Northway, Inc.,* 426 U.S. 438, 449 (1976); *Ernst & Ernst v. Hochfelder,* 425 U.S. 185, 193 n. 12 (1976).

While plaintiffs are reasonably confident as to the likelihood of their success, they recognize that establishing liability at trial would be very difficult, with the outcome by no means guaranteed. Many of the hurdles facing plaintiffs are discussed in the Joint Affidavit, ¶¶ 51–52. Among them are: (1) the notoriously difficult requirement of proving that defendants acted with the requisite degree of *scienter* in issuing the alleged misstatements, *see, e.g., In re Smithkline Beckman Corp. Sec. Litig.,* 751 F.Supp. 525, 529 (E.D.Pa.1990) (recognizing difficulty of establishing *scienter*); and (2) proving that TSC's published financial statements and releases were materially misleading in not stating that

TSC began projects without a written contract when it was allegedly known to the public that this was a common practice in the industry.

In this regard the plaintiff was also forced to take into account related litigations. One such case involved a suit by TSC, defendant herein, against Northrup claiming some ten million dollars in receivables due from Northrup. This lawsuit is related and impacts on the case at bar because one of plaintiff's main contentions in this case is that TSC ought not to have claimed receivables from Northrup based upon mere oral agreements with Northrup. A successful lawsuit against Northrup for these very same receivables based upon oral agreements would certainly tend to establish that not only was there no intentional misrepresentation in claiming these receivables, but defendant was actually fully justified in claiming such receivables in the first place. In addition there was a case pending in which Woodrow Chamberlain sued Northwest Airlines. (*Chamberlain v. Northwest Airlines, Inc.,* No. 93 C 1576 (N.D.Ill. May 2, 1995) (J. Zagel). In order to award plaintiff damages in that case, the trier of fact had to conclude that TSC's claim against Northwest Airlines was a valid, legally enforceable, claim. In fact, this actually occurred just after the conclusion of the settlement negotiations. So plaintiff had a number of difficulties in proving its case which had to be weighed in determining settlement value.

b. *Damages*

***4** While Class Plaintiffs believe that they could establish causation and damages, they would have to prove, through the inevitable battle of experts, precisely what the market price of TSC stock would have been but for the alleged fraud on each day of the Class Period. *See, e.g., In re Letterman Bros. Energy Sec. Litig.,* 799 F.2d 967, 972 (5th Cir.1986), *cert. denied,* 480 U .S. 918 (1987); *Grossman v. Waste Management, Inc.,* 589 F.Supp. 395, 401 (N.D.Ill.1984); *Sirota v. Solitron Devices, Inc.,* 673 F.2d 566, 577–78 (2d Cir.), *cert. denied,* 459 U.S. 838 (1982); *Blackie v. Barrack,* 524 F.2d 891, 908 (9th Cir.1975), *cert. denied,* 429 U.S. 816 (1976). In doing so, Class Plaintiffs would have to overcome defendants' arguments that: (1) some or all of the class' losses were caused not by defendants' conduct but instead by market factors or other reasons unrelated to the alleged fraud, such as the market's realization that TSC was losing its biggest customer, Northrup Corp.; (2) the market was aware of TSC's manner of doing business and recognizing revenue and, therefore, any misleading information from the Company regarding those practices did not inflate the market price of the stock, and; (3) if TSC had throughout the Class Period acknowledged that a portion of its revenue was attributable to work performed without a written contract but for which it expected to be paid, the market price would not have been impacted significantly. *See* Joint Aff. ¶¶ 51(b)–51(c). Accordingly, even if plaintiffs were to prevail in establishing liability, providing causation and the existence and amount of damages would remain problematic.

The Complexity, Expense, and Likely Duration of Further Litigation

Continued prosecution of this action through trial and appeals against the vigorous, determined, and resourceful opposition of multiple defendants would entail enormous additional effort and expense with no promise of any greater recovery. Indeed, a trial would be lengthy and expensive, and the appeal process would delay any award substantially well beyond trial. The time value of money is another cost of continued litigation. *Donovan,* 778 F.2d at 309; *Anderson,* 755 F.Supp. at 844. As courts recognize, a dollar obtained in settlement today is worth more than a dollar obtained after a trial and appeals years later. *Id.*

The Stage of the Proceedings and the Amount of Discovery Completed

This Settlement was not reached until almost the conclusion of fact discovery. During the pendency of the case, plaintiffs' counsel reviewed and analyzed over 500,000 pages of documents and numerous computer files produced by the defendants and third parties, took approximately twenty-five depositions of defendants, former employees of TSC and former customers of TSC, and interviewed numerous other potential witnesses. Plaintiffs' counsel also worked closely with accounting and damage experts in framing the claims and estimating the potential recovery. As a result, plaintiffs' counsel's endorsement of this settlement bears particularly significant weight since they are fully informed about the facts of this case, the defenses raised, and the risks of establishing liability and damages.

***5** Additionally, plaintiffs' counsel have had many years of experience in litigating securities fraud class actions such as this (*see* the affidavits of counsel filed in connection with their fee petition), and in assessing the relative merits of each side's case. *See Susquehanna,* 84 F.R.D. at 321. In plaintiffs' counsel's opinion, balancing the risks and delays of continuing the litigation against the immediate substantial

benefits to the Class weighs heavily in favor of the proposed settlement.

The Reaction of Class Members to the Proposed Settlement

The Notice mailed to the Class described terms of the settlement and the procedure by which class members could object to the Settlement. The deadline for serving objections was August 18, 1995. Not a single objection to the proposed Settlement has been received from any class member. Joint Affidavit, ¶ 50. Such a positive response to the Settlement by the Class is strong evidence that the settlement is fair, reasonable, and adequate and should be approved. *See, e.g., Detroit v. Grinnell Corp.,* 495 F.2d 448, 462 (2d Cir.1974); *Flinn v. FMC Corp.,* 528 F.2d 1169, 1174 (4th Cir.1975), *cert. denied,* 424 U.S. 967 (1976). [3]

The Range of Reasonableness of the Settlement Amount

The determination of a "reasonable" settlement is not susceptible of a mathematical equation yielding a particular sum. Rather, as Judge Friendly explained, "in any case there is a range of reasonableness with respect to a settlement...." *Newman v. Stein,* 464 F.2d 689, 693 (2d Cir.), *cert. denied,* 409 U.S. 1039 (1972).

The proposed Settlement for more than $4.6 million represents a portion of the damages that could reasonably have been proven on behalf of the Class, and there is no reason to doubt the representations of all counsel that it is well within the "range of reasonableness" in light of the attendant risks of continued litigation. Courts have approved settlements even though, unlike here, the benefits amounted to only a small percentage of the potential recovery. *See, e.g., Detroit,* 495 F.2d at 455 ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved."); [4] *Weinberger v. Kendrick,* 698 F.2d 61, 65 (2d Cir.1982), *cert. denied,* 464 U.S. 818 (1983) (affirming approval of settlement even though "it is not disputed that the [$2 .84 million] recovery will be only a negligible percentage of the losses suffered by the class," estimated by objectors' counsel as between $250 and $1 billion); *Cagan v. Anchor Sav. Bank FSB,* [1990 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 95,324, at 96,559 (E.D.N.Y. May 17, 1990) (approving $2.3 million class action settlement over objections, notwithstanding that the "theoretical best possible recovery would be approximately $121 million").

Although plaintiff's experts have estimated a substantially greater possible damages sum, i.e., $75 million, these estimates fail to take into account the realities of litigation existing in this case and also assume that ever single person would make a claim and that plaintiffs would be successful in each and every allegation to the fullest extent possible over the entire claims period after trial. Given all of the circumstances the proposed Settlement represents a recovery for the Class that is within the "range of reasonableness" supporting approval.

The Settlement is the Result of Arm's–Length Negotiations Among Competent and Experienced Counsel

***6** In evaluating the propriety of a proposed settlement, courts should consider the negotiating process by which the settlement was reached to determine whether that process was genuinely adversarial and not collusive. *See, e.g., Weinberger,* 698 F.2d at 74; *Boggess,* 410 F.Supp. at 438; *Susquehanna,* 84 F.R.D. at 321 ("The proposed settlement ... was reached only after lengthy and protracted negotiations had been conducted.").

Here, as described in greater detail in the Joint Affidavit, the negotiating process was protracted and extensive. Settlement negotiations commenced about a year after the action was filed in the summer of 1993, and continued, on and off, through the winter of 1994. Judge Andersen, who formerly presided over this case, assisted the parties in confidential mediation sessions which, while not resolving the matter, helped to focus the positions of both sides. Thereafter, discussions continued sporadically until negotiations began in earnest in the Spring of 1995, ultimately resulting in an agreement in principle. Joint Affidavit, ¶¶ 42–46.

THE PROPOSED PLAN OF DISTRIBUTION ALSO WARRANTS COURT APPROVAL

Plaintiffs' proposed Plan of Distribution provides that the Settlement Fund, after deducting reasonable attorneys' fees and expenses as allowed by the Court ("Net Settlement Fund"), shall be distributed to members of the Class who have timely filed valid proofs of claim ("Authorized Claimants") in proportion to their "Recognized Losses." The entire Proposed Plan of Distribution, including the method for calculating Recognized Losses, was printed in the court-approved Notice sent to members of the Class. The Notice informed class

members of the right to object to the proposed Plan of Distribution. The deadline for objecting was August 18, 1995. No objections have been received.

Under the proposed plan, Recognized Losses are determined by calculating, for each day during the Class Period, the amount by which the market price of stock was artificially inflated as a result of the alleged misconduct. For shares purchased during the Class Period and held through the end of the Class Period, the Recognized Loss equals the amount of inflation on the date of purchase. For shares purchased *and sold* during the Class Period, the Recognized Loss equals the amount by which the artificial inflation on the date of purchase exceeds the artificial inflation on the date of sale, i.e., the amount by which the Authorized Claimant "benefitted" from the fraud when he or she sold the stock. This comports with the well-accepted out-of-pocket damage measure used in cases such as this one brought under Section 10(b) of the Securities Exchange Act and Rule 10b–5. *Skelton v. General Motors Corp.,* 661 F.Supp. 1368 (N.D.1987); *In re Warner Communications Sec. Litig.,* 618 F.Supp. 735, 744 (S.D.N.Y.1985); *Seagoing Uniforms Corp. v. Texaco, Inc.,* [1989–1990 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 94,791, at 94,257 (S.D.N.Y. Oct. 24, 1989). If the artificial inflation on the date of sale during the Class Period equals or exceeds the artificial inflation on the date of purchase during the Class Period, the Authorized Claimant is deemed to have a Recognized Loss of $0.25 per share, thereby providing some monetary consideration for the releases such claimants are giving in the settlement.

***7** To determine the artificial inflation attributable to defendants' alleged fraud on any given day during the Class Period, plaintiffs propose using the analysis prepared by plaintiffs' expert, Princeton Venture Research, Inc.

In preparing its analysis, plaintiffs' expert first examined the price movements of a multitude of companies with lines of business similar to that of TSC. This effort was undertaken to determine whether these other companies could serve as a gauge of what TSC's stock price would have been but for the alleged fraud. Because most of the comparison companies were much larger than TSC and also involved in other lines of business, this comparison was helpful, but not determinative. The expert then focused on the market's reaction to the two disclosures by TSC, on June 10, 1992 and July 1, 1992, which revealed that which plaintiffs complained had been improperly withheld from the public. Based upon their knowledge and experience as securities analysts, plaintiffs' expert opined that the true value of TSC stock on each day during the Class Period—unaffected by the alleged fraud—could be fairly estimated by first assuming that the "true value" was reflected in the market price of TSC stock after the June 10, 1992 and July 1, 1992 disclosures. The expert then adjusted that "true value" to reflect the actual stock price percentage movement that had occurred between that day and July 1, 1992, the date of TSC's ultimate disclosure. Similar calculations were made for each day of the Class Period. The schedule of resulting "true values" was provided to class members in the Notice. Plaintiffs' expert was prepared to testify to the validity of their analysis as a fair and reasonable method for allocating the settlement proceeds. [5]

In sum, the proposed Plan of Distribution, conforms to the prevailing out-of-pocket method for calculating damages in Section 10(b) cases, and would provide an equitable distribution of the recovery. *See SEC v. Certain Unknown Purchasers,* 817 F.2d 1018 (2d Cir.1987), *cert. denied,* 484 U.S. 1060 (1988) (pro rata distribution of proceeds is appropriate).

ATTORNEY'S FEES AND COSTS

Plaintiffs' counsel request a fee of $1,533,333 or one third of the Settlement Fund created solely by their efforts and reimbursement of out-of-pocket expenses, including experts' fees in the amount of $391,685.28, plus interest on the fees and expenses at the same rate as earned on the Settlement Fund. There is clear legal precedent for an award of attorney's fees from the common fund created by the settlement. *See Boing Co. v. Van Gemert,* 444 U.S. 472, 478 (1980). Further, in *Harman v. Lyphomed, Inc.,* 945 F.2d 949 (7th Cir.1991) this circuit recognized the trend toward the percentage method and authorized the district court's exercise of discretion in using the percentage method to determine an appropriate fee award. More recently in the *Matter of Continental Illinois Securities Litigation,* 985 F.2d 867 (7th Cir.1993) the Seventh Circuit strongly endorsed the percentage method of computing appropriate fee awards in class action common fund cases such as this. In *Continental,* a class action arising from defaulted loans, a settlement of $45 million was reached early on in the litigation process. The lawyers for the class submitted their petition for fees and expenses to the district court in the amount of $9 million. The district court reduced this amount by one half. The class attorneys appealed and the Seventh Circuit reversed. *In re Continental Securities Litigation,* 962 F.2d 566 (7th Cir.1992). In remanding the

cause, the appellate court suggested that the district court judge set the appropriate fees in this case by comparing "the contingent-fee percentage sought by the class lawyers, i.e., 20 percent, with contingent fee arms-length contracts between lawyers and their clients in comparable commercial litigation." at 868. When the district court subsequently announced that it would set the fee amount based upon a sampling of the time sheets, the class counsel filed a petition for *mandamus.* On review, the Seventh Circuit vacated the district court's order and in the process emphasized its prior suggestion that an appropriate manner of setting a fee in this case is to award the plaintiffs' counsel the same percentage of the common fund as they could expect to get if they negotiated at arms length a percentage contingent fee contract with a private client in a comparable commercial litigation case. Specifically with respect to the 20% fee sought in that case the Seventh Circuit found *supra* at page 868:

> ***8** "Taking up this suggestion, the lawyers for the class submitted to the district judge a mass of affidavits concerning contingent fees charged in comparable multimillion dollar commercial suits in which, however, unlike the situation here, there was a negotiated fee between lawyer and client. These affidavits appear to establish that the 20 percent fee that the lawyers for the class are seeking in this case is at the low end of the range found in the market."

It seems therefore, that the fees being requested in this case, i.e. 33 1/3%, are in fact in line with that which has, in previous cases, been approved. Thirty three percent appears to be in line with what attorneys are able to command on the open market in arms-length negotiations with their clients. In *In re Continental Illinois Sec. Litig.,* 962 F.2d at 572, Judge Posner suggested that the percentage method "might save time and expense for everyone." 962 F.2d at 572. Judge Posner noted that the usual range for contingent fees in personal injury cases is between 33% and 50%. *Id.* at 572. *See also McKinnon v. City of Berwyn,* 750 F.2d 1383, 1393 (7th Cir.1984)(40% is common).

Thus, where the percentage method is utilized, courts in this District commonly award attorneys' fees equal to approximately one-third or more of the recovery. *Liebhard v. Square D Co.,* No. 91 C 1103 (N.D.Ill. Jun. 6, 1993) (J. Plunkett) (awarding fees of one-third of the fund plus expenses) (Exhibit A); *Wanninger v. SPNV Holdings,* No. 85 C 2081 (N.D.Ill. May 10, 1993) (J. Marovich) (32% awarded, plus expenses) (Exhibit B); *Long v. Trans World Airlines, Inc.,* No. 86 C 7521, 1993 U.S. Dist. LEXIS 5063 (N .D. Ill. Apr. 15, 1993) (J. Williams) (32% plus expenses) (Exhibit C); *Hammond v. Hendrickson,* No. 85 C 9829 (N.D.Ill. Nov. 20, 1992) (J. Aspen) (one-third of fund, plus expenses) (Exhibit D); *First Interstate Bank of Nevada, N.A. v. National Republic Bank of Chicago,* No. 80 C 6401, slip op. at 2 (N.D.Ill. Feb. 12, 1988) (J. Plunkett) (awarding 39% of settlement fund and recognizing "that this percentage is within the generally accepted range of fee awards in class action securities lawsuits") (Exhibit E). The fee requested here of 33 1/3% of the total recovery fits comfortably within these awards. The fee request also appears reasonable, particularly considering that it represents less than half the aggregate lodestars of plaintiffs' counsel for the services rendered on behalf of the Class.

Factual support for this motion is found in the accompanying Joint Affidavit of John Halebian and Stephen Hoffman ("Joint Affid.") to which the Court is respectfully referred.

As the Court directed, the class members were given notice of the fees and expenses that plaintiffs' counsel intended to seek and an opportunity to object if they believed the request was unreasonable. Joint Affid. ¶¶ 49–50. The deadline has passed and not a single objection has been received.

***9** Plaintiffs' counsel points out that they faced exceptionally capable and tireless opposition from counsel for defendants, particularly Grippo & Elden, a prominent Chicago law firm which took the lead for TSC and most of the individual defendants. Several other prestigious law firms represented the other defendants. In view of all of the above considerations the requested fee of 33 ⅓% of the settlement fund plus expenses of $391,685.28 appears fair and reasonable.

I fail to see the need or the rational for adding to this award, however, interest from the time of the establishment of the fund. The fee is for services rendered, not for the use of plaintiff's counsel's money. I can think of no reason why class members should be charged extra because the settlement windup took some time. Such an award would not be for services rendered, but would in effect, be treating counsel's

fee as if it were an investment for which the class members should pay some sort of return. In addition, the fee was not earned as of the day the class fund was established. Quite the contrary, the fee is earned when the district court makes the award and not before. If we are to begin to assess the right to fees incrementally during the course of the case, we would have to contemplate awarding counsel interest for some of this fee from the very first hours of work done on the case. But surely this is not what the parties contemplate in the typical arms length contingency fee contract between lawyer and client. It is part and parcel of such arrangements that counsel agrees not to be paid until the case is finished. Indeed, counsel agrees that he may not get paid at all in such cases. Why then should we pay counsel interest on fees for a time period before there was even any entitlement to such fees? I recommend against the payment of interest on the attorneys fees or expenses being claimed.

AWARDS TO THE NAMED PLAINTIFFS

As set forth in the court-approved Notice to the Class, the two class representatives, through their counsel, are applying for a special awards in the amount of $5,000.00 each. These proposed payments are warranted as a matter of policy and are supported by ample precedent. No class member has objected to granting such awards.Petitioners and the plaintiff/class representatives expended considerable effort and undertook substantial responsibilities to remedy an alleged wrong to the public investors in TSC. They reviewed the complaints, responded to interrogatories and document requests and were deposed, providing testimony over several days. Courts recognize that it is fully appropriate to reward class plaintiffs for the efforts and responsibilities undertaken and for benefits they have conferred. Courts therefore increasingly favor the practice of specially rewarding those who do step forward to champion the rights of the many.

The court in *In re Smithkline Beckman Corp. Sec. Litig.,* 751 F.Supp. at 535 (citing authority), held that such awards were appropriate because the named plaintiffs "have rendered a public service by contributing to the vitality of the federal Securities Acts. 'Private litigation aids effective enforcement of the securities laws because private plaintiffs prosecute violations that might otherwise go undetected due to the SEC's limited resources." ' *Accord Enterprise Energy Corp. v. Columbia Gas Transmission Corp.,* 137 F.R.D. 240, 250–51 (S.D.Ohio 1991); *In re Dun & Bradstreet Credit Serv. Customer Litig.,* 130 F.R.D. 366 (S.D.Ohio 1990); *In re New York City Shoes Sec. Litig.,* No. 87–4677, 1989 U.S. Dist. LEXIS 6346 (E.D.Pa. Jun. 7, 1989); *McGuinness v. Parnes,* No. 87–2728–LO, 1989 U.S. Dist. LEXIS 3576 (D.Colo. March 22, 1989); *Golden v. Shulman,* [1988–1989 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 94,060 (E.D.N.Y. Sept. 30, 1988); *In re GNC Shareholder Litig.:* All Actions, 668 F.Supp. 450 (W.D.Pa.1987); *Sherin v. Smith,* [1987–1988 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 93,582, at 97,609 (E.D.Pa. Oct. 22, 1987); *In re Continental/Midlantic Shareholders Litig.,* No. 86–6872, 1987 U.S. Dist. LEXIS 8070 (E.D.Pa. Sept. 2, 1987).

***10** This application is therefore consistent with a considerable body of precedent in support of the payment of such special awards to class representatives who have discharged their duties to the benefit of a class as a form of remedial relief within the discretion of the trial court. Particularly in light of the lack of any objections from Class members, awards to plaintiffs Goldsmith and Grijnsztein of $5,000 each is appropriate and reasonable.

CONCLUSION

For all the foregoing reasons, and based on the entire record, we recommend that the Court (i) approve the Settlement Agreement & Plan of Distribution (ii) award the requested attorneys' fees in the total amount of $1,533,333 plus reimbursement of expenses of $391,685.28, (but without interest thereon) and (iii) grant special awards of $5,000 each to plaintiffs Goldsmith and Grijnsztein.

Any objections to this Report and Recommendation must be filed with the Clerk of the Court within ten (10) days of receipt of this notice. *See* Fed.R.Civ.P. 72(b); 28 U.S.C. § 636(b)(1). Failure to object constitutes a waiver of the right to appeal. *Egert v. Connecticut General Life Ins. Co.,* 900 F.2d 1032, 1039 (7th Cir.1990).

All Citations

Not Reported in F.Supp., 1995 WL 17009594

Footnotes

1 The "Former Individual Defendants" and the "Former Underwriter Defendants," as defined in the Settlement Agreement, are likewise included in this settlement and will be dismissed and released upon its approval. *See* accompanying Joint Affidavit, ¶ 48.

2 A number of courts have held that it may be *presumed* that the agreement is fair and adequate where, as here, a proposed settlement is the product of arm's-length negotiations, sufficient discovery has been taken to allow the parties and the court to act intelligently, and counsel involved are competent and experienced. *See Susquehanna,* 84 F.R.D. at 321; *Boggess v. Hogan,* 410 F.Supp. 433, 438 (N.D.Ill.1975); *Krasner v. Dreyfus Corp.,* 90 F.R.D. 665, 667 (S.D.N.Y.1981).

3 Although in a case such as this were it is not possible to determine the exact amount any one class member will receive until all of the claims are in and have been evaluated, the lack of objections to the settlement amount and the complicated distribution plan may not necessarily indicate overwhelming approval as much as a lack of ability to evaluate the true significance of the same.

4 The Second Circuit further explained in *Detroit* that "there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery." 495 F.2d at 455 n.2.

5 Plaintiffs' experts' determination of "true values" assumes that the full impact of the alleged fraud would have been felt every day of the Class Period. Plaintiffs appreciate, however, that if the case had gone to trial, the experts would have had to refine their analysis downward, recognizing that the amount of revenue attributable to work done pursuant to oral authorizations increased as the Class Period progressed, and that much of the alleged "phantom revenue" was not reported until after the secondary public offering. Indeed, defendants contend that a large part of the alleged "phantom revenue" was not recorded until TSC's fourth quarter (March–May 1992), and was not reported in any of the published financial statements challenged in the Complaint.

End of Document

EXHIBIT 8

2019 WL 2103379
Only the Westlaw citation is currently available.
United States District Court, N.D. Illinois, Eastern Division.

Keith SNYDER and Susan Mansanarez, individually and on behalf of all others similarly situated, Plaintiffs,
v.
OCWEN LOAN SERVICING, LLC, Defendant.
Tracee A. Beecroft, Plaintiff,
v.
Ocwen Loan Servicing, LLC, Defendant.

Case No. 14 C 8461

consolidated with Case No. 16 C 8677

Signed 05/14/2019

Attorneys and Law Firms

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ORDER ON MOTION FOR FINAL APPROVAL OF FIRST AMENDMENT TO CLASS ACTION SETTLEMENT

MATTHEW F. KENNELLY, United States District Judge

***1** The plaintiffs in these consolidated cases filed suit against Ocwen Loan Servicing, LLC on behalf of a putative class, alleging, among other things, violations of the Telephone Consumer Protection Act (TCPA) and the Fair Debt Collection Practices Act (FDCPA). The parties reached a classwide settlement and moved for the Court to approve it. After thoroughly reviewing the settlement, the Court declined to approve it. The parties returned to negotiations and modified the proposed settlement to address the Court's concerns. The plaintiffs now move for final approval of the first amendment to the settlement and for attorneys' fees. The Court grants the motion for final approval of the settlement, with modifications described in this decision. The Court also grants the plaintiffs' motion for attorneys' fees in part.

Background

A. Procedural history

In October 2014, the plaintiffs in these consolidated cases filed suit against Ocwen. They challenged Ocwen's alleged practice of making debt-collection calls using an automated telephone dialing system without the call recipients' prior consent. In late December 2016, the plaintiffs separately sued a number of banks that served as the trustees for loans to the putative class members, alleging that the debt-collection calls were made on the banks' behalf, making them also liable for the resulting violations. *Snyder v. US Bank, N.A.*, No. 16 C 11675 (N.D. Ill). The class was potentially enormous. As of December 2016, Ocwen was servicing 1.4 million mortgage loans. Plaintiffs represented that Ocwen's records showed that it had made, during the period covered by the limited class proposed for preliminary injunctive relief, over 146 million calls to 1.45 million unique telephone numbers. And, indeed, Ocwen ultimately produced a list of nearly 1.7 million unique telephone numbers that its records indicated had been dialed.

In late June 2017, the Court provisionally granted, in the Ocwen suit, the plaintiffs' motion for certification of a limited class under Federal Rule of Civil Procedure 23(b)(2) and for a preliminary injunction to prevent Ocwen from continuing certain practices that allegedly violated the TCPA. *See Snyder v. Ocwen Loan Servicing, LLC*, 258 F. Supp. 3d 893 (N.D. Ill. 2017). Before the Court's ruling on the motion for a preliminary injunction, the parties conducted extensive discovery, including exchanging information regarding calls made by Ocwen and information regarding the basis for

Ocwen's defense that it had acted with the consent of the call recipients. Plaintiffs encountered significant hurdles in obtaining information supporting Ocwen's consent defense, largely because of the way in which Ocwen kept its records of debt collection calls. This same problem, however, complicated Ocwen's ability to prove the defense.

Meanwhile, several rounds of settlement negotiations occurred. A mediation in May 2016 with retired Judge James Holderman was unsuccessful. At a second mediation, this one facilitated by mediator Rodney Max in October 2016, Ocwen disclosed that its insurer had denied coverage for the claims asserted by the plaintiffs and suggested that it had a limited ability to finance the settlement on its own. These revelations led to the second mediation's unsuccessful termination. The same considerations also led the plaintiffs to move to amend their complaint in the *Snyder* case to add as defendants the banks that were trustees of the loans on which Ocwen had attempted to collect. The Court denied the motion as untimely. The plaintiffs then filed a separate suit against the banks, which the Court found to be related to *Snyder* under Local Rule 40.4, resulting in the transfer of the newly filed case to the undersigned judge's docket.

***2** In July 2017, shortly after the Court granted the motion for a preliminary injunction, a third mediation was held with retired U.S. Magistrate Judge Morton Denlow. This mediation resulted in an agreement to settle the claims of the putative class. It is reasonable to conclude that the settlement was produced, at least in part, by the plaintiffs' successful prosecution of the motion for preliminary injunction and certification of a limited class, and by their filing of the lawsuit against the bank defendants—who, the Court later learned, had tendered the defense of the case to Ocwen based upon apparent contractual indemnification provisions.

B. Original settlement

The original settlement agreement provided for the establishment of a fund of $ 17,500,000. This would have been used to pay, first, costs of notice and administration—requested at $ 1,600,000; second, attorneys' fees—requested at one-third of the total settlement less administration costs, or $ 5,289,250; third, incentive awards for the three named plaintiffs, requested at a total of $ 75,000; and, finally, payment of the claims of class members who submitted claim forms. Given the number of class members who submitted claim forms (see below), had the Court approved the costs, fees, and incentive awards in the amounts requested, each class member who submitted a form would have received about $ 39. The first proposed settlement also included injunctive relief requiring Ocwen to change its practices for obtaining consent to call borrowers, including a requirement to pay enhanced damages to those who inappropriately receive automated calls in the future. *See* Final Settlement Agr., dkt. no. 252-1, ¶ 4.2. Finally, the settlement provided for dismissal of not only the *Snyder* and *Beecroft* suits against Ocwen, but also the putative class's suit against the banks. *See id.* ¶ 3.5. The banks offered no contribution to the settlement fund or any other consideration for the dismissal of the case against them.

The Court preliminarily approved the proposed settlement, including conditional certification of a settlement class, in October 2017. Notice of the proposed settlement was then sent to the members of the class, giving them the opportunity to make claims, object, or request exclusion (also called "opting out"). The settlement class consisted of persons who had been called on nearly 1,700,000 cellular telephone numbers.

In March 2017, the plaintiffs moved for final approval of the proposed settlement, for incentive awards for the named plaintiffs, and for payment of administrative fees and an award of attorneys' fees from the settlement proceeds. The motion was fully briefed by the end of April. In September 2018, the Court denied the motion for final approval because it was concerned that the agreement (1) potentially overcompensated class counsel; (2) failed to address Ocwen's ability (or inability) to pay, which was relevant to the Court's assessment of the reasonableness of the settlement amount; and (3) would release the claims against the bank defendants for nothing. *See Snyder v. Ocwen Loan Servicing, LLC*, No. 14 C 8461, 2018 WL 4659274, at *5-6 (N.D. Ill. Sept. 28, 2018). The Court deferred decision on whether late claims and opt-outs would be accepted. *Id.* at *6.

C. Subsequent negotiations and the amended settlement

Following the Court's denial of the motion to approve the final settlement agreement, the parties returned to mediation. A fourth mediation session—the second with retired Judge Denlow—occurred on July 20, 2017 and resulted in an improved settlement. A number of the settlement's terms were unchanged from the original proposal. For instance, the settlement still provides for $ 1,600,000 in administration and notice costs and requests $ 75,000 (to be split three ways) in incentive payments for the named plaintiffs. Likewise, class counsel still requests a total of $ 96,380 in costs—$ 29,600 to be paid to Mark Ankcorn (reduced from his original request

for $ 35,000) and the remaining $ 66,780 to be divided among the other firms that shared in representing the plaintiffs.

***3** But the proposed amended settlement also makes several significant changes. Most significantly, the settlement fund provided for in the agreement has increased by $ 4,000,000 from $ 17,500,000 to $ 21,500,000. Moreover, class counsel seeks $ 500,000 less in attorneys' fees, bringing that figure down from $ 5,289,250 in the original settlement to $ 4,789,250 in the amended settlement. Next, the amended settlement also provides for dismissal of only the *Snyder* and *Beecroft* suits against Ocwen and does not seek to release the claims against the bank defendants. Finally, the proposed amendment adds to the injunctive relief described in the original settlement. [1]

The upshot, then, is that the proposed amendment provides at least $ 4,500,000 more for payment of the claims of class members who submitted claim forms and leaves the class free to pursue claims against the bank defendants if it chooses. Given the number of class members who submitted claim forms, if the Court approves the costs, fees, and incentive awards in the amounts requested, each claim will be worth between $ 53 and $ 74, depending on the Court's handling of disputed claim submissions and opt-outs. Even the lower end of this range compares quite favorably to the approximately $ 39 recovery each claimant would have received under the original settlement.

The plaintiffs have moved for final approval of the amended settlement agreement.

D. Imperfect claims and opt-outs

The deadline to file claims and opt-outs was March 5, 2018. The administrator reports that it received 212,165 complete and valid claim forms as well as 5,401 forms that were missing signatures, which the claimants were provided an opportunity to cure. [2] The settlement allows individuals to submit separate claims for up to three phone numbers, but 5,318 claimants erroneously submitted two phone numbers on a single claim form and another 59 claimants submitted three numbers on a single form. The administrator also received 52,709 claims that included numbers that did not match phone numbers from the list provided by Ocwen, 23,212 duplicate claims, and 124 requests to withdraw claims. Additionally, there were a total of 3,801 late claims submitted, discussed further below, including 358 filed by an individual named Reuben Metcalfe.

Description	Count
Complete claims	212,165
Incomplete claims (missing signature)	5,401
Multiple number claims	5,436
Late claims	3,801
Claims for numbers not on list	52,709
Total	**279,512**

As for opt-outs, the administrator reports having received 379 timely and complete requests, 178 late requests, and eighteen incomplete requests. Almost all of the late claims were either (1) postmarked and received by the administrator within the two weeks following the March 5 deadline or (2) submitted in April 2018 by Reuben Metcalfe. As the Court discovered at the April 5, 2018 hearing, Metcalfe is the proprietor of a then-nascent business specializing in assisting class members in consumer class actions exercise their rights to submit claims or opt-out of such litigation. At that hearing he admitted that the late-submitted claims and opt-outs were a product of his own mistake rather than the neglect of any member of the plaintiff class.

E. Mark Ankcorn's role

***4** Finally, the conduct of one of the attorneys who represented the plaintiff class bears on the resolution of these motions. Mark Ankcorn agreed to prosecute this case jointly with counsel from four other firms on behalf of the class. Ankcorn's service was, by all accounts, satisfactory for much of the case's history; indeed, his firm served as

lead counsel for the class for much of the litigation. But in November 2017 Ocwen filed a motion informing the Court that Ankcorn had potentially (1) committed an ethical violation by encouraging high-value members of the class to opt out and pursue their claims individually and (2) violated this Court's protective order regarding confidential information produced by the defendant. *See* dkt. no. 268. These allegations and the ensuing related proceedings bear, to some extent, on the final resolution of this matter. But because it is difficult to understand why the details matter without context, the Court reserves their discussion until later in this opinion.

Discussion

A. Amended settlement approval

A district court may approve a proposed settlement of a class action only after it directs notice in a reasonable manner to all class members who would be bound and finds, after a hearing, that the proposed settlement is "fair, reasonable and adequate." Fed. R. Civ. P. 23(e)(2). In making the latter determination, courts in this circuit consider the following factors:

> (1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to the settlement; (5) the opinion of competent counsel; and (6) the stage of the proceedings and the amount of discovery completed.... The most important factor relevant to the fairness of a class action settlement is the strength of plaintiff's case on the merits balanced against the amount offered in the settlement.

Wong v. Accretive Health, Inc., 773 F.3d 859, 863–64 (7th Cir. 2014) (internal quotation marks and citations omitted). Rule 23(e)(2) also sets forth a list of points a court must consider in determining whether a proposed class action settlement is fair, reasonable, and adequate. The Court will address these points as well. They include whether:

- the class representatives and class counsel have adequately represented the class;
- the proposal was negotiated at arm's length;
- it treats class members equitably relative to each other; and
- the relief provided by the settlement is adequate, taking into consideration the costs, risks, and delay of trial and appeal; the effectiveness of the proposed method of distributing relief; the terms of any proposed award of attorneys' fees; any agreements made in connection with the proposed settlement.

Fed. R. Civ. P. 23(e)(2).

1. Fairness, reasonableness, and adequacy of the proposed settlement

Significant portions of the Court's analysis remain materially unchanged from the previous order. Nevertheless, the Court will once again carefully review each of the factors set forth in *Wong* and Rule 23(e)(2).

a. Adequacy of representation of the class

The named plaintiffs participated in the case diligently, including being subjected to discovery. And class counsel fought hard throughout the litigation and pursued mediation when it appeared to be an advisable and feasible alternative. The Court has concerns regarding certain aspects of the conduct of Mark Ankcorn, which are discussed below. But there is no basis to believe that Ankcorn's conduct influenced the representation of the class by counsel unaffiliated with his law firm. Nor does the Court believe that misconduct attributed to Ankcorn—who was only one of several attorneys who represented the class—is on its own problematic enough to seriously undermine the proposed settlement's viability under this factor.

b. Arm's length negotiation

The record reflects that the settlement was negotiated at arm's length. The parties conducted their negotiations via three separate and independent mediators—retired Judge James

Holderman, mediator Rodney Max, and retired Magistrate Judge Morton Denlow. There is no indication of any side deals material to this analysis.[3] And 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.

c. Treatment of class members vis-à-vis each other

***5** The proposed settlement treats all class members the same; each is entitled to a single payment for each claim submitted. There is an argument to be made that this is inequitable, as some class members received more unwanted calls than others—including some who received hundreds or even thousands of unwanted calls. No class member has objected on this basis, however, and the ability to opt out (plus an explanation in the class notice of what a class member who opts out might expect) has provided a safety valve that permitted class members on the higher end of the call spectrum to, in effect, vote with their feet and pursue the possibility of a greater award. The Court is especially comfortable with the effectiveness of the opt-out mechanism to cure any potential inequity among class members in light of the Court's treatment of modestly late opt-out requests, discussed below. The Court finds that the proposal for equal treatment is reasonably equitable.

d. Adequacy of relief

The six factors identified by the Seventh Circuit in *Wong*, 773 F.3d at 863-64, and numerous other cases subsume most of the factors listed in Rule 23(e)(2). The Court addresses each in turn.

Complexity, length, and expense of further litigation. Little has changed regarding this factor since the Court's previous order. Almost all of the work that has occurred since then has been aimed at reaching a settlement that addressed the Court's concerns. As the Court previously observed, absent a settlement, a good deal of work would remain to bring the case to a conclusion. Fact discovery on the suit against Ocwen was largely completed before the parties reached the original settlement. But expert disclosure and discovery remained to be done. Plaintiffs had moved to certify a class under Rule 23(b)(3), and the remaining briefing on that motion had yet to be finished. The losing party on that motion could then request an interlocutory appeal. Before this Court, both sides likely would have moved for summary judgment following determination of the class certification motion. It is fair to say that settlement obviated a significant amount of work in the suit against Ocwen.

One piece of the analysis has changed since the original settlement proposal, however. The Court previously noted that very little discovery had been done regarding the claims against the bank defendants at the time of the first settlement. But because the amended settlement no longer concerns the bank defendants, the complexity, length, and expense of litigating the claims against them is no longer a relevant consideration in this analysis. Nonetheless, the fact that the proposed settlement does not implicate the bank defendants does not meaningfully undermine the conclusion that approving the settlement would avoid substantial future litigation.

In sum, this factor favors approval of the settlement.

Amount of opposition to the settlement. There remain only three objections out of more than 270,000 responses submitted. This factor favors approval.

***6** Opinion of competent counsel. Class counsel are experienced members of the plaintiff's consumer class action bar. They favor the settlement, and this is a factor supporting approval of the amended settlement. *See Isby v. Bayh*, 75 F.3d 1191, 1200 (7th Cir. 1996). As the Court previously noted, however, they are hardly disinterested parties; they stand to gain handsomely—though materially less than in the original proposed settlement—if the Court approves the proposed fee award.

Stage of proceedings and amount of discovery completed. The analysis of this factor remains largely unchanged from the previous order. Though a lot of work remains to be done if the case is not settled, much has been done already. Work previously completed includes a significant amount of fact discovery as well as litigation of the motion for preliminary injunction. And plaintiffs had, in the Court's view, sufficient information via discovery and otherwise to enable them to evaluate the merits of the case against Ocwen. *See Isby*, 75 F.3d at 1200.

One factor has changed considerably from the Court's previous analysis. In the last order, the Court noted that it had insufficient information from which to evaluate Ocwen's

contention that its ability to pay was limited. Certainly the plaintiffs had enough information to determine that Ocwen could not write a check in the billion-dollar range—which may have theoretically been the judgment if Ocwen were ordered to pay full statutory damages for each alleged violation—and Ocwen's counsel repeatedly represented that the company was in a relatively tenuous financial position at least in light of the potential exposure. But, as the Court noted in its previous order, there was little information in the record regarding Ocwen's financial status when class counsel agreed to the proposed settlement at the third mediation.

Based on the parties' representations, the Court is now satisfied that Ocwen's financial status was not a significant factor in this settlement agreement and thus should not be a significant factor in deciding whether to approve it. Specifically, in their briefing on this motion for final approval, the parties assured the Court that Ocwen's ability to pay the judgment was not so limited that it influenced the settlement amount. They explained that any previous indication to the contrary was mistaken or uninformed and that such representations should be disregarded. The Court is persuaded that the parties are sufficiently apprised of the underlying facts to support those assertions.

The Court also previously noted that the parties failed to meaningfully discuss the claims against the banks in their papers on the previous motion for final approval. Because the claims against the banks have been removed from the proposed amended settlement agreement, that concern is no longer operative.

On balance, this factor favors approval of the amended settlement.

Strength of the case compared with the settlement offer. The primary consideration in deciding whether to approve a proposed settlement under *Wong* and Seventh Circuit precedent is "the strength of the plaintiff's case on the merits balanced against the amount offered in settlement." *Wong*, 773 F.3d at 864. In addressing the original proposed settlement, the Court considered (1) the relative strength of the plaintiffs' claims and counsel's assessment of the merits, together with the risk to the claims of a potential adverse decision by the D.C. Circuit on a key legal issue; (2) the overall weakness of Ocwen's consent defense in light of its poor recordkeeping, but the potential for the defense to adversely affect class certification; (3) the lack of documentation supporting Ocwen's purportedly weak financial health, which had been offered as a basis to approve the settlement; (4) the entirely gratuitous dismissal of the claims against the bank defendants; and (5) what the Court considered a potentially unreasonably large request for attorneys' fees. Balancing these considerations, the Court denied the motion to approve the original settlement.

***7** The first two considerations remain unchanged. For instance, although the parties present arguments about the relative strengths and weaknesses of the plaintiffs' claims in light of recent changes to the relevant regulatory regime, *see, e.g.*, *ACA Int'l v. FCC*, 885 F.3d 687 (D.C. Cir. 2018), they largely reproduce points already made and acknowledged in relation to the original settlement. The Court's assessment of the merits has not changed much since the order on the first motion for final approval.

But the amended settlement agreement includes several substantial changes that address the concerns outlined in the Court's previous order. First, as discussed above, the parties have provided assurances that Ocwen's finances are not relevant to the settlement. Specifically, they have represented to the Court that their own previous statements about Ocwen's financial infirmity were mistaken, overblown, or misinterpreted. Rather, they intended only to suggest that Ocwen would be unable to afford the multi-billion dollar judgment that would have resulted from class certification combined with a victory on the merits. In its papers on the motion for final approval of the amended settlement, for instance, Ocwen states that:

> It is not disputed that Ocwen cannot pay the many billions of dollars in damages that Plaintiffs are seeking. But the question of whether Ocwen might pay such a judgment is distinct from the question of whether Ocwen might be able to pay more than the agreed-on amount of the settlement. The proposed amended settlement is not predicated on Ocwen's ability or inability to pay more by way of settlement, and, as a result, Ocwen's financial capacity is not pertinent to whether the settlement is fair, reasonable and adequate.

Def.'s Br. in Supp. of Mot. to Approve First Am. to Settlement Agreement, dkt. no. 355, at 12-13. The Court is satisfied with the parties' assurances and concludes that their failure to provide details regarding Ocwen's finances is immaterial to the settlement analysis.

The parties have also addressed the Court's reservations regarding the bank defendants. Recall that the bank defendants were the trustees of the loans upon which Ocwen was seeking to collect when it allegedly violated the TCPA. After an attempt to add them to this suit was denied, the plaintiffs sued the banks separately and the Court found that case related to this one. The original settlement agreement sought to release the claims against the banks for nothing and with no explanation. The amended settlement addresses this issue. Specifically, the plaintiffs, Ocwen, and the banks agreed during the fourth mediation that the amended settlement would not release the claims against the banks. In short, the banks have been carved out of the settlement, and the lawsuit against them is proceeding ahead. This change resolves the Court's concerns about the settlement's treatment of the bank defendants.

The other consideration that led the Court to deny the original settlement was the fee requested by class counsel. Specifically, the attorneys representing the plaintiff class sought nearly $ 5.3 million in attorneys' fees out of the $ 17,500,000 settlement fund. In tandem with other considerations discussed here, the Court concluded that such a fee was probably excessive. Class counsel wisely changed course. In the amended settlement, they seek $ 500,000 less in fees, or $ 4,789,250 in total.

Finally, one other key factor supports approval: the settlement got considerably larger. Between the original settlement and the amended settlement, the total amount of the settlement fund increased from $ 17,500,000 to $ 21,500,000. In combination with the reduced fee request from class counsel, that means that there is effectively $ 4.5 million more available to compensate individual claimants. As a result, claimants will be able to collect between $ 53 and $ 74 per claim—pending the discussion of late claims, opt-outs, and other loose ends below—up from the approximately $ 39 per claim to which they would have been entitled under the original settlement. This is a considerable improvement in the value of the settlement in both absolute and relative terms.

***8** Taking these considerations together, the Court concludes that the single most important consideration under *Wong*, the strength of the case compared with the settlement offer, now favors approval of the amended settlement.

e. Approval decision

The Court concludes that the amended settlement is "fair, reasonable and adequate," Fed. R. Civ. P. 23(e)(2), subject to the following modifications.

First, the attorneys' fee request is acceptable as to all attorneys other than Mark Ankcorn. Ankcorn's fees are to be modified as discussed below. "[D]istrict courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time." *Camp Drug Store, Inc. v. Cochran Wholesale Pharm., Inc.*, 897 F.3d 825, 832 (7th Cir. 2018). Applying this standard, the proposed attorneys' fees are acceptable under either the percentage or lodestar methods of analysis. *See Americana Art China Co., Inc. v. Foxfire Printing & Packaging, Inc.*, 743 F.3d 243, 246-47 (7th Cir. 2014). The amended settlement requests around 22% of the total, less administration costs, as attorneys' fees, well within the parameters of the declining marginal fee scale often employed in this district. *See, e.g.*, *In re Capital One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 805-07 (N.D. Ill. 2015). Likewise, applying a lodestar cross-check reveals that the risk multiplier sought by plaintiffs' counsel is well within reason, *see, e.g.*, *In re Trans Union Corp. Privacy Litig.*, No. 00 C 4729, 2009 WL 4799954, at *17-21 (N.D. Ill. Dec. 9, 2009), with the key exception of Mark Ankcorn, whose fees are discussed below.

Second, the Court concludes that the amended settlement's proposal to give each of the three named plaintiffs $ 25,000 incentive rewards is excessive. Although "[i]ncentive awards are justified when necessary to induce individuals to become named representatives," *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 722 (7th Cir. 2001), the proposed awards are disproportionate and unwarranted. In deciding the appropriate incentive award, "relevant factors include the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998). Most often, "[c]ourts in this District have granted $ 5,000 incentive awards to named plaintiffs in TCPA cases." *Douglas v. W. Union Co.*, 328 F.R.D. 204, 219 (N.D. Ill. 2018) (collecting cases).

In acknowledgment that the named plaintiffs here have endured several years of discovery, scrutiny, and inconvenience in the pursuit of the case, the Court approves incentives awards of $ 10,000 to each of the named plaintiffs, for a cumulative total of $ 30,000.

2. Adequacy of notice

As noted previously, the Court may approve a settlement only if it is satisfied that notice of the settlement has been effected in a reasonable manner. In this case, notice was sent by mail and/or e-mail to over 1.4 million class members, using addresses in Ocwen's records. No better sources for physical or e-mail addresses were reasonably available. The settlement administrator determined that 95 percent of the proposed settlement class received mail or e-mail notice, and this determination appears to be reasonably supported. There was an initial coding error, made by the administrator, in the Internet-based claim submission process, but this was fixed, and the deadline to file a claim was extended accordingly. The administrator also set up a toll-free number and a website for class members to obtain additional information, and these were used extensively. The claim rate in this case was about 16 percent, which is far higher than the usual TCPA settlement —a further indication of the success of the notice program. As such, the Court reaffirms its finding that notice was sent in a reasonable manner to all class members and that, indeed, class members received the best notice practicable.

***9** But the analysis does not end there. Because the amended settlement changes somewhat the terms upon which the plaintiff class's claims will be discharged, the Court must assess whether those changes are "material" and thus require a new round of notice to the class and a new Rule 23(e) hearing. *See Pearson v. Target Corp.*, 893 F.3d 980, 986 (7th Cir. 2018). The Seventh Circuit recently explained that any change that results in a disadvantage to the class without an offsetting benefit demands that a new round of notice be disseminated to the class. *Id.* But courts routinely hold that no new notice is required where changes to a proposed settlement are objectively favorable for class members and do not prejudice any benefit previously promised. *See, e.g.*, *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 330 (N.D. Cal. 2018) (collecting cases).

The proposed amended settlement at issue here leaves class members objectively better off than the original settlement would have. Most directly, it substantially increases the payout per claim to which members are entitled. Moreover, it excludes the claims against the banks from settlement, meaning that litigation against them may yet be viable. These changes unequivocally enhance the value of the settlement to class members and they come at no apparent cost in terms of benefits provided by the original settlement. Because the changes embodied by the amended settlement are entirely beneficial to the plaintiff class and have no apparent costs to it, the Court concludes that no further notice is required under Rule 23.

3. Objections

As noted above, the Court received three objections. They were from class members Brenda Stuart, Paul Squicciarini, and Daniel Seltzer. Each stated that his or her opposition stemmed from a combination of the relatively low per-claim award amount to which class members would have been entitled irrespective how many calls they received—then around $ 39—and the relatively high attorneys' fees sought in the original settlement—then $ 5,289,250, which was a third of the total settlement fund.

The Court overrules these objections. First, the per-claim award has improved considerably since the original notice. Furthermore, after reviewing the parties' submissions, the Court is satisfied that the per-claim settlement amount provided by the amended settlement falls comfortably within the range of rates that have been approved in the Seventh Circuit and elsewhere in similar TCPA litigation. And, in any event, objectors' reservations about the amount of the settlement could have been resolved by simply opting out of the class and filing separate suits.

Second, as noted previously, the attorneys' fees requested in the amended settlement are significantly lower than those sought in the original settlement, both in absolute terms and as a proportion of the total settlement fund. Two of the three objectors pointed out that the fee request in the original settlement sought one third of the total settlement fund. Because the fund has increased by $ 4,000,000 and the fee request has decreased by $ 500,000, the fee request now totals only a little more than 22% of the settlement fund. And, indeed, the total fee award will be less once the adjustment discussed below is made by plaintiffs' counsel.

4. Late, incomplete, imperfect, and unlisted claims and opt-outs

The Court must also determine how to handle claims and opt-outs that were submitted late, were incomplete, included

multiple phone numbers, or were submitted with phone numbers that did not appear on the list the defined the class. The Court has discretion to permit claims and opt-outs submitted after the March 5, 2018 deadline upon a determination that their tardiness was a product of excusable neglect. *See In re Vitamins Antitrust Class Actions*, 327 F.3d 1207, 1209-10 (D.C. Cir. 2003).

a. Claims

***10** The administrator received a total of 279,512 claim submissions (not including duplicates). Some 52,709 of these claims sought recovery for calls to phone numbers that did not appear on the list provided by Ocwen. Because the class notice clearly instructed claimants on how to submit claims and because settlement class was defined to include only "persons who were called by Ocwen on the 1,685,757 unique phone numbers" on the list it provided, *see* Order Conditionally Certifying Settlement Class, dkt. no. 266, at 3, the Court finds that these claimants fall outside of the plaintiff class and are entitled to no further opportunity to correct their submissions.

Another 5,401 claim forms bore phone numbers that matched the list but were missing the claimants' signatures. The class administrator provided these claimants opportunity to cure their submissions. The deadline to cure was February 14, 2019. Claimants who cured their submissions by that date are entitled to recovery; those who failed to cure their submissions are not.

The administrator reported that an additional 5,436 claims incorrectly listed multiple phone numbers from Ocwen's list on a single form. The settlement agreement permits a single claimant to submit up to three claims for calls to three separate phone numbers but required submitting such claims on separate forms. Nevertheless, the Court finds that any neglect on the claimants' part was excusable and concludes that claim forms bearing two or three phone numbers on Ocwen's list should be treated as separate claim forms for the purposes of recovery.

Finally, 3,801 claims were submitted late, including 358 that were submitted by Reuben Metcalfe. These claims make up a tiny portion of the overall total—less than two percent of the nearly 280,000 total claims submitted to the administrator. As such, allowing them to go forward would have a negligible impact on class as a whole and no impact on Ocwen, which is on the hook for the same amount irrespective how many claims are filed. In light of these considerations, the Court finds the 3,801 late claimants' neglect to be excusable. And, as discussed further below, any neglect on the part of the claimants on whose behalf Metcalfe submitted claims is also entirely excusable because it was apparently his error, not the claimants', that led to the late submission. The late claims discussed here may therefore proceed forward as though submitted timely.

b. Opt-outs

Although the Court retains considerable discretion to allow late and otherwise imperfect opt-outs to go forward, the calculus is a bit different because opt-outs present a potential cost to the defendant. Specifically, any member of the class who exercised her right to opt out will not be bound by the terms of the settlement and may pursue individual litigation against Ocwen. Ocwen made clear at a hearing that it opposes recognizing any of the late or incomplete opt-outs. In this case, there were a total of 379 timely and complete requests to opt out of the plaintiff class. Additionally, there were eighteen incomplete requests and 178 late requests.

At the threshold, the Court finds that the incomplete requests to opt-out are forfeited. The class notice stated clearly how to opt out of the plaintiff class and a failure to do so correctly or to cure an incorrect opt-out by now—more than a year after the deadline—constitutes inexcusable neglect in light of the prejudice it would cause the defendant.

The late requests present a closer question. The Court notes that nearly all of the late opt-outs were submitted either within two weeks of the March 5 deadline or in April 2018 by Reuben Metcalfe. After considering the balance of the equities, the Court concludes that both groups will be allowed to opt out. Most of the opt-outs in the first group were postmarked either the same week as the March 5 deadline or the following week. Although these submissions fell outside the March 5 timeline, they were submitted near enough to it to make any neglect in their submission excusable.

***11** The second group, the eighty-eight opt-outs submitted by Metcalfe, were postmarked on April 16. Although longer after the deadline, the Court is still persuaded that these requests should be honored. It was Metcalfe's error, not the fault of any of the class members requesting to opt-out, that led to their untimely submission. That alone satisfies the

Court that any neglect on the part of those seeking to opt out was entirely excusable. That said, the Court recommends that Metcalfe take greater care in the future to observe the deadlines set by courts.

But not quite all of the opt-outs fall into the categories described above. After cross-referencing the class administrator's records with those provided by Metcalfe, it appears that three opt-out requests were submitted significantly beyond the deadline without any explanation. These three requests were from James Sweeny (postmarked March 26), Charles Calia (postmarked April 18), and Brian Lametto (postmarked June 14). The Court concludes that Sweeny's March 26 opt-out—precisely three weeks after the deadline—represents the outer limit of excusable neglect. That is, it will be honored, but none beyond it will be. For that reason, Calia's and Lametto's opt-outs—submitted forty-seven and 101 days after the deadline respectively—are deemed untimely and will not be authorized.

5. Summary

The Court concludes that the proposed settlement is "fair, reasonable and adequate." Fed. R. Civ. P. 23(e)(2). The Court overrules the three objections made by members of the plaintiff class and further concludes that no additional notice is necessary for approval of the amended settlement. Finally, the Court finds that certain late and otherwise imperfect claims and opt-outs are authorized to proceed as described above.

B. Ankcorn's actions and their consequences

In the background of this discussion looms Mark Ankcorn's ill-advised conduct in the months preceding the first proposed settlement. Ankcorn agreed to prosecute this case jointly with counsel from four other firms on behalf of the plaintiff class. Ankcorn's firm served as lead class counsel for most of the history of the case. But in November 2017 Ocwen filed a motion alleging that Ankcorn had potentially committed an ethical violation by encouraging high-value members of the class he represented to opt out and pursue their claims individually and had violated the Court's protective order regarding information produced by Ocwen. *See* dkt. no. 268.

The Seventh Circuit has long recognized that class actions offer fertile soil for conflicts of interest. *See, e.g.*, *Thorogood v. Sears, Roebuck & Co.*, 547 F.3d 742, 744 (7th Cir. 2008) (describing the paradigmatic conflict). For that reason, the court has repeatedly described a district judge reviewing a proposed settlement as a "fiduciary of the class," responsible for ferreting out inappropriate conduct by class counsel. *See, e.g.*, *Pearson v. NBTY, Inc.*, 772 F.3d 778, 780 (7th Cir. 2014). Furthermore, the Court has "an independent duty under Federal Rule of Civil Procedure 23 to the class and the public to ensure that attorneys' fees are reasonable and divided up fairly among plaintiffs' counsel." *In re High Sulfur Content Gasoline Prods. Liab. Litig.*, 517 F.3d 220, 227 (5th Cir. 2008); *see also In re Vitamins Antitrust Litig.*, 398 F. Supp. 2d 209, 228-35 (D.D.C. 2005); Manual for Complex Litigation § 14.211 (4th ed. 2004).

In light of the allegations against Ankcorn and the Court's own duty to the class, the Court finds it necessary to review the alleged misconduct and, as discussed below, exercise its "broad authority" to address that conduct in the distribution of attorneys' fees. *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 100 (1981).

1. Ankcorn's conduct

***12** The Court first caught wind of the allegations against Ankcorn in November 2017 when Ocwen filed a motion for leave to depose Ankcorn and for other relief. In its motion, Ocwen contended that Ankcorn had sent letters to members of the plaintiff class who had particularly valuable claims reminding them that they had the right to opt out of the class to pursue individual litigation. That is, knowing that individuals would likely be compensated at a flat rate if they remained members of the class irrespective how many illegal calls they had received, Ankcorn allegedly persuaded class members who had received large numbers of calls to opt out and to instead pursue their valuable claims individually—presumably to obtain higher recovery. Ocwen also alleged that Ankcorn used the call data produced by Ocwen under protective order during discovery to file a new lawsuit in Florida—the *Graham* suit—on behalf of a number of former members of the *Snyder* plaintiff class. In its motion, Ocwen sought leave to depose Ankcorn and requested a hearing on his conduct.

To understand why Ankcorn's letter-writing campaign and individual representation of class members was potentially fraught, one need only look to paragraph 11.4 of the original settlement agreement. "If 4,000 or more potential members of the Settlement Class properly and timely opt out of the Settlement," that paragraph states, "then the Settlement may be deemed null and void upon notice by Ocwen without penalty or sanction." *See* Final Settlement Agr., dkt. no. 252-1, ¶ 4.2. This sort provision, known as a "blow up" or

"tip over" clause, is common in class action settlements and provides a device by which the defendant can terminate the settlement if a certain number (or cumulative value) of claims opt out. *See generally Terms of Art in Class Action Settlements —"Blow Up" Provision*, Newberg on Class Actions § 13:6 (5th ed. 2018). Any effort by class counsel to encourage opt outs could thus endanger the settlement for the class as a whole while (at least potentially) enriching certain individual plaintiffs and their counsel, amounting to a conflict of interest.

In response to Ocwen's motion, Ankcorn denied any wrongdoing. He admitted that he had sent letters to about 2,000 class members, in which he said he asked them to call or e-mail him in order to help build the record for the motion for a preliminary injunction. He contended, however, that he had not directly solicited or encouraged opt-outs. Ankcorn also contended that, although the letters included a reminder of the right to opt out and some recipients indeed asked him about pursuing individual suits, he did not represent such class members himself. Instead, Ankcorn said, he referred those interested in individual litigation to outside counsel—mostly, the Court later learned, to the law firm of Hyde & Swigert. He argued that such actions did not constitute an ethical violation. Likewise, Ankcorn admitted to having filed the *Graham* suits in Florida but attested that the information that he had used to file those suits had been public at the time. He further contended that he had never earned a fee for that representation and had merely filed the suits as a favor to his colleagues at Hyde & Swigert.

After ordering briefing on Ocwen's motion and holding a hearing on January 4, 2018, the Court denied the motion for leave to depose Ankcorn but ordered him to (1) destroy certain confidential data; (2) inform all parties of the extent of his previous disclosures; and (3) show cause why he should not be removed as class counsel. After further briefing, the Court removed Ankcorn as lead counsel and appointed Burke Law Offices, LLC and Terrell Marshall Law Group PLLC as interim lead class counsel. The Court also scheduled an evidentiary hearing on Ankcorn's alleged misconduct for April 5, 2018.

The content and timing of Ankcorn's alleged misconduct came into better focus during his testimony at the April 5 hearing. According to Ankcorn, he sent about 2,400 letters to members of the *Snyder* class. These letters apparently included details about the value of individual claims under the TCPA; lauded Ankcorn's firm's skill at prosecuting TCPA claims; and advised class members that they would "need to file an opt out request" in order to keep their individual claims alive. *See* Hearing Tr., dkt. no. 302, at 28:5-7. The letters also included a clause disclaiming that the letters were not intended to be solicitations for representation.

***13** The letters were sent in two rounds. The first round, Ankcorn testified, involved about 2,000 letters sent between September and November 2016 to members of the *Snyder* class who had received between approximately 500 and 1,200 calls from Ocwen. The second round of letters, sent during the spring of 2017, was directed to a subset of 300-400 of those who received letters in the first round. According in Ankcorn, the final such letter was sent in June 2017. The timing of Ankcorn's correspondence with class members is important. The first round of letters was sent between September and November 2016, after the first unsuccessful mediation with Judge Holderman on May 25, 2016 and roughly contemporaneously with the second mediation with Rodney Max on October 14, 2016. The second round of letters was sent to class members in the months preceding the July 20, 2017 mediation with Judge Denlow, which resulted in the original settlement deal. In other words, the record reveals that Ankcorn's letters were sent to members of the class throughout the period during which negotiations to settle the case were ongoing.

During his April 5 testimony, Ankcorn again characterized the letters as entirely innocent. He claimed that when he sent the letters he did not have any reason to expect a successful resolution of the *Snyder* litigation given the failure of the first two mediation sessions. Furthermore, Ankcorn contended that paragraph 11.4's provision for terminating the settlement if 4,000 or more members of the class opted out was not discussed until the July 2017 mediation with retired Judge Denlow. He again represented that the letters were not intended to solicit individual class members to opt out and pursue profitable litigation. Instead, he contended, the letters were meant to reach credible, knowledgeable class members who could provide evidentiary support for the class's motion for a preliminary injunction. Nevertheless, Ankcorn admitted that virtually all of the class members who responded to his mailings were primarily interested in opting out and pursuing individual claims against Ocwen. But Ankcorn testified that he did not represent any of the class members who reached out to him because he simply did not have the time in the midst of litigating the class action. Rather than offering to personally represent any of the potential opt-outs himself, he said he instead referred them to outside counsel. Specifically, he testified that he referred most of the potential individual

claims to the firm of Hyde & Swigert, with which he reported having an "understanding" but from which he says he received no referral fees.

But the April 5 hearing also revealed several pieces of evidence that tend to contradict Ankcorn's characterizations of his conduct. First, Ankcorn's co-counsel pointed out that, by the time the first round of letters was sent in the fall of 2016, there was no investigation remaining to be done on the motion for a preliminary injunction—contrary to his testimony regarding the rationale for the letters. The record supports that position; the motion for a preliminary injunction was filed in October 2016, approximately concurrently with the first round of letters and several months before the second round. Indeed, the motion was fully briefed by February 2017, before the second round of mailings even began. Co-counsel also pointed out that none of the four other firms representing the class were aware that Ankcorn was sending the letters, casting further doubt on his claim that the letters were intended to facilitate fact-finding in the lawsuit.

Second, contrary to Ankcorn's own representations to this Court that he had never represented class members in individual litigation against Ocwen, Ankcorn admitted that he had filed at least one lawsuit in Florida on behalf of a small group of class members with high-value claims. These were the *Graham* cases, discussed above. Ankcorn contends that he acted only as the "filing attorney" as a favor to Hyde & Swigert while that firm sought local counsel. Ankcorn says he did not get paid a fee for his service and only hoped to recover the costs of filing. But the Court notes that Ankcorn nevertheless did appear on behalf of individual class members in that litigation, even if, as he contends, he played only a limited role.

***14** Third, and perhaps most importantly, the Court learned during the April 5 hearing that Ankcorn's firm sent at least one member of the *Snyder* class a retainer agreement for individual representation as an attachment to a second-round letter. Specifically, Ankcorn's co-counsel, Beth Terrell, flagged for the Court that Ankcorn sent class member Earl Simpson a letter dated June 2, 2017, which included a retainer agreement by which Simpson could engage Ankcorn's law firm to represent him in a potential opt-out suit. Unsurprisingly, Simpson—who, the letter stated, had received at least 1,275 calls for which he could receive as much as $ 1,500 per call if he opted out—obliged by signing the retainer agreement. Earl's son, Pat Simpson, also communicated with one of Ankcorn's employees, Benjamin Charles, about opting out of the plaintiff class. According to Ankcorn's co-counsel Beth Terrell, who spoke with Pat Simpson about the exchange, Charles strongly encouraged Pat to persuade his father to opt out of the class action and to pursue individual litigation instead.

Ankcorn testified that this was all a big mistake. He sought to offload culpability for the lapse on his employee, Charles. He said that Charles must have "mistakenly" sent the retainer agreement as an attachment to the second-round letter to Earl Simpson. Ankcorn suggested that Charles must have confused Earl Simpson with another client, and he insisted that he had instructed his employees not to give legal advice about opting out of the class. Ankcorn claimed that as soon as he learned about the Simpson retainer—which apparently did not occur until December 2017, five months after the first settlement was reached and two months after the Court conditionally approved it—he instructed Charles to break off the contractual relationship and refer Earl Simpson to Hyde & Swigert. In the meantime, however, while Ankcorn was apparently still retained to represent him, Earl Simpson was added as a plaintiff in the Florida *Graham* litigation—the very same suit that Ankcorn claimed he had filed as a favor to his colleagues at Hyde & Swigert but which he claimed to have stepped away from almost immediately. The Court does not find Ankcorn's explanations regarding this episode to be credible.

2. Assessing the damage

At the threshold, the Court finds that Ankcorn had a duty to the putative plaintiff class at all times relevant here. There is no question that class counsel owes a fiduciary duty to a class he or she represents. *See Culver v. City of Milwaukee*, 277 F.3d 908, 913 (7th Cir. 2002). Courts in this circuit and elsewhere have also found that where, as here, counsel "file[s] a case as a class action," his fiduciary duty extends to the "putative class even before it is certified." *House v. Akorn*, No. 17 C 5018, 2018 WL 4579781, at *2 (N.D. Ill. Sept. 25, 2018), *appeal docketed*, No. 18-3307 (7th Cir.); *see also Back Doctors Ltd. v. Metro. Prop. & Cas. Ins. Co.*, 637 F.3d 827, 830 (7th Cir. 2011) (holding that named plaintiffs have fiduciary duties to a putative class before certification); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 801 (3d Cir. 1995). Indeed, the Ninth Circuit has noted that the risk of attorneys breaching their fiduciary duty is "even greater" where "a settlement agreement is negotiated prior to formal class certification" and that these potential conflicts

must therefore be assiduously policed by reviewing courts. *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 946.

In light of his duty, Ankcorn's conduct is troubling. A careful review of the record reveals a shifting narrative and suspicious timing on Ankcorn's part. Time and again, when confronted with allegations of wrongdoing, Ankcorn has attempted to rationalize his actions in completely innocent terms. The Court is not persuaded. For instance, Ankcorn's assertion that the letters he sent to class members were intended only to serve a factfinding function in support of the motion for preliminary injunction is patently implausible. This is even more emphatically the case for the second-round letters, which all appear to have been sent after briefing on the preliminary injunction was complete. Likewise, Ankcorn's legalistic attempts to distance himself from the *Graham* litigation are unconvincing; his categorical claims that he refused to represent any members of the plaintiff class in individual litigation are, by his own admissions, false. And, as indicated, the Court also finds incredible Ankcorn's explanation that his employee, Charles, went rogue by encouraging a class member responding to a second-round letter to opt out.

***15** But, Ankcorn was quick to point out, even if he did encourage opt-outs, he did so only before the parties discussed a blow-up clause. He suggested at the April 5 hearing that he therefore had no way of knowing that making referrals could harm the class. Alternatively, he contended that he did not act improperly because he knew there was little risk of enough class members leaving to jeopardize a settlement agreement. He sent 2,000 letters to *Snyder* class members; even if every single recipient had opted out, that would have only gotten the class halfway to the 4,000-opt-out blow-up provision in paragraph 11.4 of the settlement. And, in fact, he reported that only 10-12% of those who he mailed responded. Virtually all of these respondents opted out, but that amounted to only a little over 200 opt-outs. The net effect, he would argue, was fairly negligible.

The Court concludes that Ankcorn's conduct created an unacceptable risk to the plaintiff class's settlement negotiations, for his own gain and in conflict with the class's interests. *Cf. Thorogood*, 547 F.3d at 744 (7th Cir. 2008). Although Ankcorn is correct that the letters he sent to class members preceded specific discussions of the blow-up provision during the July 2017 mediation, the inclusion of such a provision was predictable. Defendants commonly insist on blow-up provisions to insure against costly mass opt-outs. *See Terms of Art in Class Action Settlements—"Blow Up" Provision*, Newberg on Class Actions § 13:6 (5th ed. 2018); Niki Mendoza, *How to Structure Securities Class Action Settlements to Obtain Court Approval and Global Peace*, Am. Bar Ass'n (Aug. 25, 2018) (describing the utility of a blow-up provision). These provisions are no less common in TCPA class actions like this one. *See, e.g.*, *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11 C 4462, 2014 WL 4724387, at *6 (N.D. Ill. Sept. 23, 2014) (assessing a TCPA settlement including a blow-up provision). Given the massive potential exposure Ocwen faced if a large number of class members pursued their claims individually, it was no surprise that it insisted on a clause permitting it to terminate the action if too many class members opted out. Ankcorn has stated that he possesses "extensive experience" in cases like this one, having negotiated multiple class action settlements in the past. *See* Ankcorn Decl. in Supp. of Pls.' Mot. for Att'ys' Fees, Ex. 1 to Pls.' Mot. for Att'ys' Fees, dkt. no. 296-1, ¶¶ 2, 4. It is therefore unlikely that Ankcorn was caught off guard by the inclusion of the blow-up provision.

Likewise, although Ankcorn is correct that his letter-writing campaign alone probably could not have triggered paragraph 11.4 as it was eventually written, his attempts to minimize the risk he created are unconvincing. How was he to know *ex ante* that a blow-up threshold would not be set at a lower number or that no one else was attempting to drum up a large enough number of opt-outs from the more than 1.6 million member class to imperil the settlement? There was no way to tell. And, in fact, the Court learned during the April 5 hearing that others *were* soliciting opt-outs from class members. When Reuben Metcalfe appeared and explained that his business represented a sizable number of claimants and opt-outs, it became clear that Ankcorn's was not the only game in town. (The key difference, of course, is that Metcalfe did not owe, much less violate, a fiduciary duty to represent the interests of the class.)

Ankcorn's claim that he did not stand to gain anything from the scheme to siphon valuable claimants to Hyde & Swigert is also unconvincing. Although the Court has no reason to doubt the truth of Ankcorn's assertion that he was not paid a fee, it concludes that the understanding Ankcorn said he had with Hyde & Swigert likely included implicit promises of future benefit to his own practice.

***16** Finally, the Court finds that the risk created by Ankcorn's conduct was not harmless. Although there were ultimately fewer than 4,000 requests to opt out of the class,

the Court has little trouble determining that his conduct risked significantly impairing the plaintiffs' bargaining position during the fourth and final mediation. The plaintiffs were, of course, ultimately able to come away with an objectively more desirable settlement than they had originally been offered. But the plaintiff class may have been able to leverage an even larger settlement amount if the highly valuable class members from whom Ankcorn had solicited opt-outs—which the parties appear to have learned about between the third and fourth mediations—had remained in the class. Crediting Ankcorn's own testimony, the letters he sent resulted in class members whose claims were cumulatively worth tens or even hundreds of millions of dollars opting out of the class.[4] It is not possible to quantify exactly what effect this loss in individual claim value to be discharged by the settlement had on the agreement eventually reached by the parties. But it is clear that by encouraging high-value class members to opt out of the class to pursue individual lawsuits, Ankcorn harmed the class's interests in violation of his fiduciary duty to it.

3. Consequences

Based on the record, the April 5 evidentiary hearing and corresponding briefs, and the discussion here, the Court exercises its authority and duty under Rule 23(h) to assess the reasonableness of the fee distribution proposed by the parties. *See Douglas*, 328 F.R.D. at 220-24; *In re High Sulfur Content Gasoline Prods. Liab. Litig.*, 517 F.3d 220, 227 (5th Cir. 2008) ("[T]he district court has an independent duty under Federal Rule of Civil Procedure 23 to the class and the public to ensure that attorneys' fees are reasonable and divided up fairly among plaintiffs' counsel."). For the reasons stated below, the Court concludes that the proposed fee distribution must be modified. *See In re Vitamins Antitrust Litig.*, 398 F. Supp. 2d 209, 228-35 (D.D.C. 2005) (exercising this authority to modify fee distribution)

As noted, the amended settlement seeks $ 4,789,250 in attorneys' fees—$ 500,000 less than the original settlement. The Court already expressed its opinion that this amount appears fair and reasonable. According to their submissions to this Court, the five firms representing the plaintiffs have agreed to the following distribution of the fees: (1) 75% split among the Terrell Marshall Law Group PLLC, Ankcorn Law Firm, PC, and the Cabrera Firm, APC; and (2) the remaining 25% split between Burke Law Offices, LLC and Heaney Law Offices, LLC. It is unclear from the parties' submissions precisely how the distribution to each individual firm will be calculated, but the plaintiffs' statement of lodestar hours may offer some clues. That statement suggests that the value of services provided by each firm are distributed as follows: Terrell Marshall (about 31%); Burke (about 31%); Ankcorn (about 23%); Cabrera (about 10.5%); and Heaney (about 4%). If one applies these same percentages to the reduced settlement amount, Ankcorn may be awarded well over $ 1,000,000 in fees if distribution is left to the parties.

Given Ankcorn's actions, the Court concludes that it is appropriate to reduce his fee. The Seventh Circuit has held that district courts "must set a fee by approximating the terms that would have been agreed to ex ante, had negotiations occurred." *Americana Art China Co.*, 743 F.3d at 246-47. Any such approximation must account for Ankcorn's conduct. Specifically, by encouraging members of the plaintiff class with valuable claims to abandon the class, Ankcorn put settlement at risk in clear conflict with the interests of the class as a whole. But the Court must also acknowledge the good result that plaintiffs' counsel collectively obtained for the class; the amended settlement includes a $ 21,500,000 fund, the lion's share of which is to be distributed to class members. Balancing these considerations, the Court concludes that the Ankcorn Law Firm is entitled to no more than the value of its services—$ 601,697.50, according to the plaintiffs' lodestar hours statement—and not to any risk multiplier.

***17** Ankcorn has lost any claim to a risk multiplier by creating unnecessary and unacceptable risk. Risk multipliers are intended to compensate attorneys for the risk of nonpayment inherent in contingency fee cases. *See Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 483 U.S. 711, 732 (1987) (O'Connor, J., concurring); *In re Synthroid Mktg. Litig.*, 264 F.3d at 718-19. Here, plaintiffs' counsel faced significant risk of nonpayment after the first two unsuccessful mediations. But, rather than working to reduce this risk by facilitating resolution of the class's claims, Ankcorn's conduct actively and materially increased it by siphoning away valuable claims, thereby weakening the plaintiff class's bargaining position in subsequent negotiations. Likewise, Ankcorn's actions drove up the number of opt-outs, increasing the probability of triggering a blow-up provision like the one that was later added—and which, as discussed above, Ankcorn should have anticipated likely would be included in any eventual settlement.

Because Ankcorn's conduct increased the risk of nonpayment for him and for his co-counsel, the Court will limit the Ankcorn Law Firm to the $ 601,697.50 that Ankcorn

represented the firm's services to be worth in the April 2018 statement of lodestar hours. This resolution compensates Ankcorn fairly for his contributions to the favorable outcome in the case while simultaneously holding him to account for the unacceptable risk that he created for his clients and colleagues. The value of any additional fee to which Ankcorn may otherwise have been entitled—whether by way of a risk multiplier, by agreement among his group of class counsel, or otherwise—shall return to the fund from which claims are paid and shall be distributed proportionally to claimants. *See NBTY, Inc.*, 772 F.3d at 786 ("The simple and obvious way for the judge to correct an excessive attorney's fee for a class action lawyer is to increase the share of the settlement received by the class, at the expense of class counsel.").

This modification of attorneys' fees is not intended to affect the other attorneys who jointly represented the class. The total fee award is reduced only by the difference between the amount that the Ankcorn Law Firm would have received had the appropriate multiplier been applied to its portion of the award and the firm's lodestar amount of $ 601,697.50. The Court leaves it to class counsel to calculate that figure precisely. Terrell Marshall, Burke, Cabrera, and Heaney remain free to distribute the remaining attorneys' fees according to their own internal agreement or in any other reasonable manner—so long as that distribution does not allocate Ankcorn more than the amount awarded by the Court in this order.

Conclusion

For the foregoing reasons, the motion for final approval of the amended settlement is granted subject to the modifications described here, while the motion for attorneys' fees is granted in part. The Court modifies the settlement such that the distribution of the $ 21,500,000 common fund is as follows: (1) $ 1,600,000 to Epiq for the costs of notice and administration; (2) $ 96,380 to plaintiffs' counsel for costs; (3) $ 4,789,250 to plaintiffs' counsel for fees, less any amount greater than $ 601,697.50 that the Ankcorn Law Firm would have received by way of a risk multiplier, agreement among counsel, or otherwise; (4) $ 30,000 to named plaintiffs Keith Snyder, Susan Mansanarez, and Tracee Beecroft as incentive awards; and (5) the remainder to compensate claimants as set forth herein.

The Court also orders class counsel to submit, by May 21, 2019, a status report detailing (1) the precise amount that the Ankcorn Law Firm would be receiving but for the Court's order (which per this order must be reallocated to the fund from which claimants are compensated) and (2) how class counsel intend to allocate the remaining attorneys' fees award. Counsel are also to submit by that date a draft judgment and order embodying the Court's rulings.

All Citations

Not Reported in Fed. Supp., 2019 WL 2103379

Footnotes

1 The parties report that Ocwen has already implemented the changes required by the original proposed injunction. *See* Pls.' Br. in Supp. of Mot. for Approval of First Am. to Settlement Agreement & Release, dkt. no. 350, at 4. The amended settlement goes further and sets out specific requirements for how the injunction is to be maintained by Ocwen during and after its adoption of new loan servicing technology. *See* First Am. to Settlement Agreement & Release, Ex. 1 to Terrell Decl., dkt. no. 353, ¶¶ 4-5.

2 Numbers are drawn from the supplemental declaration of Michael R. O'Connor, the vice president of class administrator Epiq Class Actions & Claim Solutions, Inc. *See* dkt. no. 354.

3 The Court includes this limitation in light of the later discussion of Mark Ankcorn.

4 Ankcorn testified that he sent 2,000 letters to members of the class who had received between approximately 500 and 1,200 calls from Ocwen. He further testified that 10-12% of recipients pursued opt-out requests. Taking the lower end of both ranges and multiplying by the statutory damages range, the opt-out claims

were potentially worth $ 150,000,000. If all of the recipients had opted out, which Ankcorn could not have conclusively ruled out at the time he sent the letters, the class would have lost more than $ 1 billion in potential individual claims with which to bargain.

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