

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

JOHN STIDWELL, individually, and on behalf)	
of all others similarly situated,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 1:19-cv-00770
)	
KRONOS, INC. and NFI INDUSTRIES, INC.)	Judge
)	
Defendant.)	

NOTICE OF REMOVAL

Defendant NFI INDUSTRIES, INC. (“NFI Industries”), by and through its attorneys FAEGRE BAKER DANIELS LLP, respectfully removes the above-captioned matter from the Circuit Court of Cook County, Chancery Division, to the United States District Court for the Northern District of Illinois pursuant to 28 U.S.C. §§ 1332, 1367, 1441, and 1446. In support of its Notice of Removal, NFI Industries states as follows:

I. Procedural History

1. On October 31, 2018, Plaintiff John Stidwell filed his initial complaint in the Circuit Court of Cook County, Chancery Division, alleging a putative class action for violations of the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*, as well as for negligence, against NFI, LLC—the entity Plaintiff initially identified as his former employer—and Kronos, Inc. (“Kronos”).

2. But NFI, LLC is a limited liability company that is separate from, and in no way affiliated with, NFI Industries. (Ex. 1 to Pls.’ Mot. for Leave to File Amended Compl.) NFI, LLC’s sole member is an Illinois farmer who is a citizen of Illinois. (*Id.* (identifying Alex Marshall as the sole member of NFI, LLC and further identifying Mr. Marshall’s address as Leland,

Illinois).) Plaintiff served NFI, LLC with the Summons and Complaint on November 27, 2018. (*Id.*)

3. Defendant Kronos is incorporated in the State of Massachusetts and has its principal place of business in Massachusetts; accordingly, it is a citizen of Massachusetts. (*See* Illinois Secretary of State filings for Kronos Incorporated, File No. 52387884).

4. Despite not being named in the initial complaint, NFI Industries acknowledged receipt of the summons and complaint on December 7, 2018. NFI Industries is a corporation incorporated under the laws of the State of Delaware with its principal place of business in New Jersey because its headquarters, which is the location from which company officers and top management provide direction to the rest of the organization, is in New Jersey. (Exhibit A, Decl. of Jeffrey Venella ¶ 3). Accordingly, it is a citizen of both Delaware and New Jersey.

5. At the time NFI Industries acknowledged receipt of the complaint, multiple courts in this district dismissed or remanded BIPA claims just like the one Plaintiff pleads here for lack of Article III standing, or the parties stipulated to remand after removal. *See e.g., McGinnis v. United States Cold Storage, Inc.*, 2019 U.S. Dist. LEXIS 848, No. 17-cv-08054 (N.D. Ill. Jan. 3, 2019); *Rivera v. Google*, 2018 U.S. Dist. LEXIS 217710 (N.D. Ill. Dec. 29, 2018); *Johnson v. United Air Lines, Inc.*, 2018 U.S. Dist. LEXIS 127959 (N.D. Ill. July 31, 2018); *Aguilar v. Rexnord LLC*, 2018 U.S. Dist. LEXIS 110765 (N.D. Ill. July 3, 2018); *Goings v. UGN, Inc.*, 2018 U.S. Dist. LEXIS 99273 (N.D. Ill. June 13, 2018); *Howe v. Speedway LLC*, 2018 U.S. Dist. LEXIS 90342 (N.D. Ill. May 31, 2018).

6. Thus, prevailing authority held that BIPA claims like Plaintiff's did not satisfy Article III's standing requirement, which is a necessary predicate for federal court jurisdiction (even if the statutory requirements for subject matter jurisdiction are otherwise satisfied). *Smith*

v. Wisc. Dep't of Agric., 23 F.3d 1134, 1142 (7th Cir. 1994) (“Standing [is a] . . . jurisdictional prerequisite[.]” (citing *In re United States Catholic Conference*, 885 F.2d 1020, 1023 (2d Cir. 1989) (“when a plaintiff lacks standing to bring suit, a court has no subject matter jurisdiction over the case.”)); *Howe v. Speedway*, 2018 U.S. Dist. LEXIS 90342, at *8 (“Where a plaintiff does not have Article III standing, a federal court lacks subject-matter jurisdiction to hear his or her claims.”); *Goings v. UGN, Inc.*, 2018 U.S. Dist. LEXIS 99273, at *12 (concluding the court lacked subject matter jurisdiction because the plaintiff lacked Article III standing); *Figueroa v. Am. Bankers Ins. Co.*, 517 F. Supp. 2d 1266, n.5 (D. Colo. 2006) (“Both parties assert that 28 U.S.C. § 1332 provides for this Court’s subject-matter jurisdiction on the grounds of diversity. Although true, this misses the point that standing is a component of jurisdiction that must exist independently of any statutory basis for subject-matter jurisdiction.”)).

7. On December 31, 2018, Plaintiff filed a motion for leave to amend his complaint to name “the correct defendant, NFI Industries, Inc.,” and to dismiss NFI, LLC from the action.

8. On January 8, 2019, the Circuit Court of Cook County, Chancery Division, granted Plaintiff’s motion and dismissed NFI, LLC from the case with prejudice. As of the filing of this Notice of Removal, Plaintiff has not yet filed his First Amended Complaint to add NFI Industries as a party.

9. On January 25, 2019, the Illinois Supreme Court definitively established that a BIPA plaintiff who has suffered even a technical or procedural violation of the statute, without any allegations of any additional harm or injury, has suffered an injury in fact. *Rosenbach v. Six Flags Entertainment Corporation*, 2019 IL 123186 (Ill. Sup. Ct. 2019). In *Rosenbach*, the Illinois Supreme Court explained:

When a private entity fails to adhere to the statutory procedures, as defendants are alleged to have done here, the right of the individual to maintain his or her biometric

privacy vanishes into thin air. The precise harm the Illinois legislature sought to prevent is then realized. This is no mere technicality. The injury is real and significant.

Id. at 34 (quotations and alterations omitted).

10. Thus, with the issuance of *Rosenbach*, the Illinois Supreme Court made clear that Plaintiff has alleged an injury in fact under Illinois law. As a result, this Court has—for the first time—original jurisdiction over the controversy between Plaintiff and Defendants. *See Wilkins v. Just Energy Grp., Inc.*, 308 F.R.D. 170, 178 (N.D. Ill. 2015) (“In the absence of Illinois Supreme Court authority, a federal court applying Illinois law must attempt to predict how the Illinois Supreme Court would decide an issue. . . . In making that prediction, the decisions of the Illinois Appellate Court are non-binding but persuasive unless the court has a compelling reason to doubt that they have stated the law correctly.” (quotations and citations omitted)); *Lucas v. Jos. A. Bank Clothiers*, 2015 U.S. Dist. LEXIS 61550, at *12 (S.D. Cal. May 11, 2015) (“Where state-created interests are at issue, federal courts look to state law to define the ‘injury’ a plaintiff may assert to meet Article III requirements.”).

11. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings, and orders served upon defendants is attached hereto as Exhibit B, including Plaintiff’s Motion for Class Certification and Request for Discovery of Certification Issues, filed November 1, 2018, and the stay issued by the state court, most recently reflected in its January 8, 2019 Order.

II. This Court has Jurisdiction Under the Class Action Fairness Act.

12. Pursuant to 28 U.S.C. § 1446(b)(3), Defendant NFI Industries has timely filed this Notice of Removal because the Illinois Supreme Court did not issue its ruling in *Rosenbach* until January 25, 2019, which afforded this Court with original jurisdiction over this controversy for the first time and thereby first made this case removable.

13. The Class Action Fairness Act provides the statutory basis for original jurisdiction in federal court over putative class actions in which (1) the aggregate number of members in the proposed class is 100 or more; (2) the amount in controversy “exceeds the sum or value of \$5,000,000, exclusive of interests and costs”; and (3) the parties are minimally diverse, meaning “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332 (d)(2)(A), (d)(5)(B).

14. The putative class action in either the initial Complaint or the proposed First Amended Complaint satisfies the requirements of CAFA. While the precise number in the class cannot be determined until discovery, the aggregate putative class size according to Plaintiff’s allegations is, at a minimum, 4,500 members. (Exhibit A, Decl. of Jeffrey Venella ¶¶ 5, 6).

15. Both the currently operative complaint and the proposed amended complaint allege reckless or intentional violations of BIPA, which carry statutory damages of \$5,000 “per violation.” *See* 740 ILCS 14/20. Thus, even if each class member is entitled to recover for only one “violation,” recovery of greater than the \$5,000,000 jurisdictional threshold is not “legally impossible” ($4,500 * \$5,000 = \$22,500,000$). *See Spivey v. Vertrue*, 528 F.3d 982, 986 (7th Cir. 2008).

16. The parties are also minimally diverse in that Plaintiff is a citizen of Illinois, NFI Industries is a citizen of New Jersey and Delaware, and Kronos is a citizen of Massachusetts.

III. This Court has Complete Diversity Jurisdiction.

17. Alternatively, with the dismissal of NFI, LLC, this Court also has complete diversity jurisdiction pursuant to 28 U.S.C. § 1332(a).

18. As with removal under CAFA, and pursuant to 28 U.S.C. § 1446(b)(3), Defendant NFI Industries has timely filed this Notice of Removal because the Illinois Supreme Court did not

issue its ruling in *Rosenbach* until January 25, 2019, which afforded this Court with original jurisdiction over this controversy for the first time and thereby first made this case removable.

19. Furthermore, and setting aside whether *Rosenbach* provided this Court with original jurisdiction for the first time on January 25, 2019, removal is still timely because it is within 30 days of receipt of the Order dismissing NFI, LLC—a citizen of Illinois—and creating complete diversity between the parties for the first time. *See Camico Mut. Ins. Co. v. Citizens Bank*, 474 F.3d 989 (7th Cir. 2007) (“For diversity jurisdiction purposes, the citizenship of an LLC is the citizenship of each of its members.”).

20. Plaintiff is a citizen of Illinois, NFI Industries is a citizen of New Jersey and Delaware, and Kronos is a citizen of Massachusetts.

21. In addition, the amount in controversy exceeds \$75,000 because Plaintiff seeks a statutory penalty for “each violation” of up to \$5,000, and because Plaintiff alleges that each time he clocked into and out of work using his “fingerprint” over his alleged 23-month period of employment constituted an independent violation. (Complaint ¶¶ 30, 52, 55, 61). Based on this approach, even the most conservative estimate would have Plaintiff clocking in and out far in excess of the 16 times necessary to exceed the jurisdictional amount-in-controversy threshold (i.e., $16 * \$5,000 = \$80,000$) over his alleged 23 months of employment.

22. Kronos consents to removal of this action pursuant to 28 U.S.C. § 1446(b)(2)(C).

IV. Venue and Supplemental Jurisdiction Are Proper Here.

23. This Court has supplemental jurisdiction over Plaintiff’s remaining state law claim for negligence under 28 U.S.C. § 1367(a) because it is part of the same case or controversy as Plaintiff’s BIPA claim.

24. Venue is proper in this Court pursuant to 28 U.S.C. § 1441(a), which permits any civil action brought in any state court in which the District Courts of the United States have original jurisdiction to be removed to the District Court of the United States for that district and division embracing the place where the state court action is pending.

25. Defendant NFI Industries reserves the right to amend or supplement this Notice of Removal.

26. In accordance with 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Clerk of the Circuit Court of Cook County, Chancery Division, and is being served on Plaintiff.

27. Defendant NFI Industries submits this Notice of Removal without waiving any defenses to the claims asserted by Plaintiff or conceding that Plaintiff pled claims upon which relief can be granted.

Dated: February 6, 2019

FAEGRE BAKER DANIELS LLP

s/ Gregory P. Abrams

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CERTIFICATE OF SERVICE

The undersigned attorney hereby states that on February 6, 2019 he filed the foregoing document using the CM/ECF Filing System, which will send an email notification to the attorneys listed below. The foregoing document will also be served via overnight delivery upon all attorneys of record.

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s/ Gregory P. Abrams

EXHIBIT A

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

JOHN STIDWELL, individually, and on behalf)	
of all others similarly situated,)	
)	
Plaintiff,)	
)	
v.)	Case No.:
)	
KRONOS, INC.,)	Judge
)	
Defendant.)	

DECLARATION IN SUPPORT OF NFI INDUSTRIES' INC., NOTICE OF REMOVAL

I, Jeffrey L. Venella, declare and state as follows:

1. I am currently employed as the Payroll Director providing payroll services to NFI Industries, Inc. ("NFI Industries") and its affiliates. I have held this job since November 5, 2012.
2. I make this declaration based on my personal knowledge and on my review of company records maintained in the regular course of NFI Industries' business.
3. NFI Industries is a corporation incorporated under the laws of the state of Delaware. Its company headquarters are in Cherry Hill, New Jersey, which is the location from which top management personnel direct the operations of the company. For example, the CEO and CFO who oversee NFI Industries work out of the New Jersey office. In addition, the Finance and Human Resources Departments that support NFI Industries are also located in Cherry Hill, New Jersey.
4. I understand that the Plaintiff in this case seeks to certify a class of "all individuals working for NFI in the State of Illinois who had their fingerprints collected, captured, received, or otherwise obtained or disclosed by any Defendant during the applicable statutory period."

5. My job duties as Payroll Director include being familiar with and having access to the company's time reporting and payroll systems. I have reviewed company records relating to individuals who have utilized timeclocks supplied under the Kronos Sales, Software, License & Services Agreement between NFI Industries and Kronos, Inc. for the five year period beginning October 31, 2013.

6. There are at least 4,500 individuals who fit that description.

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

Dated: February 6, 2019



Jeffrey L. Venella, Director of Payroll

EXHIBIT B

12-Person Jury

FILED
10/31/2018 10:20 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018CH13599

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

JOHN STIDWELL, individually,)
and on behalf of all others similarly situated,)

Plaintiff,)

v.)

NFI, LLC and KRONOS, INC.,)

Defendants.)

Case No. 2018CH13599

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff John Stidwell (“Stidwell” or “Plaintiff”), by and through his attorneys, individually and on behalf of all others similarly situated (the “Class”), brings the following Class Action Complaint (“Complaint”) pursuant to the Illinois Code of Civil Procedure, 735 ILCS §§ 5/2-801 and 2-802, against NFI Industries (“NFI”) and Kronos, Inc. (“Kronos”) (collectively, “Defendants”), their subsidiaries and affiliates, to redress and curtail Defendants’ unlawful collection, use, storage, and disclosure of Plaintiff’s sensitive biometric data. Plaintiff alleges as follows upon personal knowledge as to himself, his own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

NATURE OF THE ACTION

1. Defendant NFI is a warehouse and distribution center that provides transit, warehousing, brokerage, and real estate services to clients. NFI has locations throughout the Chicagoland area.

2. When NFI hires an employee, he or she is enrolled in its Kronos employee database. NFI uses the employee database to monitor the time worked by NFI hourly employees.

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3. While many employers use conventional methods for tracking time worked (such as ID badge swipes or punch clocks), NFI employees are required to have their fingerprints scanned by a biometric timekeeping device.

4. Biometrics are not relegated to esoteric corners of commerce. Many businesses – such as Defendants’ – and financial institutions have incorporated biometric applications into their workplace in the form of biometric timeclocks, and into consumer products, including such ubiquitous consumer products as checking accounts and cell phones.

5. Unlike ID badges or time cards – which can be changed or replaced if stolen or compromised – fingerprints are unique, permanent biometric identifiers associated with each employee. This exposes NFI’s employees to serious and irreversible privacy risks. For example, if a database containing fingerprints or other sensitive, proprietary biometric data is hacked, breached, or otherwise exposed – like in the recent Yahoo, eBay, Equifax, Uber, Home Depot, MyFitnessPal, Panera, Whole Foods, Chipotle, Omni Hotels & Resorts, Trump Hotels, and Facebook/Cambridge Analytica data breaches or misuses – employees have no means by which to prevent identity theft, unauthorized tracking or other unlawful or improper use of this highly personal and private information.

6. In 2015, a data breach at the United States Office of Personnel Management exposed the personal identification information, including biometric data, of over 21.5 million federal employees, contractors, and job applicants. U.S. Off. of Personnel Mgmt., *Cybersecurity Incidents* (2018), available at <https://www.opm.gov/cybersecurity/cybersecurity-incidents>.

7. A black market already exists for biometric data. Hackers and identity thieves have targeted Aadhaar, the largest biometric database in the world, which contains the personal and biometric data – including fingerprints, iris scans, and a facial photograph – of over a billion Indian

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citizens. See Vidhi Doshi, *A Security Breach in India Has Left a Billion People at Risk of Identity Theft*, The Washington Post (Jan. 4, 2018), available at https://www.washingtonpost.com/news/worldviews/wp/2018/01/04/a-security-breach-in-india-has-left-a-billion-people-at-risk-of-identity-theft/?utm_term=.b3c70259f138.

8. In January 2018, an Indian newspaper reported that the information housed in Aadhaar was available for purchase for less than \$8 and in as little as 10 minutes. Rachna Khaira, *Rs 500, 10 Minutes, and You Have Access to Billion Aadhaar Details*, The Tribune (Jan. 4, 2018), available at <http://www.tribuneindia.com/news/nation/rs-500-10-minutes-and-you-have-access-to-billion-aadhaar-details/523361.html>.

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

10. Notwithstanding the clear and unequivocal requirements of the law, Defendants disregard NFI employees’ statutorily protected privacy rights and unlawfully collect, store, disseminate, and use employees’ biometric data in violation of BIPA. Specifically, Defendants have violated and continue to violate BIPA because they did not and continue not to:

- a. Properly inform Plaintiff and others similarly situated in writing of the specific purpose and length of time for which their fingerprints were being collected, stored, disseminated and used, as required by BIPA;
- b. Provide a publicly available retention schedule and guidelines for permanently destroying Plaintiff’s and other similarly-situated individuals’ fingerprints, as required by BIPA; and
- c. Receive a written release from Plaintiff and others similarly situated to collect, store, disseminate or otherwise use their fingerprints, as required by BIPA.

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11. Plaintiff and other similarly-situated individuals are aggrieved because they were not: (1) informed in writing of the purpose and length of time for which their fingerprints were being collected, stored, disseminated and used; (2) provided a publicly available retention schedule or guidelines for permanent destruction of the biometric data; and (3) provided (nor did they execute) a written release, as required by BIPA.

12. Upon information and belief, Defendant NFI improperly discloses its employees' fingerprint data to at least one out-of-state third-party vendor, Kronos.

13. Upon information and belief, both Defendants improperly disclose employees' fingerprint data to other, currently unknown, third parties, including, but not limited to third parties that host biometric data in their data center(s).

14. Upon information and belief, each Defendant lacks retention schedules and guidelines for permanently destroying Plaintiff's and other similarly-situated individuals' biometric data and have not and will not destroy their biometric data as required by BIPA.

15. Plaintiff and others similarly situated are aggrieved by each Defendant's failure to destroy their biometric data when the initial purpose for collecting or obtaining such data has been satisfied or within three years of the employee's last interactions with the company.

16. Plaintiff and others similarly situated have suffered an injury in fact based on each Defendant's improper disclosures of their biometric data to third parties.

17. Plaintiff and others similarly situated have suffered an injury in fact based on each Defendant's violations of their legal rights.

18. These violations have raised a material risk that Plaintiff's and other similarly-situated individuals' biometric data will be unlawfully accessed by third parties. The Illinois

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Attorney General has ranked identity theft as the top scam targeting Illinois residents. (*See, e.g.,* Exhibit A).

19. Employees have a proprietary right to control their biometric information. In failing to comply with the requirements of BIPA, employers intentionally interfere with each employee's right of possession and control over their valuable, unique, and permanent biometric data.

20. Each Defendant is directly liable for, and had actual knowledge of, the BIPA violations alleged herein.

21. Accordingly, Plaintiff, on behalf of himself as well as the putative Class, seeks an Order: (1) declaring that each Defendant's conduct violates BIPA; (2) requiring each Defendant to cease the unlawful activities discussed herein; and (3) awarding statutory damages to Plaintiff and the proposed Class.

PARTIES

22. Plaintiff John Stidwell is a natural person and a citizen of the State of Illinois.

23. Defendant NFI is a limited liability corporation existing under the laws of the State of New Jersey, with its principal place of business in Cherry Hill, New Jersey. NFI is registered with the Illinois Secretary of State and conducts business in the State of Illinois, including Cook County.

24. Defendant Kronos, Inc. is a Massachusetts corporation registered to do business in Illinois. Upon information and belief, Kronos provides biometric timekeeping devices to NFI.

JURISDICTION AND VENUE

25. This Court has jurisdiction over Defendants pursuant to 735 ILCS 5/2-209 because they conduct business transactions in Illinois, committed statutory violations and tortious acts in Illinois, and are registered to conduct business in Illinois.

26. Venue is proper in Cook County because Plaintiff resides in Cook County.

FACTUAL BACKGROUND

I. The Biometric Information Privacy Act.

27. Major national corporations started using Chicago and other locations in Illinois in the early 2000s to test “new applications of biometric-facilitated financial transactions, including finger-scan technologies at grocery stores, gas stations, and school cafeterias” 740 ILCS 14/5(c). Given its relative infancy, an overwhelming portion of the public became wary of this then-growing yet unregulated technology. *See* 740 ILCS 14/5.

28. 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. The bankruptcy was alarming to the Illinois legislature because there was suddenly a serious risk that millions of fingerprint records – which, similar to other 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 used the company’s fingerprint scanners were completely unaware the scanners were not 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.

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

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30. Additionally, to ensure compliance, BIPA provides that, for each violation, the prevailing party may recover \$1,000 or actual damages, whichever is greater, for negligent violations and \$5,000, or actual damages, whichever is greater, for intentional or reckless violations. 740 ILCS 14/20.

31. 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:

- a. Informs the subject in writing that a biometric identifier or biometric information is being collected or stored;
- b. 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
- c. Receives a written release executed by the subject of the biometric identifier or biometric information.”

See 740 ILCS 14/15(b).

32. 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.

33. 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. *Id.*

34. BIPA also establishes standards for how companies must handle Illinois citizens’ biometric identifiers and biometric information. *See, e.g.,* 740 ILCS 14/15(c)-(d). For example,

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BIPA prohibits private entities from disclosing a person's or customer's biometric identifier or biometric information without first obtaining consent for that disclosure. *See* 740 ILCS 14/15(d)(1).

35. BIPA also prohibits selling, leasing, trading, or otherwise profiting from a person's biometric identifiers or biometric information (740 ILCS 14/15(c)) and 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).

36. The Illinois legislature enacted BIPA due to the increasing use of biometric data in financial and security settings, the general public's hesitation to use biometric information, and – most significantly – the unknown ramifications of biometric technology. Biometrics are biologically unique to the individual and, once compromised, an individual is at heightened risk for identity theft and left without any recourse.

37. BIPA provides individuals with a private right of action, protecting their right to privacy regarding their biometrics as well as protecting their rights to know the precise nature for which their biometrics are used and how they are being stored and ultimately destroyed. Unlike other statutes that only create a right of action if there is a qualifying data breach, BIPA strictly regulates the manner in which entities may collect, store, use, and disseminate biometrics and creates a private right of action for lack of statutory compliance.

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38. Plaintiff, like the Illinois legislature, recognizes how imperative it is to keep biometric information secure. Biometric information, unlike other personal identifiers such as a social security number, cannot be changed or replaced if hacked or stolen.

II. Defendants Violate the Biometric Information Privacy Act.

39. By the time BIPA passed through the Illinois legislature in mid-2008, most companies who had experimented using employees' biometric data as an authentication method stopped doing so.

40. However, Defendants failed to take note of the shift in Illinois law governing the collection and use of biometric data. As a result, each Defendant continues to collect, store, use, and disseminate employees' biometric data in violation of BIPA.

41. Specifically, when employees are hired by NFI, they are required to have their fingerprints captured and stored to enroll them in its Kronos employee database(s).

42. NFI uses an employee time tracking system supplied by Kronos that requires employees to use their fingerprint as a means of authentication. Unlike a traditional timeclock, all NFI employees must use their fingerprints to "punch" in and out of work.

43. Upon information and belief, NFI fails to inform its employees that it discloses their fingerprint data to at least one out-of-state third-party vendor, Kronos; fails to inform its employees that it discloses their fingerprint data to other, currently unknown third parties, which host the biometric data in their data centers; fails to inform its employees of the purposes and duration for which it collects their sensitive biometric data; and fails to obtain written releases from employees before collecting their fingerprints.

44. Upon information and belief, Kronos fails to inform NFI employees that it discloses their fingerprint data to other, currently unknown third parties, which host the biometric data in

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their data centers; fails to inform NFI employees of the purposes and duration for which it collects their sensitive biometric data; and fails to obtain written releases from employees before collecting their fingerprints.

45. Furthermore, each Defendant fails to provide employees with a written, publicly available policy identifying their retention schedule and guidelines for permanently destroying employees' fingerprints when the initial purpose for collecting or obtaining their fingerprints is no longer relevant, as required by BIPA.

46. The Pay by Touch bankruptcy, which triggered the passage of BIPA, highlights why such conduct – where individuals are aware that they are providing a fingerprint but are not aware to whom or for what purposes they are doing so – is dangerous. This bankruptcy spurred Illinois citizens and legislators into realizing that it is crucial for individuals to understand when providing biometric identifiers such as a fingerprint, who exactly is collecting their biometric data, where it will be transmitted, for what purposes it will be transmitted, and for how long. Each Defendant disregards these obligations and their employees' statutory rights and instead unlawfully collect, store, use, and disseminate employees' biometric identifiers and information, without ever receiving the individual's informed written consent required by BIPA.

47. Upon information and belief, each Defendant lacks retention schedules and guidelines for permanently destroying Plaintiff's and other similarly-situated individuals' biometric data and have not and will not destroy Plaintiff's and other similarly-situated individuals' biometric data when the initial purpose for collecting or obtaining such data has been satisfied or within three years of the employee's last interaction with each company.

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48. NFI employees are not told what might happen to their biometric data if and when any Defendant merges with another company or worse, if and when each Defendant's business folds, or when the other third parties' that have received their biometric data businesses fold.

49. Since Defendants neither publish BIPA-mandated data retention policies nor disclose the purposes for their collection of biometric data, NFI employees have no idea whether any Defendant sells, discloses, re-discloses, or otherwise disseminates their biometric data. Moreover, Plaintiff and others similarly situated are not told to whom any Defendant currently discloses their biometric data to, or what might happen to their biometric data in the event of a merger or a bankruptcy.

50. These violations have raised a material risk that Plaintiff's and other similarly-situated individuals' biometric data will be unlawfully accessed by third parties.

51. By and through the actions detailed above, Defendants disregarded Plaintiff's and other similarly-situated individuals' legal rights in violation of BIPA.

III. Plaintiff John Stidwell's Experience

52. Plaintiff John Stidwell worked as a Forklift Operator for NFI from November 2016 until October 16, 2018.

53. As a condition of employment, Stidwell was required to scan his fingerprint so NFI could use it as an authentication method to track his time.

54. NFI subsequently stored Stidwell's fingerprint data in its Kronos database(s).

55. Stidwell was required to scan his fingerprint each time he began and ended his workday.

56. Stidwell has never been informed of the specific limited purposes or length of time for which any Defendant collected, stored, used, and/or disseminated his biometric data.

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57. Stidwell has never been informed of any biometric data retention policy developed by any Defendant, nor has he ever been informed whether any Defendant will ever permanently delete his biometric data.

58. Stidwell has never been provided with nor ever signed a written release allowing any Defendant to collect, store, use or disseminate his biometric data.

59. Stidwell has continuously and repeatedly been exposed to the risks and harmful conditions created by each Defendants' violations of BIPA alleged herein.

60. No amount of time or money can compensate Stidwell if his biometric data is compromised by the lax procedures through which each Defendant captured, stored, used, and disseminated his and other similarly-situated individuals' biometrics, and Stidwell would not have provided his biometric data to any Defendant if he had known that they would retain such information for an indefinite period of time without his consent.

61. A showing of actual damages is not necessary in order to state a claim under BIPA. Nonetheless, Stidwell has been aggrieved because he suffered an injury-in-fact based on each Defendant's violations of his legal rights. Defendants intentionally interfered with Stidwell's right to possess and control his own sensitive biometric data. Additionally, Stidwell suffered an invasion of a legally protected interest when each Defendant secured his personal and private biometric data at a time when it had no right to do so, a gross invasion of his right to privacy. BIPA protects employees like Stidwell from this precise conduct, and Defendants had no lawful right to secure this data or share it with third parties absent a specific legislative license to do so.

62. Stidwell's biometric information is economically valuable, and such value will increase as the commercialization of biometrics continues to grow. As such, Stidwell was not sufficiently compensated by any Defendant for its retention and use of his and other similarly-

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situated employees' biometric data. Stidwell would not have agreed to work for NFI for the compensation he received if he had known that Defendants would retain his biometric data indefinitely.

63. Stidwell also suffered an informational injury because each Defendant failed to provide him with information to which he was entitled by statute. Through BIPA, the Illinois legislature has created a right: an employee's right to receive certain information prior to an employer securing their highly personal, private and proprietary biometric data; and an injury – not receiving this extremely critical information.

64. Further, Stidwell suffered an injury in fact because each Defendant improperly disseminated his biometric identifiers and/or biometric information to third parties, including but not limited to Kronos and any other third party that hosted the biometric data in their data centers, in violation of BIPA.

65. Pursuant to 740 ILCS 14/15(b), Stidwell was entitled to receive certain information prior to Defendants securing his biometric data; namely, information advising him of the specific limited purpose(s) and length of time for which each Defendant collects, stores, uses and disseminates his private biometric data; information regarding each Defendant's biometric retention policy; and, a written release allowing each Defendant to collect, store, use, and disseminate his private biometric data. By depriving Stidwell of this information, Defendants injured him. *Public Citizen v. U.S. Department of Justice*, 491 U.S. 440, 449 (1989); *Federal Election Commission v. Akins*, 524 U.S. 11 (1998).

66. Finally, as a result of each Defendant's conduct, Stidwell has experienced personal injury in the form of mental anguish. For example, Stidwell experiences mental anguish and injury when contemplating what would happen to his biometric data if any Defendant went bankrupt,

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whether any Defendant will ever delete his biometric information, and whether (and to whom) any Defendant would share his biometric information.

67. Stidwell has plausibly inferred actual and ongoing harm in the form of monetary damages for the value of the collection and retention of his biometric data; in the form of monetary damages by not obtaining additional compensation as a result of being denied access to material information about Defendants' policies and practices; in the form of the unauthorized disclosure of his confidential biometric data to third parties; in the form of interference with his right to control and possess his confidential biometric data; and, in the form of the continuous and ongoing exposure to substantial and irreversible loss of privacy.

68. As Stidwell is not required to allege or prove actual damages in order to state a claim under BIPA, he seeks statutory damages under BIPA as compensation for the injuries caused by Defendants.

CLASS ALLEGATIONS

69. Pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/2-801, Plaintiff brings claims on his own behalf and as a representative of all other similarly-situated individuals pursuant to BIPA, 740 ILCS 14/1, *et seq.*, to recover statutory penalties, prejudgment interest, attorneys' fees and costs, and other damages owed.

70. As discussed *supra*, Section 14/15(b) of BIPA prohibits a company from, among other things, collecting, capturing, purchasing, receiving through trade, or otherwise obtaining a person's or a customer's biometric identifiers or biometric information, unless it first (1) informs the individual in writing that a biometric identifier or biometric information is being collected or stored; (2) informs the individual in writing of the specific purpose and length of time 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.

71. Plaintiff seeks class certification under the Illinois Code of Civil Procedure, 735
ILCS 5/2-801 for the following class of similarly-situated employees under BIPA:

All individuals working for NFI in the State of Illinois who had their fingerprints
collected, captured, received, or otherwise obtained or disclosed by any Defendant
during the applicable statutory period.

72. This action is properly maintained as a class action under 735 ILCS 5/2-801
because:

- A. The class is so numerous that joinder of all members is impracticable;
- B. There are questions of law or fact that are common to the class;
- C. The claims of the Plaintiff are typical of the claims of the class; and,
- D. The Plaintiff will fairly and adequately protect the interests of the class.

Numerosity

73. The total number of putative class members exceeds fifty (50) individuals. The
exact number of class members can easily be determined from NFI's payroll records.

Commonality

74. There is a well-defined commonality of interest in the substantial questions of law
and fact concerning and affecting the Class in that Plaintiff and all members of the Class have been
harmed by Defendants' failure to comply with BIPA. The common questions of law and fact
include, but are not limited to the following:

- A. Whether any Defendant collected, captured or otherwise obtained
Plaintiff's biometric identifiers or biometric information;
- B. Whether any Defendant properly informed Plaintiff of their purposes for
collecting, using, and storing his biometric identifiers or biometric
information;

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- C. Whether any Defendant obtained a written release (as defined in 740 ILCS 14/10) to collect, use, and store Plaintiff's biometric identifiers or biometric information;
 - D. Whether any Defendant has disclosed or re-disclosed Plaintiff's biometric identifiers or biometric information;
 - E. Whether any Defendant has sold, leased, traded, or otherwise profited from Plaintiff's biometric identifiers or biometric information;
 - F. Whether any 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 with the employee, whichever occurs first;
 - G. Whether any Defendant complies with any such written policy (if one exists);
 - H. Whether any Defendant used Plaintiff's fingerprints to identify him;
 - I. Whether any Defendant's violations of BIPA have raised a material risk that Plaintiff's biometric data will be unlawfully accessed by third parties;
 - J. Whether the violations of BIPA were committed negligently; and
 - K. Whether the violations of BIPA were committed willfully.
75. Plaintiff anticipates that Defendants will raise defenses that are common to the class.

Adequacy

76. Plaintiff will fairly and adequately protect the interests of all members of the class, and there are no known conflicts of interest between Plaintiff and class members. Plaintiff, moreover, has retained experienced counsel who are competent in the prosecution of complex litigation and who have extensive experience acting as class counsel.

Typicality

77. The claims asserted by Plaintiff are typical of the class members he seeks to

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represent. Plaintiff has the same interests and suffers from the same unlawful practices as the class members.

78. Upon information and belief, there are no other class members who have an interest individually controlling the prosecution of his or her individual claims, especially in light of the relatively small value of each claim and the difficulties involved in bringing individual litigation against one's employer. However, if any such class member should become known, he or she can "opt out" of this action pursuant to 735 ILCS 5/2-801.

Predominance and Superiority

79. The common questions identified above predominate over any individual issues, which will relate solely to the quantum of relief due to individual class members. A class action is superior to other available means for the fair and efficient adjudication of this controversy because individual joinder of the parties is impracticable. Class action treatment will allow a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expense if these claims were brought individually. Moreover, as the damages suffered by each class member are relatively small in the sense pertinent to class action analysis, the expenses and burden of individual litigation would make it difficult for individual class members to vindicate their claims.

80. Additionally, important public interests will be served by addressing the matter as a class action. The cost to the court system and the public for the adjudication of individual litigation and claims would be substantially more than if claims are treated as a class action. Prosecution of separate actions by individual class members would create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendants and/or substantially impair or impede the ability of class members to protect their interests. The issues in

this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can and is empowered to, fashion methods to efficiently manage this action as a class action.

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

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

82. BIPA requires companies to obtain informed written consent from employees before acquiring their biometric data. Specifically, 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).

83. BIPA also prohibits private entities from disclosing a person’s or customer’s biometric identifier or biometric information without first obtaining consent for that disclosure. *See* 740 ILCS 14/15(d)(1).

84. Furthermore, BIPA 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 (at most three years after the company’s last interaction with the individual); and (ii) actually adhere to that retention schedule and actually delete the biometric information. *See* 740 ILCS 14/15(a).

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85. Each Defendant fails to comply with these BIPA mandates.

86. Defendant NFI is a New Jersey limited liability corporation registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS 14/10.

87. Defendant Kronos, Inc. is a Massachusetts corporation registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS 14/10.

88. Plaintiff is an individual who had his “biometric identifiers” collected by each Defendant (in the form of his fingerprints), as explained in detail in Sections II and III, *supra*. *See* 740 ILCS 14/10.

89. Plaintiff’s biometric identifiers were used to identify him and, therefore, constitute “biometric information” as defined by BIPA. *See* 740 ILCS 14/10.

90. Each Defendant systematically and automatically collected, used, stored, and disclosed Plaintiff’s biometric identifiers and/or biometric information without first obtaining the written release required by 740 ILCS 14/15(b)(3).

91. Upon information and belief, NFI systematically disclosed Plaintiff’s biometric identifiers and biometric information to at least one third-party vendor, Kronos.

92. Upon information and belief, each Defendant systematically disclosed Plaintiff’s biometric identifiers and biometric information to other, currently unknown, third parties, which hosted the biometric data in their data centers.

93. No Defendant informed Plaintiff in writing that his biometric identifiers and/or biometric information were being collected, stored, used, and disseminated, nor did Defendant inform Plaintiff in writing of the specific purpose and length of time for which his biometric identifiers and/or biometric information were being collected, stored, used and disseminated as required by 740 ILCS 14/15(b)(1)-(2).

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94. No Defendant provides a publicly available retention schedule or guidelines for permanently destroying biometric identifiers and biometric information as specified by BIPA. *See* 740 ILCS 14/15(a).

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

96. Upon information and belief, each Defendant lacks retention schedules and guidelines for permanently destroying Plaintiff's and the Class's biometric data and have not and will not destroy Plaintiff's and the Class's biometric data when the initial purpose for collecting or obtaining such data has been satisfied or within three years of the employee's last interaction with the company.

97. These violations have raised a material risk that Plaintiff's and the Class's biometric data will be unlawfully accessed by third parties.

98. On behalf of himself and the Class, Plaintiff seeks: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Defendants to comply with BIPA's requirements for the collection, storage, and use of biometric identifiers and biometric information as described herein; (3) statutory damages of \$5,000 for each willful and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2) or, in the alternative, statutory damages of \$1,000 for each negligent violation of BIPA pursuant to 740 ILCS 14/20(1); and (4) reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3).

SECOND CAUSE OF ACTION
Negligence
(On Behalf of Plaintiff and the Class)

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

100. Each Defendant owed Plaintiff and the Class a duty of reasonable care. Such duty required Defendants to exercise reasonable care in the collection and use of Plaintiff's and the Class's biometric data.

101. Additionally, NFI owed Plaintiff and the Class a heightened duty – under which it assumed a duty to act carefully and not put Plaintiff and the Class at undue risk of harm – because of the employment relationship of the parties.

102. Each Defendant breached its duties by failing to implement a BIPA-compliant biometric time tracking system with reasonable data security safeguards.

103. Specifically, each Defendant breached its duties by failing to properly inform Plaintiff and the Class in writing of the specific purpose or length of time for which their fingerprints were being collected, stored, used, and disseminated.

104. Defendants also breached their duties by failing to provide a publicly available retention schedule and guidelines for permanently destroying Plaintiff's and the Class's fingerprint data.

105. Upon information and belief, each Defendant breached its duties because each Defendant lacks retention schedules and guidelines for permanently destroying Plaintiff's and the Class's biometric data and have not and will not destroy Plaintiff's and the Class's biometric data when the initial purpose for collecting or obtaining such data has been satisfied or within three years of the employee's last interaction with either company.

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106. These violations have raised a material risk that Plaintiff's and the Class's biometric data will be unlawfully accessed by third parties.

107. As a direct and proximate cause of each Defendant's negligent misrepresentations, Plaintiff and the other Class members have suffered from diminution in the unique identifying value of their biometric information caused by Defendants' repeated dissemination and exposure of such information to multiple third-parties, including Kronos, and data storage vendors, among others.

108. Defendants knew or should have known that their breach would cause Plaintiff and the other Class members to experience the foreseeable harms associated with the exposure of their biometrics to third parties, including the discontinuation of Plaintiff's and the Class members' exclusive possession and control of their biometrics and the accompanying loss of the unique identifying value of their biometrics.

109. Further, each Defendant's breach of its duty proximately caused and continues to cause an invasion of Plaintiff's and the Class's privacy, an informational injury, and mental anguish, in addition to the statutory damage provided in BIPA.

110. Accordingly, Plaintiff seeks an order declaring that Defendants' conduct constitutes negligence and awarding Plaintiff and the Class damages in an amount to be calculated at trial.

PRAYER FOR RELIEF

Wherefore, Plaintiff John Stidwell respectfully requests that this Court enter an Order:

- A. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff John Stidwell as Class Representative, and appointing Stephan Zouras, LLP, as Class Counsel;
- B. Declaring that Defendants' actions, as set forth above, violate BIPA;
- C. Awarding statutory damages of \$5,000 for *each* willful and/or reckless violation of

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BIPA pursuant to 740 ILCS 14/20(2) or, in the alternative, statutory damages of \$1,000 for *each* negligent violation of BIPA pursuant to 740 ILCS 14/20(1);

- D. Declaring that Defendants' actions, as set forth above, constitute negligence;
- E. Declaring that Defendants' actions, as set forth above, were willful;
- F. Awarding injunctive and other equitable relief as is necessary to protect the interests of Plaintiff and the Class, including an Order requiring Defendants to collect, store, use and disseminate biometric identifiers and/or biometric information in compliance with BIPA;
- G. Awarding Plaintiff and the Class their reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3);
- H. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable;
- I. Provide such further relief as the Court deems just and equitable.

JURY TRIAL

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

Date: October 31, 2018

Respectfully Submitted,

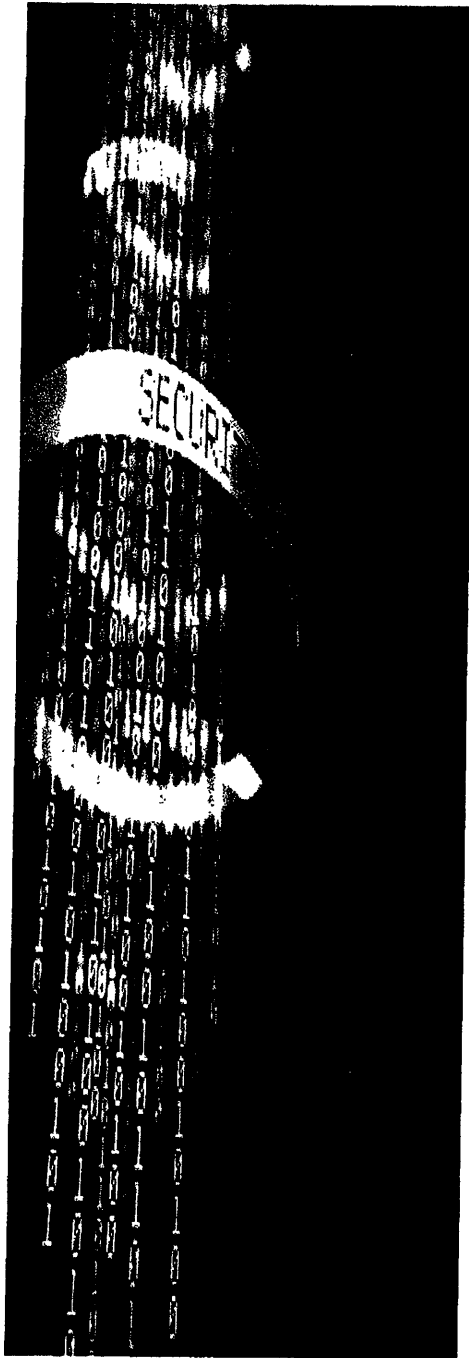
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FILED
10/31/2018 10:20 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018CH13599

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EXHIBIT A

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Not Just Security, the Right
Security.

Data Breach QuickView Report

Data Breach Trends - First Six Months of 2017

Sponsored by:
Risk Based Security

Issued in July 2017

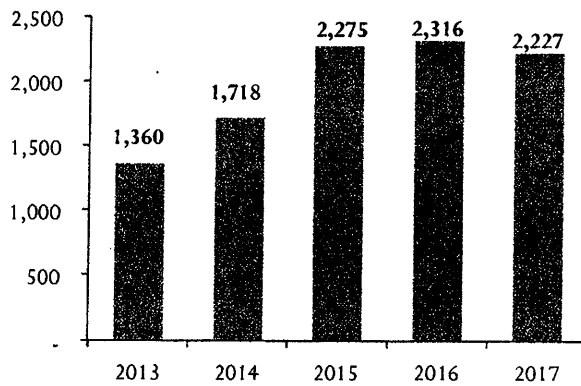
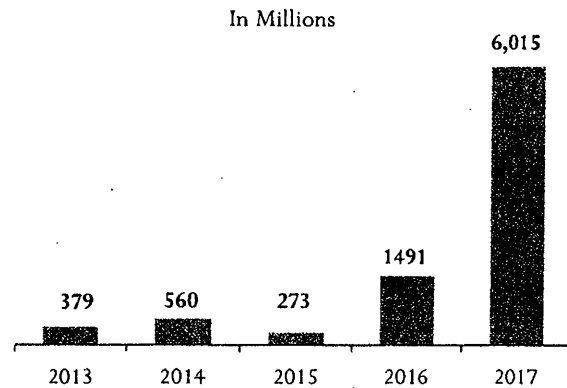
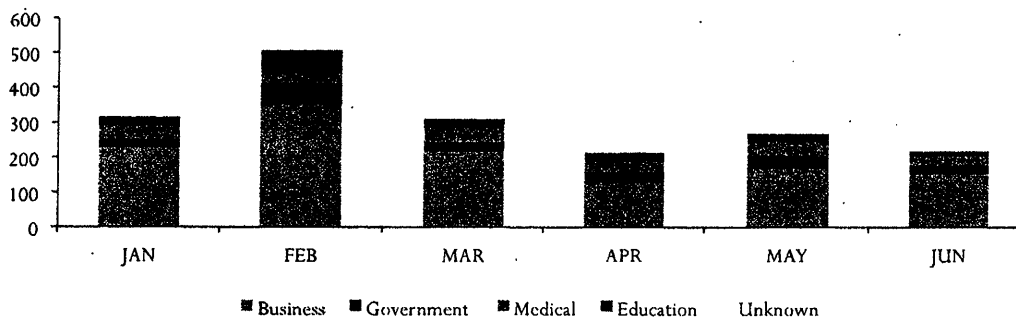
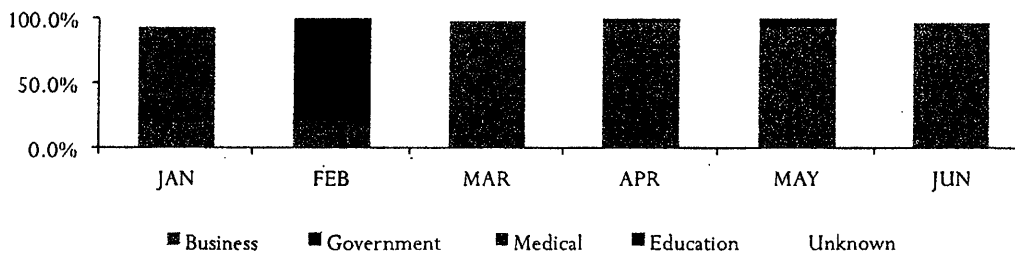
Mega breaches continue while pace of disclosure shows signs of slowing

- There were 2,227 breaches reported in the first half of 2017, exposing over 6 billion records.
- Top 10 breaches exposed 5.6 billion of the 6 billion records compromised.
- Top 10 Severity scores averaged 9.82 out of 10.0.
- The Business sector accounted for 56.5% of reported breaches, followed by Unknown (17%), Government (9.1%), Medical (9%), and Education (8.4%).
- The Business sector accounted for 93% of the total records exposed, followed by Government and Unknown (approximately 3% for each). Medical and Education sectors combined accounted for less than 1% of the total records exposed year to date.
- Web (inadvertent online disclosure) continues to be the leading cause of records compromised in 2017, accounting for 68.3% of records exposed, but only 7.1% of incidents reported so far this year.
- 41.6% of reported breaches were the result of Hacking, yet accounted for 30.6% of the exposed records.
- Breaches involving U.S. entities accounted for 61% of the breaches and approximately 30% of the exposed records.
- 29.3% of the breaches exposed between one and 1,000 records, 43.6% of breaches exposed between one and 10,000 records – virtually unchanged from Q12017.
- 121 breaches, or 5.4%, affected Third Parties.
- Fifty (50) breaches - 19 in Q2 and 31 in Q1 - exposed one million or more records.
- Four 2017 breaches are now on the Top 10 List of All Time Largest Breaches.
- The company DU Called, replaced River City Media for the top spot of the single largest breach disclosed, impacting 2 billion records.

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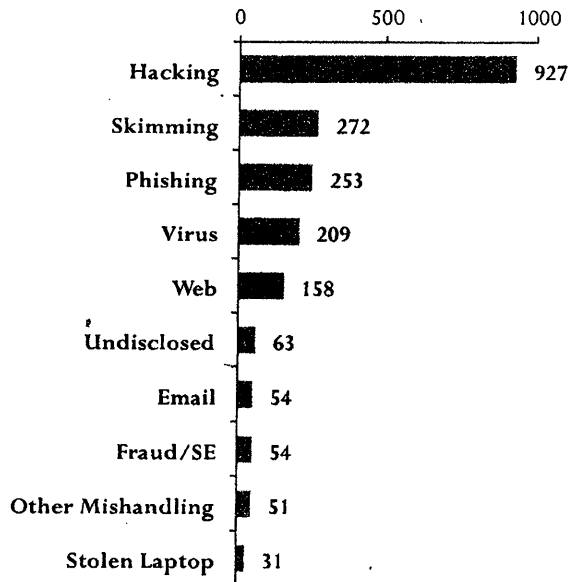
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Mid-Year 2017 Compared to Mid-Year of the Previous Four Years**Number of Incidents by Year - First 6 Months****Number of Records Exposed by Year - First 6 Months****Mid-Year 2017 by Industry, by Month****Distribution of Incidents by Industry, by Month****Distribution of Exposed Records by Industry, by Month**

Mid-Year 2017 Analysis by Breach Type

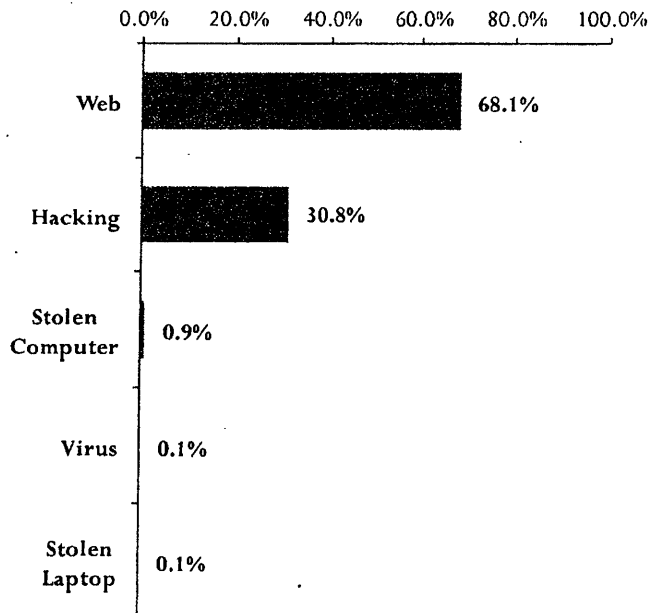
Top 10 Breach Types - First 6 Months



The number of phishing incidents started to decline once the U.S. tax season came to a close.

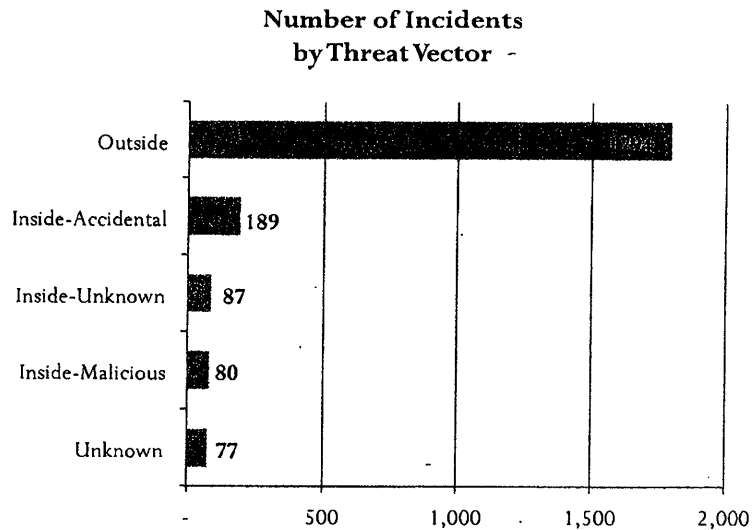
Despite being the leading cause of records exposed, Web (inadvertent online disclosure) ranked fifth on number of incidents.

Top 5 Breach Types by Records Exposed First 6 Months



While not making the top 5 list very often, a Stolen Computer from the COMELEC (Philippines Election Commission) offices resulted in 55.1 million voter records exposed.

Mid-Year 2017 Data Breach Analysis by Threat Vector



16.0% of incidents were the result of insider activity, up slightly from 12.1% of incidents reported in Q12017.

Mid-Year 2017 Exposed Records by Threat Vector

Threat Vector	Records Exposed
Outside	2,227,842,612
Inside-Unknown	2,001,248,057
Inside-Accidental	1,739,943,232
Unknown	45,540,090
Inside-Malicious	567,571
Total	6,015,141,562

A single insider incident exposed Two billion records.

Mid-Year 2017 – Breach Discovery Method

	Internal Discovery - Incidents	Internal Discovery - Records	External Discovery - Incidents	External Discovery - Records	Undisclosed Discovery - Incidents	Undisclosed Discovery - Records
Q1	221	65,173,264	783	3,345,957,501	376	17,670,845
Q2	222	2,966,956	314	486,285,236	311	2,097,077,760
YTD	443	68,140,220	1,097	3,832,242,737	687	2,114,748,605

Mid-Year 2017 Top 10 Breaches Data Types and Severity Scores¹

Breach Type	Records Exposed	Percentage of Total Exposed	Data Type ²	Severity Score
Web	2,000,000,000	33.2%	ADD/NAA/NUM	10.0
Web	1,374,159,612	22.8%	ADD/EMA/FIN/MISC/NAA	10.0
Hack	1,221,893,767	20.3%	EMA/PWD	10.0
Web	267,693,854	4.5%	EMA/NUM	9.80
Web	198,000,000	3.3%	ADD/DOB/MISC/NAA/NUM	10.0
Web	135,000,000	2.2%	ADD/FIN/MISC/NAA/NUM/SSN	9.68
Hack	129,696,449	2.2%	EMA/PWD	9.71
Hack	126,761,168	2.1%	ADD/NAA/NUM	9.40
Hack	91,890,110	1.5%	EMA/PWD/USR	9.56
Hack	77,000,000	1.3%	EMA/PWD/USR	9.96
The top 10 breaches exposed 5,622,094,960 records, or 93.4% of the total records exposed in the first 6 months				

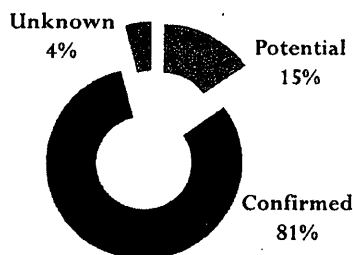
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Mid-Year 2017 Analysis by Data Family

	Percentage of Total Breaches	Percentage of Total Exposed Records	Percentage of Total Breaches	Percentage of Total Exposed Records
Data Family	Mid-Year 2016	Mid-Year 2016	Mid-Year 2017	Mid-Year 2017
Electronic	90.18%	99.98%	93.22%	99.98%
Physical	6.75%	<1%	4.62%	<1%
Unknown	3.07%	<1%	2.16%	<1%

Mid-Year 2017 Confidentiality Impact

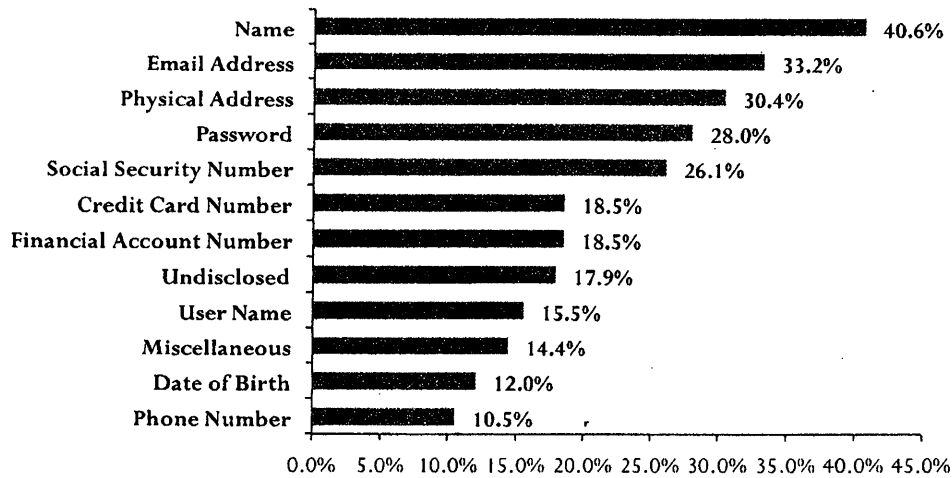
Confidentiality Impact



The majority of breaches continue to result in confirmed unauthorized access to sensitive data

¹ See page 13 for additional detail on these incidents.² See page 17 for a description of abbreviations.

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Mid-Year 2017 Analysis by Data Type - Percentage of Breaches**Incidents by Data Type Exposed**

Compared to the same time period in 2016, the percentage of breaches impacting Social Security numbers increased from 17.6% in 2016 to 26.1% in 2017. Likewise, the percentage of breaches impacting Names increased from 36.1% to 40.6% and the percentage impacting physical addresses increased from 21.6% to 30.4%. Research indicates this effect is attributable to the steady rise of successful phishing campaigns targeting W-2 data during the first 4 months of the year.

Percentage of Breaches Exposing Data Types YTD 2017 vs. Prior Years

Data Type	First 6 Months 2017	First 6 Months 2016	First 6 Months 2015
Name	40.6%	36.1%	27.8%
Email Address	33.2%	42.9%	45.5%
Physical Address	30.4%	21.6%	12.3%
Password	28%	39.8%	52.2%

The "W-2 phishing effect" is more evident when comparing the percentage of breaches impacting 2017's top four data types over time. Access credentials in the form of username / email address and password remain popular targets, but the overall number of breaches impacting these records has steadily declined during the first half of 2017 as attention turns to data more directly useful for tax fraud.

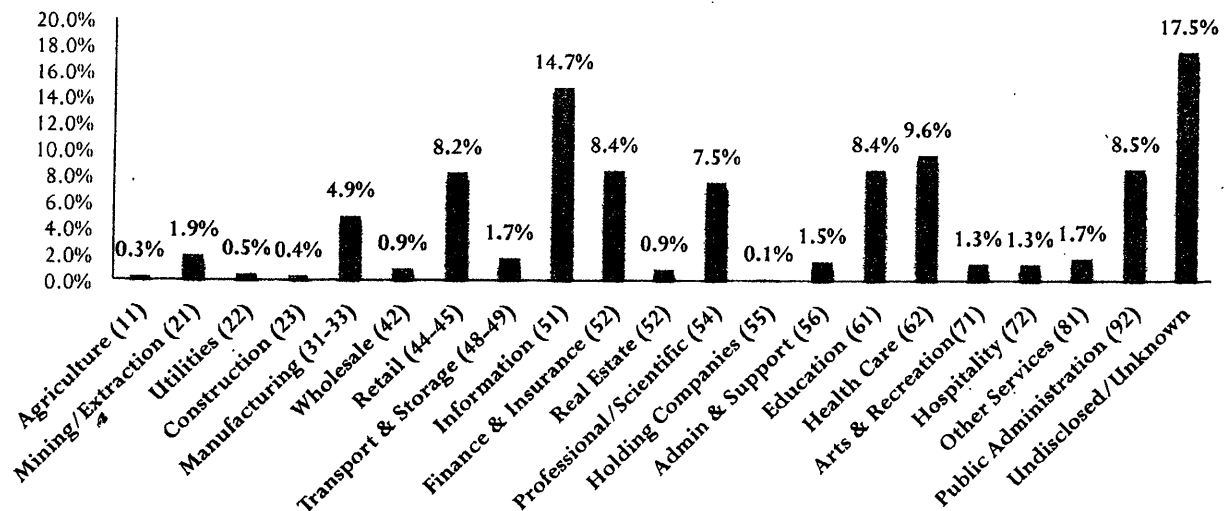
Mid-Year 2017 Analysis of Records per Breach

Exposed Records	Number of Breaches	Percent of Total
Unknown/Undisclosed	1024	46.0%
1 to 100	317	14.2%
101 to 1,000	336	15.1%
1,001 to 10,000	320	14.4%
10,001 to 100,000	132	5.9%
100,001 to 500,000	36	1.6%
500,001 to 999,999	12	0.5%
1 M to 10 M	30	1.3%
> 10 M	20	0.9%

For the third year in a row, the number of incidents with exposed records either unknown or unreported increased. At this point in 2015, it was 27.6%; in 2016, it was 35.4%.

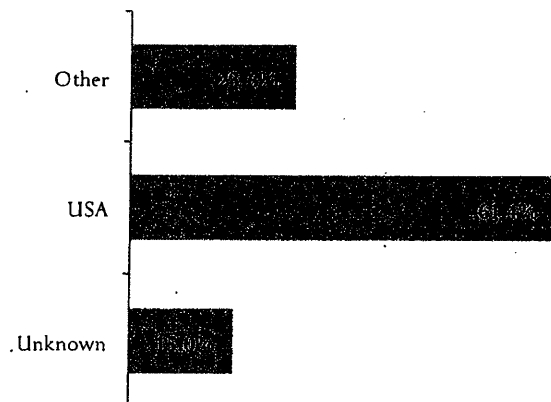
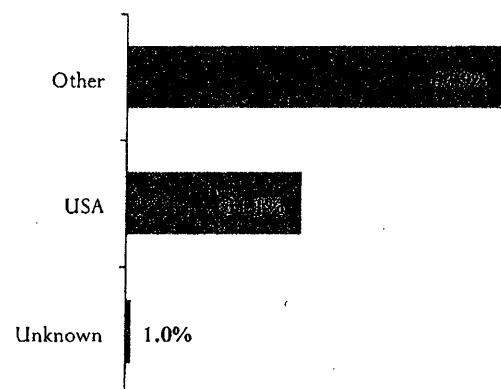
Mid-Year 2017 Breach Types/Records Exposed – Top 5

Breach Category	Number of Breaches	Number of Records Exposed	Average Records per Breach	Percent of Total Records Exposed
Hacking	927	1,839,750,699	1,984,629	30.59%
Skimming	272	4,874	18	0.00%
Phishing	253	458,964	1,814	0.01%
Virus/Malware	209	6,918,120	33,101	0.12%
Web	158	4,069,836,698	25,758,460	67.67%

Mid-Year 2017 Analysis of Incidents by NAICS Economic Sector**Distribution of Incidents by Economic Sector**

Distribution of Business Groups Within Economic Sectors – Top 3

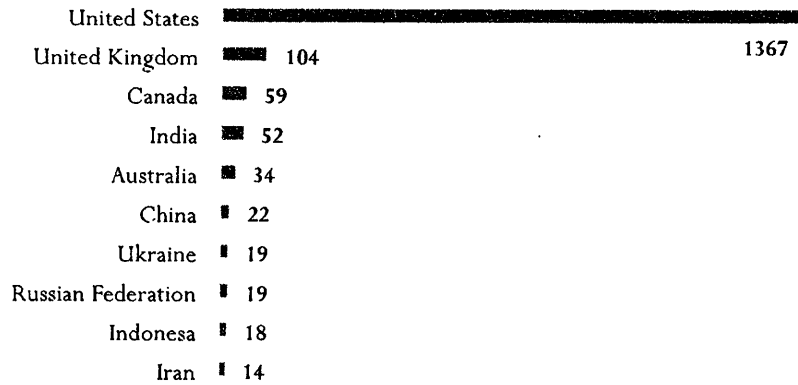
Economic Sector	Business Group	Percentage of Breaches Within Economic Sector
Information (51)	Software / Web Services	79.9%
	Mass Media	11.2%
	Telecommunications	7.3%
HealthCare (62)	Non-Hospital Facilities	33.3%
	Hospitals	29.5%
	Practitioner Offices	29.5%
Public Sector (92)	Federal	33.8%
	State	20.6%
	Cities	19.5%

Mid-Year 2017 Analysis by Country**Incidents by Location****Records Exposed by Location**

The Top 10 countries accounted for 1,708, or 76.6% of the breaches reported and 97.7% of the records compromised.

Mid-Year 2017 Analysis by Country – Top 10

Incidents by Country -Top 10

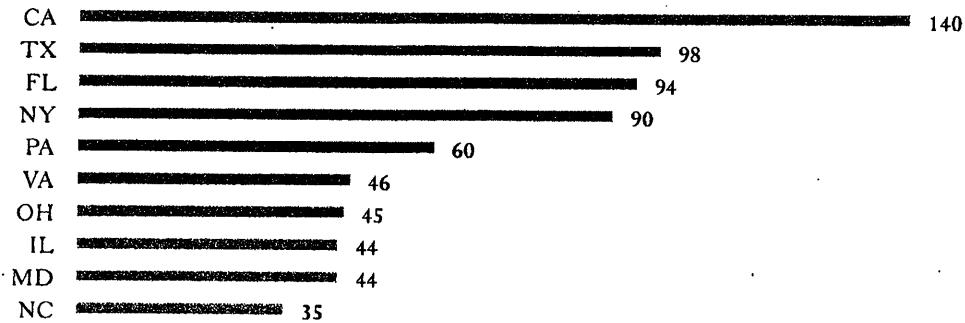


North America
accounted for
64.2% of breaches

Mid-Year 2017 Exposed Records by Country

Ranking	Number of Breaches	Country	Total Exposed Records	Average Records per Breach	Median Number of Records	Percentage of Exposed Records
1	22	China	3,822,024,257	173,728,375	3,371,754	48.83%
2	1367	United States	3,746,193,334	2,740,449	1,700	47.86%
3	52	India	179,055,018	3,443,366	308	2.29%
4	2	Philippines	55,254,020	27,627,010	-	0.71%
5	7	Hong Kong	12,041,792	1,720,256	1,890,876	0.15%
6	4	South Africa	6,700,000	1,675,000	-	0.09%
7	104	United Kingdom	2,401,829	23,095	669	0.03%
8	59	Canada	2,107,262	35,716	503	0.03%
9	2	Finland	1,100,023	550,012	-	0.01%
10	7	Japan	722,096	103,157	121	0.01%

Large breaches affecting 1,000,000 or more records heavily influences the average number of records lost in certain countries. The median number of records lost in the five countries reporting the most breaches ranges between 308 and 1,700, with Australia coming in at 872.

Mid-Year 2017 Distribution of Breaches By State**Incidents by US State -
Top 10**

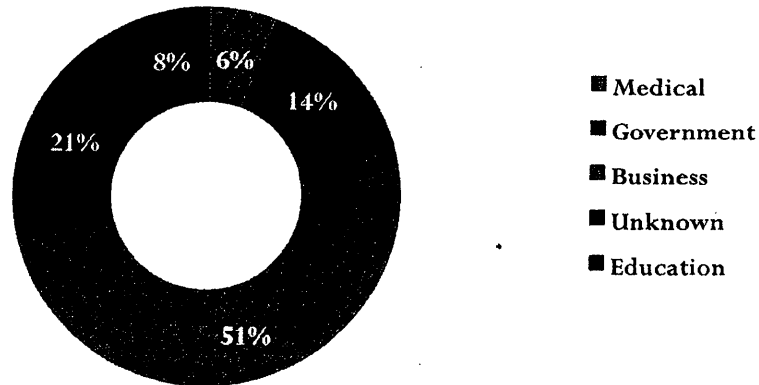
The top 10 states
represent 51% of
US breaches.

Mid-Year 2017 Analysis of US State Rankings- Exposed Records

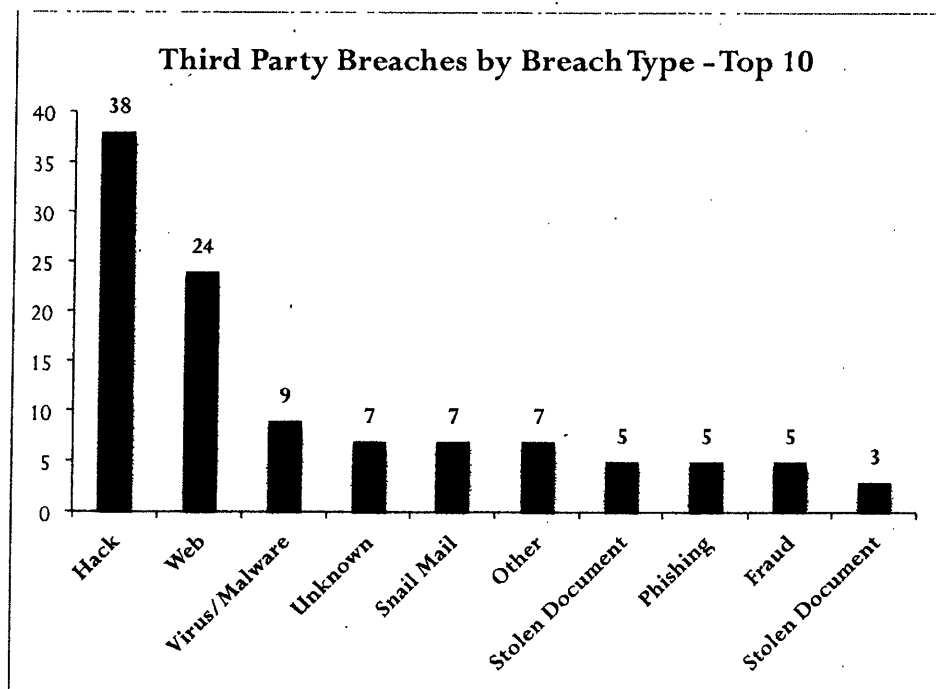
Exposed Records Ranking	US State	Total Exposed Records	Number of Breaches	Exposed Records/Breach	Percentage of USA Exposed Records
1	WA	1,375,336,881	27	50,938,403	73.42%
2	NJ	33,724,579	29	1,162,917	1.31%
3	CA	10,690,370	140	76,360	0.31%
4	NY	8,163,474	90	90,705	0.19%
5	AR	4,890,000	7	698,571	0.16%
6	TX	4,777,984	98	48,755	0.15%
7	GA	3,798,732	23	165,162	0.10%
8	MD	2,674,211	44	60,778	0.09%
9	MI	2,426,296	22	110,286	0.07%
10	FL	1,519,843	94	16,169	0.02%

Mid-Year 2017 Breaches Involving Third Parties

Third Party Breaches by Business Type



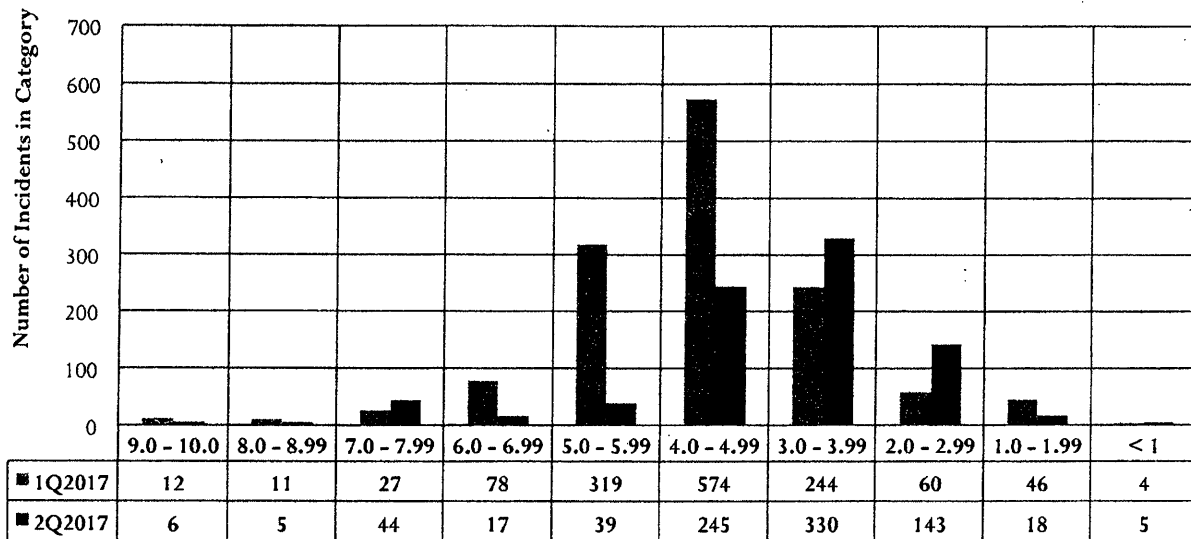
- Organizations classified in the business sector account for more than 50% of the breaches impacting data belonging to customers, clients or other 3rd parties.
- Three of the largest breaches reported in the first six months impacted 3rd parties.
- Hacking remains the dominant breach type for incidents impacting 3rd Parties, with regard to both the number of breaches and the number of records compromised.



Mid-Year 2017 – Breach Severity Scores & Scoring

We can all readily agree that not all data breaches are created equal. Where disagreement arises is when we attempt to rate the 'severity' or 'impact' of a breach. At Risk Based Security we have combined our knowledge of the security industry, business experience and our comprehensive data breach information to calculate a Data Breach Severity Score.

Breach Severity Scores by Quarter



On a positive note, breach severity scores declined in the second quarter of 2107. 58.2% of breaches reported in Q2 scored 3 or below while 25.7% of Q1 reported breaches scored 3 or below.

Mid-Year 2017 – Breach Severity Scores – Top 10

Score	Reported	Organization	Top 10 Summary
10	Q2	DU Group dba DU Caller	(Web) 2,000,000,000 user phone numbers, names and addresses inappropriately made accessible in an uncensored public directory
10	Q1	NetEase, Inc. dba 163.com	(Hacking) 1,221,893,767 email addresses and passwords stolen by hackers and sold on the Dark Web by DoubleFlag
10	Q1	River City Media, LLC	(Web) 1,374,159,612 names, addresses, IP addresses, and email addresses, as well as an undisclosed number of financial documents, chat logs, and backups exposed by faulty rsync backup
10	Q2	Deep Root Analytics	(Web) Approximately 198,000,000 voter names, addresses, dates of birth, phone numbers, political party affiliations, and other demographic information exposed in an unsecured Amazon S3 bucket

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Score	Reported	Organization	Top 10 Summary
9.96	Q2	Edmodo	(Hacking) 77,000,000 user email addresses, usernames, and bcrypt hashed passwords with salts stolen by hackers through undisclosed means
9.80	Q1	EmailCar	(Web) 267,693,854 email addresses and phone numbers exposed in an unsecure MongoDB installation and later dumped on the Internet
9.71	Q1	Tencent Holdings Ltd dba QQ.com	(Hacking) 129,696,449 email addresses and passwords stolen by hackers and sold on the Dark Web by DoubleFlag
9.68	Q2	National Social Assistance Programme (India)	(Web) Roughly 135,000,000 Aadhaar numbers and 100,000,000 linked bank account numbers, as well as names, caste, religion, addresses, phone numbers, photographs, and assorted financial details leaked on government web portals
9.56	Q2	Youku	(Hacking) 91,890,110 user accounts with usernames, email addresses and MD5 encrypted passwords compromised by hackers and offered for sale
9.45	Q1	Yahoo Japan	(Hacking) 23,590,165 email addresses and passwords stolen by hackers and sold on the Dark Web by DoubleFlag

Top 20 Largest Breaches All Time (Exposed Records Count)

Breach Reported Date	Summary	Records Exposed	Organization's Name	Industry-Sector	Breach Location
Highest All Time 5/13/2017	User phone numbers, names and addresses inappropriately made accessible in an uncensored public directory	2 Billion	DU Caller Group (DU Caller)	Business - Technology	China
Number 2 3/3/2017	Names, addresses, IP addresses, and email addresses, as well as an undisclosed number of financial documents, chat logs, and backups, exposed by faulty rsync backup.	1.3 Billion	River City Media, LLC	Business - Technology	United States
Number 3 1/25/2017	A database holding email addresses and passwords stolen by hackers and offered for sale on the dark web.	1.2 Billion	NetEase, Inc. dba 163.com	Business - Technology	China

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Breach Reported Date	Summary	Records Exposed	Organization's Name	Industry-Sector	Breach Location
Number 4 12/14/2016	While investigating the #4 incident on this list, a second hacking event was discovered targeting user names, email addresses, phone numbers, dates of birth, hashed passwords and security questions and associated answers.	1 Billion	Yahoo	Business - Technology	United States
Number 5 9/22/2016	Hack exposes user names, email addresses, phone numbers, dates of birth, hashed passwords and security questions and associated answers.	500 Million	Yahoo	Business - Technology	United States
Number 6 10/18/2016	Hackers exploit a Local File Inclusion vulnerability, compromising member email addresses, usernames, and encrypted passwords, IP addresses and membership statuses.	412 Million	FriendFinder Networks, Inc	Business - Technology	United States
Number 7 5/27/2016	Hack exposes user account records containing SHA1 encrypted passwords, email addresses.	360 Million	MySpace	Business - Technology	United States
Number 8 1/1/2017	Email addresses and phone numbers were exposed in an unsecure MongoDB installation, which was later downloaded and dumped on the Internet	267 Million	EmailCar	Business - Technology	China
Number 9 8/22/2014	Hack of websites exposes names, registration numbers, usernames and passwords.	220 Million	Organization's Name has not been reported	Unknown	South Korea
Number 10 12/3/2016	Hackers offer for sale a database containing a variety of personal and financial details.	203 Million	Organization's Name has not been reported	Unknown	Unknown
Number 11 10/19/2013	Fraudulent account used to gain access to credit card numbers, social security numbers, names, and financial account numbers.	200 Million	Court Ventures, Inc.	Business - Data	United States
Number 12 6/19/2017	Unsecured Amazon S3 bucket exposes voter names, addresses, dates of birth, contact information and voter preferences.	198 Million	Deep Root Analytics	Business / Business	United States

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Breach Reported Date	Summary	Records Exposed	Organization's Name	Industry-Sector	Breach Location
Number 13 12/28/2015	Mis-configured database exposes voter names, dates of birth, addresses, phone numbers, political party affiliations, and genders.	191 Million	Organization's Name has not been reported	Unknown	United States
Number 14 6/21/2014	Hack exposes trip details of customers after cracking MD5 hashes	173 Million	NYC Taxi & Limousine Commission	Government - City	United States
Number 15 6/23/2016	Hack exposes USA voter information.	154 Million	Organization's Name has not been reported	Unknown	United States
Number 16 10/3/2013	Hack exposed customer names, IDs, encrypted passwords and debit/ credit card numbers with expiration dates, source code and other customer order information.	152 Million	Adobe Systems, Inc.	Business - Technology	United States
Number 17 3/17/2012	Firm may have illegally bought and sold customers' information.	150 Million	Shanghai Roadway D&B Marketing Services Co.	Business - Data	China
Number 18 5/21/2014	Hack exposes names, encrypted passwords, email addresses, registered addresses, phone numbers and dates of birth.	145 Million	eBay, Inc.	Business - Retail	United States
Number 19 6/8/2013	North Korean Hackers expose email addresses and identification numbers.	140 Million	Organization's Name has not been reported	Unknown	South Korea
Number 20 5/2/2017	Leaky governmental websites expose Aadhaar numbers, banking details, names and other personal information.	135 Million	National Social Assistance Programme	Government - Federal	India

Methodology & Terms

Risk Based Security's research methods include automated processes coupled with traditional human research and analysis. Our proprietary applications crawl the Internet 24x7 to capture and aggregate potential data breach breaches for our researchers to analyze. In addition, the research team manually verifies news feeds, blogs, and other sources looking for new data breaches as well as new information on previously disclosed incidents. The database also includes information obtained through Freedom of Information Act (FOIA) requests, seeking breach notification documentation from various state and federal agencies in the United States. The research team extends our heartfelt thanks to the individuals and agencies that assist with fulfilling our requests for information.

Data Standards and the use of "Unknown"

In order for any data point to be associated with a breach entry, Risk Based Security requires a high degree of confidence in the accuracy of the information reported as well as the ability to reference a public source for the information. In short, the research team does not guess at the facts. For this reason the term "Unknown" is used when the item cannot be verified in accordance with our data validation requirements. This can occur when the breached organization cannot be identified but leaked data is confirmed to be valid or when the breached organization is unwilling or unable to provide sufficient clarity to the data point.

Breach Types are defined as follows:

Name	Description
Disposal Computer	Discovery of computers not disposed of properly
Disposal Document	Discovery of documents not disposed of properly
Disposal Drive	Discovery of disk drives not disposed of properly
Disposal Mobile	Discovery of mobile devices not disposed of properly
Disposal Tape	Discovery of backup tapes not disposed of properly
Email	Email communication exposed to unintended third party
Fax	Fax communication exposed to unintended third party
Fraud SE	Fraud or scam (usually insider-related), social engineering
Hack	Computer-based intrusion
Lost Computer	Lost computer (unspecified type in media reports)
Lost Document	Discovery of documents not disposed of properly, not stolen
Lost Drive	Lost data drive (unspecified if IDE, SCSI, thumb drive, etc.)
Lost Laptop	Lost laptop (generally specified as a laptop in media reports)
Lost Media	Media (e.g. disks) reported to have been lost by a third party
Lost Mobile	Lost mobile phone or device such as tablets, etc.
Lost Tape	Lost backup tapes
Missing Document	Missing document, unknown or disputed whether lost or stolen
Missing Drive	Missing drive, unknown or disputed whether lost or stolen
Missing Laptop	Missing laptop, unknown or disputed whether lost or stolen
Missing Media	Missing media, unknown or disputed whether lost or stolen
Other	Miscellaneous breach type not yet categorized
Phishing	Masquerading as a trusted entity in an electronic communication to obtain data
Seizure	Forcible taking of property by a government law enforcement official
Skimming	Using electronic device (skimmer) to swipe victims' credit/debit card numbers
Snail Mail	Personal information in "snail mail" exposed to unintended third party
Snooping	Exceeding intended privileges and accessing data not authorized to view
Stolen Computer	Stolen desktop (or unspecified computer type in media reports)
Stolen Document	Documents either reported or known to have been stolen by a third party
Stolen Drive	Stolen data drive, unspecified if IDE, SCSI, thumb drive, etc.
Stolen Laptop	Stolen Laptop (generally specified as a laptop in media reports)
Stolen Media	Media generally reported or known to have been stolen by a third party

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Name	Description
Stolen Mobile	Stolen mobile phone or device such as tablets, etc.
Stolen Tape	Stolen backup tapes
Unknown	Unknown or unreported breach type
Virus (Malware)	Exposure to personal information via virus or Trojan (possibly classified as hack)
Web	Web-based intrusion, data exposed to the public via search engines, public pages

Data Type Definitions

Abbreviation	Description
CCN	Credit Card Numbers
SSN	Social Security Numbers (or Non-US Equivalent)
NAA	Names
EMA	Email Addresses
MISC	Miscellaneous
MED	Medical
ACC	Account Information
DOB	Date of Birth
FIN	Financial Information
UNK	Unknown
PWD	Passwords
ADD	Addresses
USR	User Name
NUM	Phone Number
IP	Intellectual Property

NO WARRANTY.

Risk Based Security, Inc. makes this report available on an "As-is" basis and offers no warranty as to its accuracy, completeness or that it includes all the latest data breach breaches. The information contained in this report is general in nature and should not be used to address specific security issues. Opinions and conclusions presented reflect judgment at the time of publication and are subject to change without notice. Any use of the information contained in this report is solely at the risk of the user. Risk Based Security, Inc. assumes no responsibility for errors, omissions, or damages resulting from the use of or reliance on the information herein. If you have specific security concerns please contact Risk Based security, Inc. for more detailed data loss analysis and security consulting services.

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About Risk Based Security

Risk Based Security (RBS) provides detailed information and analysis on Data Breaches, Vendor Risk Scores and Vulnerability Intelligence. Our products, Cyber Risk Analytics (CRA) and VulnDB, provide organizations with access to the most comprehensive threat intelligence knowledge bases available, including advanced search capabilities, access to raw data via API, and email alerting to assist organizations in taking the right actions in a timely manner. In addition, our YourCISO offering provides organizations with on-demand access to high quality security and information risk management resources in one, easy to use web portal.

VulnDB is the most comprehensive and timely vulnerability intelligence available and provides actionable information about the latest in security vulnerabilities via an easy-to-use SaaS Portal, or a RESTful API for easy integration into GRC tools and ticketing systems. VulnDB allows organizations to search on and be alerted to the latest vulnerabilities, both in end-user software and the third-party libraries or dependencies that help build applications. A subscription to VulnDB provides organizations with simple to understand ratings and metrics on their vendors and products, and how each contributes to the organization's risk-profile and cost of ownership.

Cyber Risk Analytics (CRA) provides actionable security ratings and threat intelligence on a wide variety of organizations. This enables organizations to reduce exposure to the threats most likely to impact them and their vendor base. In addition, our PreBreach vendor risk rating, the result of a deep-view into the metrics driving cyber exposures, are used to better understand the digital hygiene of an organization and the likelihood of a future data breach. The integration of PreBreach ratings into security processes, vendor management programs, cyber insurance processes and risk management tools allows organizations to avoid costly risk assessments, while enabling businesses to understand its risk posture, act quickly and appropriately to proactively protect its most critical information assets.

YourCISO provides organizations with on-demand access to high quality security and information risk management resources in one, easy to use web portal. YourCISO provides organization ready access to a senior executives and highly skilled technical security experts with a proven track record, matched specifically to your needs. The YourCISO service is designed to be an affordable long term solution for addressing information security risks. YourCISO brings together all the elements an organization needs to develop, document and manage a comprehensive information security program.

For more information, please visit:

<https://www.riskbasedsecurity.com/>
<https://vulndb.cyberriskanalytics.com/>
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Or call 855-RBS- RISK.

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10/31/2018 10:39 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018CH13599

2120 - Served 2121 - Served
2220 - Not Served 2221 - Not Served
2320 - Served By Mail 2321 - Served By Mail
2420 - Served By Publication 2421 - Served By Publication
Summons - Alias Summons

(08/01/18) CCG 0001 A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

John Stidwell

(Name all parties)

v.

NFI, LLC and Kronos, INC.

Case No. 2018-CH-13599

☒ SUMMONS ☐ ALIAS SUMMONS

To each Defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance and pay the required fee **within thirty (30) days after service of this Summons**, not counting the day of service. To file your answer or appearance you need access to the internet. Please visit www.cookcountyclerkofcourt.org to initiate this process. Kiosks with internet access are available at all Clerk's Office locations. Please refer to the last page of this document for location information.

If you fail to do so, a judgment by default may be entered against you for the relief requested in the complaint.

To the Officer:

This Summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so endorsed. This Summons may not be served later than thirty (30) days after its date.

Dorothy Brown, Clerk of the Circuit Court of Cook County, Illinois
cookcountyclerkofcourt.org

Summons - Alias Summons

(08/01/18) CCG 0001 B

E-filing is now mandatory for documents in civil cases with limited exemptions. To e-file, you must first create an account with an e-filing service provider. Visit <http://efile.illinoiscourts.gov/service-providers.htm> to learn more and to select a service provider. If you need additional help or have trouble e-filing, visit <http://www.illinoiscourts.gov/FAQ/gethelp.asp>, or talk with your local circuit clerk's office.

Atty. No.: 43734

Witness: 10/31/2018 10:39 AM DOROTHY BROWN

Atty Name: Stephan Zouras, LLP.

Atty. for: Plaintiff

Address: 100 N. Riverside Plaza, Suite 2150

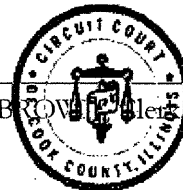
City: Chicago

State: IL Zip: 60606

Telephone: (312)233-1550

Primary Email: hjenkins@stephanzouras.com

DOROTHY BROWN Clerk of Court



Date of Service: _____
(To be inserted by officer on copy left with
Defendant or other person):

Dorothy Brown, Clerk of the Circuit Court of Cook County, Illinois
cookcountyclerkofcourt.org

FILED DATE: 10/31/2018 10:39 AM 2018CH13599

CLERK OF THE CIRCUIT COURT OF COOK COUNTY OFFICE LOCATIONS

- ☐ Richard J Daley Center
50 W Washington
Chicago, IL 60602
 - ☐ District 2 - Skokie
5600 Old Orchard Rd
Skokie, IL 60077
 - ☐ District 3 - Rolling Meadows
2121 Euclid
Rolling Meadows, IL 60008
 - ☐ District 4 - Maywood
1500 Maybrook Ave
Maywood, IL 60153
 - ☐ District 5 - Bridgeview
10220 S 76th Ave
Bridgeview, IL 60455
 - ☐ District 6 - Markham
16501 S Kedzie Pkwy
Markham, IL 60428
 - ☐ Domestic Violence Court
555 W Harrison
Chicago, IL 60607
 - ☐ Juvenile Center Building
2245 W Ogden Ave, Rm 13
Chicago, IL 60602
 - ☐ Criminal Court Building
2650 S California Ave, Rm 526
Chicago, IL 60608
 - ☐ Domestic Relations Division
Richard J Daley Center
50 W Washington, Rm 802
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm
 - ☐ Civil Appeals
Richard J Daley Center
50 W Washington, Rm 801
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm
 - ☐ Criminal Department
Richard J Daley Center
50 W Washington, Rm 1006
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm
 - ☐ County Division
Richard J Daley Center
50 W Washington, Rm 1202
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm
 - ☐ Probate Division
Richard J Daley Center
50 W Washington, Rm 1202
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm
 - ☐ Law Division
Richard J Daley Center
50 W Washington, Rm 801
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm
 - ☐ Traffic Division
Richard J Daley Center
50 W Washington, Lower Level
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm
- Daley Center Divisions/Departments**
- ☐ Civil Division
Richard J Daley Center
50 W Washington, Rm 601
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm
 - ☒ Chancery Division
Richard J Daley Center
50 W Washington, Rm 802
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm

Dorothy Brown, Clerk of the Circuit Court of Cook County, Illinois
cookcountyclerkofcourt.org

Courtroom Number:
Location:

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11/1/2018 2:46 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018CH13599

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

**JOHN STIDWELL, individually, and on behalf)
of all others similarly situated,)**

Plaintiff,)

v.)

NFI, LLC and KRONOS, INC.,)

Defendants.)

Case No. 2018-CH-13599

Hearing Date: 11/13/2018 9:00 AM - 9:00

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **Tuesday, November 13 at 9:00 a.m.** or as soon thereafter as counsel may be heard, I shall appear before the Honorable Sanjay T. Tailor, or any judge sitting in his stead, in the courtroom usually occupied by him at 50 W. Washington St., Room 2009, and present **PLAINTIFF'S MOTION FOR CLASS CERTIFICATION AND REQUEST FOR DISCOVERY ON CERTIFICATION ISSUES.**

Respectfully submitted,

/s/ Haley R. Jenkins

Haley R. Jenkins

Ryan F. Stephan

James B. Zouras

Attorneys for Plaintiff

STEPHAN ZOURAS, LLP

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Chicago, IL 60606

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jzouras@stephanzouras.com

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CERTIFICATE OF SERVICE

I, the attorney, hereby certify that on November 1, 2018, I filed the attached with the Clerk of the Court using the electronic filing system which will send such filing to all attorneys of record.

/s/Haley R. Jenkins

Return Date: No return date scheduled
Hearing Date: 11/13/2018 9:00 AM - 9:00 AM
Courtroom Number:
Location:

FILED
11/1/2018 1:50 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018CH13599

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

JOHN STIDWELL, individually,)
and on behalf of all others similarly situated,)

Plaintiff,)

Case No. 2018-CH-13599

v.)

NFI, LLC and KRONOS, INC.,)

Defendants.)

**PLAINTIFF'S MOTION FOR CLASS CERTIFICATION AND REQUEST FOR
DISCOVERY ON CERTIFICATION ISSUES**

Plaintiff John Stidwell ("Stidwell" or "Plaintiff") alleges that NFI, LLC ("NFI") and Kronos, Inc. (collectively, "Defendants"), systematically violated the Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1, *et seq.* This case is well-suited for class certification pursuant to 735 ILCS 5/2-801. Specifically, Plaintiff seeks to certify a class consisting of hundreds of former and current similarly-situated employees who worked for Defendant NFI in the State of Illinois who had their fingerprints unlawfully collected, captured, received, otherwise obtained, or disclosed by either Defendant during the applicable statutory period in violation of BIPA. The question of liability is a legal question that can be answered in one fell swoop. As Plaintiff's claims and the claims of similarly-situated individuals all arise from Defendants' uniform policies and practices, they satisfy the requirement of 735 ILCS 5/2-801 and should be certified.

Plaintiff moves for class certification to protect members of the proposed class, employees whose proprietary and legally protected personal and private biometric data was invaded by each

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Defendant. Plaintiff believes that the evidence and argumentation submitted within this motion are sufficient to allow the class to be certified now. However, in the event the Court (or a Defendant) wishes for the parties to undertake formal discovery prior to the Court's consideration of this motion, Plaintiff requests that the Court allow him to supplement his briefing and defer the response and reply deadlines.

I. RELEVANT BACKGROUND

A. The Biometric Information Privacy Act

Major national corporations started using Chicago and other locations in Illinois in the early 2000s 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(c). Given its relative infancy, an overwhelming portion of the public became wary of this then-growing, yet unregulated, technology. *See* 740 ILCS 14/5.

The Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* was enacted in 2008, arising from concerns that these experimental uses of finger-scan technologies created a "very serious need of protections for the citizens of Illinois when it comes to biometric information." Illinois House Transcript, 2008 Reg. Sess. No. 276. Under the Act, it is unlawful for a private entity 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).

Although there may be benefits with using biometrics in the workplace, there are also serious risks. Unlike ID badges or time cards – which can be changed or replaced if stolen or compromised – fingerprints are a unique, permanent biometric identifier associated with each individual. These biometrics are biologically unique to the individual; once compromised, the individual has *no* means by which to prevent identity theft, unauthorized tracking, or other unlawful or improper use of this information. This exposes individuals to serious and irreversible privacy risks. For example, if a biometric database is hacked, breached, or otherwise exposed – as in the recent Yahoo, eBay, Equifax, Uber, Home Depot, MyFitnessPal, Panera, Whole Foods, Chipotle, Omni Hotels & Resorts, Trump Hotels, and Facebook/Cambridge Analytica data breaches, to name a few – individuals have no means to prevent the misappropriation and theft of their proprietary biometric makeup. Thus, recognizing the need to protect its citizens from harms like these, Illinois enacted BIPA specifically to regulate the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and information.

B. Factual Allegations

Plaintiff John Stidwell filed this class action against Defendants on November 2, 2018, to redress Defendants' unlawful collection, use, storage, and disclosure of biometric information of their employees under BIPA. In his Class Action Complaint, Stidwell provided detailed allegations that NFI's employees were and continue to be universally required to scan their fingerprints for enrollment in the Kronos employee database(s) as a condition of their employment, but are not: (1) informed in writing of the purpose(s) and length of time for which fingerprint data is being collected, stored, used, and disseminated by either Defendant; (2) provided a publicly available retention schedule or guidelines for permanent destruction of the data by either Defendant; and (3)

provided (nor permitted to execute) a written release for either Defendant, as required by BIPA. *See Compl.* ¶¶ 9-10.

Stidwell worked as a forklift operator for NFI, which is located at 27143 Baseline Road, Elwood, IL, 60421. *Id.* ¶ 23. Stidwell worked for Defendant NFI from approximately November 2016 until October 16, 2018. *Id.* ¶ 52. As an employee and as a condition of his employment, Stidwell was required to scan his fingerprint so that NFI could use it as an authentication method to track his time. *Id.* ¶ 53. Both Defendants subsequently stored Stidwell's fingerprint data in the Kronos employee database(s). *Id.* ¶ 54. Stidwell was required to scan his fingerprint at the start and end of every workday. *Id.* ¶ 55. However, Defendants failed and continue to fail to inform NFI's employees, including Stidwell, of the extent of the purposes for which they collect employees' sensitive biometric data or to whom the data is disclosed. *Id.* ¶ 56. Similarly, Defendants failed to provide NFI's employees, including, Stidwell, with a written, publicly available policy identifying its retention schedule and guidelines for permanently destroying employees' fingerprint data when the initial purpose for collecting or obtaining their fingerprint is no longer relevant, as required by BIPA. *Id.* ¶ 57, 93. Employees, including Stidwell, have no knowledge when they leave the company of when – if ever – their biometric identifiers will be removed from Defendants' database(s). *Id.* ¶ 48. NFI's employees are not told what might happen to their biometric data if and when it merges with another company, or worse, if and when either Defendant's entire business folds. *Id.* Because Defendants neither publish a BIPA-mandated data retention policy nor disclose the purposes for their collection of biometric data, employees, including Stidwell, have no idea whether Defendants sell, disclose, re-disclose, or otherwise disseminate their biometric data. *Id.* ¶ 49. Nor are employees told to whom either Defendant currently discloses their biometric data or what might happen to their biometric data in the event

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of a merger or a bankruptcy. *Id.* Finally, Defendants never secured a written release executed by any of NFI's employees, including Stidwell, permitting them to collect, store, use, and disseminate employees' biometric data, as required by BIPA. *Id.* ¶¶ 9-10, 31-32, 44, 90.

Accordingly, Defendants' practices violated BIPA. As a result of Defendants' violations, Plaintiff and similarly-situated individuals were subject to Defendants' common and uniform policies and practices and were victims of its scheme to unlawfully collect, store, use, and disseminate its employees' biometric data in direct violation of BIPA. As a result of Defendants' violations of BIPA, Plaintiff and all other similarly-situated individuals suffered an invasion of privacy and other damages.¹

Plaintiff now seeks class certification for the following similarly-situated individuals, defined as:

All individuals working for NFI in the State of Illinois who had their fingerprints collected, captured, received, or otherwise obtained or disclosed by either Defendant during the applicable statutory period.

Given Defendants' standard practices defined above and the straightforward and common legal questions presented in this case, Plaintiff now moves for class certification. Notably, this motion is being filed shortly after the Complaint was filed and before the Defendants have responded. The parties have not discussed settlement, neither settlement offers nor demands have been made, and a scheduling order has not been issued. For the reasons discussed herein, Plaintiff's request should be granted.

¹ BIPA does not require Plaintiff and the putative class to have suffered actual damages. Nonetheless, Plaintiff and the putative class have suffered an invasion of a legally protected interest when Defendants secured their personal and private biometric data at a time when it had no right to do so, an invasion of Plaintiff's and the putative Class's right to privacy; an informational injury because Defendants did not provide them with information to which they were entitled by statute; and mental anguish when contemplating what would happen to their biometric data if and when Defendants out of business, whether Defendants will ever delete their biometric information, and whether (and to whom) Defendants share their biometric information.

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II. STANDARD FOR CLASS CERTIFICATION

“The basic purpose of a class action is the efficiency and economy of litigation.” *CE Design Ltd. v. C & T Pizza, Inc.*, 2015 IL App. (1st) 131465, ¶ 9 (Ill. App. Ct. May 8, 2015) (citing *Miner v. Gillette Co.*, 87 Ill. 2d 7, 14 (1981)). “In determining whether to certify a proposed class, the trial court accepts the allegations of the complaint as true and should err in favor of maintaining class certification.” *CE Design Ltd.*, 2015 IL App. (1st) 131465, ¶ 9 (citing *Ramirez v. Midway Moving & Storage, Inc.*, 378 Ill. App. 3d 51, 53 (2007)). Under Section 2-801 of the Code of Civil Procedure, a class may be certified if the following four requirements are met:

- (1) the class is so numerous that a joinder of all members is impracticable;
- (2) there are questions of fact or law common to the class that predominate over any questions affecting only individual members;
- (3) the representative parties will fairly and adequately protect the interest of the class; and
- (4) the class action is an appropriate method for the fair and efficient adjudication of the controversy.

See *Smith v. Illinois Cent. R.R. Co.*, 223 Ill. 2d 441, 447 (2006) (citing 735 ILCS 5/2-801). Notably, “[a] trial court has broad discretion in determining whether a proposed class meets the requirements for class certification.” *CE Design Ltd.*, 2015 IL App. (1st) 131465, ¶ 9 (citing *Ramirez*, 378 Ill. App. 3d at 53). Here, the allegations and facts in this case amply demonstrate that the four certification factors are met.

III. ARGUMENT

Plaintiff’s claims here are especially suited for class certification because Defendants treated all employees who worked for them identically for the purposes of applying BIPA. All of the putative class members in this case were uniformly subjected to the same illegal and unlawful collection, storage, use, and dissemination of their biometric data that was required as a condition

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of employment throughout the class period. Plaintiff meets each of the statutory requirements for maintenance of this suit as a class action. Thus, the class action device is ideally suited and is far superior to burdening the Court with many individual lawsuits to address the same issues, undertake the same discovery, and rely on the same testimony.

A. The Class Is So Numerous That Joinder of All Members Is Impracticable.

Numerosity is not dependent on a plaintiff setting forth a precise number of class members or a listing of their names. *See Cruz v. Unilock Chicago*, 383 Ill. App. 3d 752, 771 (2d Dist. 2008) (“Of course, plaintiffs need not demonstrate a precise figure for the class size, because a good-faith, non-speculative estimate will suffice; rather, plaintiffs need demonstrate only that the class is sufficiently numerous to make joinder of all of the members impracticable.”) (internal citations omitted); *Hayna v. Arby’s, Inc.*, 99 Ill. App. 3d 700, 710-11 (1st Dist. 1981) (“It is not necessary that the class representative name the specific individuals who are possibly members of the class.”). Courts in Illinois generally find numerosity when the class is comprised of at least 40 members. *See Wood River Area Dev. Corp. v. Germania Fed. Sav. Loan Ass’n*, 198 Ill. App. 3d 445, 450 (5th Dist. 1990).

In the present case, there can be no serious dispute that Plaintiff meets the numerosity requirement. The class of potential plaintiffs is sufficiently large to make joinder impracticable.² As a result of Defendants’ violations of BIPA, Plaintiff and all similarly-situated individuals were subjected to Defendants’ common and uniform policies and practices and were victims of Defendants’ schemes to unlawfully collect, store, use, and disseminate their extremely personal and private biometric data in direct violation of BIPA. As a result of Defendants’ violations of the

² Upon information and belief, NFI employs hundreds of workers, many of whom are members of the class.

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Act, Plaintiff and all other similarly-situated individuals suffered an invasion of privacy as well as informational and personal injury. The precise number in the class cannot be determined until discovery records are obtained from Defendants. Nevertheless, class membership can be easily determined by reviewing Defendants' records. A review of Defendants' files regarding the collection, storage, use, and dissemination of employees' biometric data performed during the class period is all that is needed to determine membership in Plaintiff's proposed class. *See e.g., Chultem v. Ticor Title Ins. Co.*, 401 Ill. App. 3d 226, 233 (1st Dist. 2010) (reversing Circuit Court's denial of class certification and holding that class was certifiable over defendants' objection that "the proposed class was not ascertainable, because the process of reviewing defendants' transaction files to determine class membership would be burdensome"); *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 539-40 (6th Cir. 2012)³ (rejecting the argument that manual review of files should defeat certification agreeing with district court's reasoning that, if manual review was a bar, "defendants against whom claims of wrongful conduct have been made could escape class-wide review due solely to the size of their businesses or the manner in which their business records were maintained," and citing numerous courts that are in agreement, including *Perez v. First Am. Title Ins. Co.*, 2009 WL 2486003, at *7 (D. Ariz. Aug. 12, 2009) ("Even if it takes a substantial amount of time to review files and determine who is eligible for the [denied] discount, that work can be done through discovery"). Once Defendants' records are obtained, the Court will know the precise number of persons affected.

Absent certification of this class action, NFI's employees may never know that their legal rights have been violated, and as a result, may never obtain the redress to which they are entitled

³ "Section 2-801 is patterned after Rule 23 of the Federal Rules of Civil Procedure and, because of this close relationship between the state and federal provision, 'federal decisions interpreting Rule 23 are persuasive authority with regard to questions of class certification in Illinois.'" *Cruz*, 383 Ill. App. 3d at 761 (quoting *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill.2d 100, 125 (2005)).

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under BIPA. Illinois courts have noted that denial of class certification where members of the putative class have no knowledge of the lawsuit may be the “equivalent of closing the door of justice” on the victims. *Wood River Area Dev. Corp. v. Germania Fed. Sav. & Loan Assn.*, 198 Ill.App.3d 445, 452 (5th Dist. 1990). Further, recognizing the need to protect its citizens from harms such as identity theft, Illinois enacted BIPA specifically to regulate the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and information. A class action would help ensure that Plaintiff and all other similarly-situated individuals have a means of redress against Defendants for their widespread violations of BIPA.

B. Common Questions Of Law And Fact Exist That Predominate Over Any Questions Solely Affecting Individual Members Of The Class.

Courts analyze commonality and predominance under Section 2-801 by identifying the substantive issues that will control the outcome of the case. *See Bemis v. Safeco Ins. Co. of Am.*, 407 Ill. App. 3d 1164, 1167 (5th Dist. 2011); *Cruz*, 383 Ill. App. 3d at 773. The question then becomes whether those issues will predominate and whether they are common to the class, meaning that “favorable adjudication of the claims of the named plaintiffs will establish a right of recovery in other class members.” *Cruz*, 383 Ill. App. 3d at 773. As stated by the Court of Appeals, the question is will “common . . . issues be the subject of the majority of the efforts of the litigants and the court[?]” *Bemis*, 407 Ill. App. 3d at 1168. The answer here is “yes.”

At the heart of this litigation is Defendants’ culpable conduct under BIPA. The issues are simple and straightforward legal questions that plainly lend themselves to class-wide resolution. Notwithstanding the clear and unequivocal requirements of the law, Defendants disregarded Plaintiff’s and other similarly-situated individuals’ statutorily-protected privacy rights and unlawfully collected, stored, used, and disseminated their biometric data in direct violation of BIPA. Specifically, Defendants have violated and continue to violate BIPA because they failed

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and continue to fail to: (1) inform Plaintiff or the putative class in writing of the specific purpose(s) and length of time for which their fingerprints were being collected, stored, used, and disseminated as required by BIPA; (2) provide a publicly available retention schedule and guidelines for permanently destroying Plaintiff's and the putative class's fingerprints, as required by BIPA; and (3) receive a written release from Plaintiff or the putative class to collect, capture, or otherwise obtain their fingerprints, as required by BIPA. Defendants treated the entire proposed class in precisely the same manner, resulting in identical violations of BIPA. These common practices create common issues of law and fact. In fact, the legality of Defendants' collection, storage, use, and dissemination of its employees' biometric data is the focus of this litigation.

Indeed, once this Court determines whether Defendants' practices of collecting, storing, and using individuals' biometric data without adhering to the specific requirements of BIPA constitutes violations thereof, liability for the claims of class members will be determined in one stroke. The material facts and issues of law are substantially the same for the members of the class, and therefore these common issues could be tried such that proof as to one claimant would be proof as to all members of the class. This alone establishes predominance. The only remaining questions will be whether Defendants' violations caused members of the class to suffer damages and the proper measure of damages and injunctive relief, which in and of themselves are questions common to the class. Accordingly, a favorable adjudication of the Plaintiff's claims in this case will establish a right of recovery to all other class members, and thus the commonality and predominance requirements weigh in favor of certification of the class.

C. **The Named Plaintiff And Class Counsel Are Adequate Representatives Of The Class.**

When evaluating adequacy, courts look to whether the named plaintiff has the same interests as those of the class and whether he or she will fairly represent them. *See CE Design Ltd.*,

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2015 IL App. (1st) 131465, ¶ 16. In this case, Plaintiff's interest arises from statute. The class representative, John Stidwell, is a member of the proposed class and will fairly and adequately protect the class's interests. Plaintiff, as a condition of employment, was required to have his fingerprints scanned for both accountability and time tracking purposes. Defendants subsequently stored Plaintiff's fingerprints in their database(s). Plaintiff has never been informed of the specific limited purposes (if any) or length of time for which either Defendant collected, stored, used, or disseminated his biometric data. Plaintiff has never been informed of any biometric data retention policy developed by either Defendant, nor has he ever been informed of whether either Defendant will ever permanently delete his fingerprints. Finally, Plaintiff has never been provided, nor did he ever sign, a written release allowing either Defendant to collect, store, use, or disseminate his fingerprints. Thus, Plaintiff was a victim of the same uniform policies and practices of Defendants as the individuals he seeks to represent and is not seeking any relief that is potentially antagonistic to other members of the class. What is more, Plaintiff has the interests of those class members in mind, as demonstrated by his willingness to sue on a class-wide basis and step forward as the class representative, which subjects him to discovery. (*See* Exhibit A – Affidavit of John Stidwell). This qualifies him as a conscientious representative plaintiff and satisfies the adequacy of representation requirement.

Proposed Class Counsel, Stephan Zouras, LLP, will also fairly and adequately represent the class. Proposed Class Counsel are highly qualified and experienced attorneys. (*See* Exhibit B – Affidavit of Haley R. Jenkins and the Firm Resume attached thereto as Exhibit 1). Stephan Zouras, LLP, are recognized attorneys in class action lawsuits and have been designated as class counsel in numerous class actions in state and federal courts. (*Id.*). Thus, proposed Class Counsel, too, are adequate and have the ability and resources to manage this lawsuit.

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D. A Class Action Is The Appropriate Method For Fair And Efficient Adjudication Of This Controversy.

Finally, a class action is the most appropriate method for the fair and efficient adjudication of this controversy, rather than bringing individual suits which could result in inconsistent determinations and unjust results. “It is proper to allow a class action where a defendant is alleged to have acted wrongfully in the same basic manner toward an entire class.” *P.J.’s Concrete Pumping Service, Inc. v. Nextel West Corporation*, 345 Ill. App. 3d 992, 1003 (2d Dist. 2004). “The purported class representative must establish that a successful adjudication of its individual claims will establish a right of recovery or resolve a central issue on behalf of the class members.” *Id.*

Here, Plaintiff’s claim stems from Defendants’ common and uniform policies and practices, resulting in common violations of BIPA for all members of the class. Thus, class certification will obviate the need for unduly duplicative litigation that might result in inconsistent judgments concerning Defendants’ practices. *Wenthold v. AT&T Technologies, Inc.*, 142 Ill. App. 3d 612 (1st Dist. 1986). Without a class, the Court would have to hear dozens, if not hundreds, of additional individual cases raising identical questions of liability. Moreover, class members are better served by pooling resources rather than attempting to litigate individually. *CE Design Ltd.*, 2015 IL App. (1st) 131465, ¶¶ 28-30 (certifying TCPA class where statutory damages were alleged and rejecting arguments that individual lawsuits would be superior). In the interests of justice and judicial efficiency, it is desirable to concentrate the litigation of all class members’ claims in a single forum. For all of these reasons, the class action is the most appropriate mechanism to adjudicate the claims in this case.

E. In The Event The Court Or A Defendant Seeks More Factual Information Regarding This Motion, The Court Should Allow Supplemental And Deferred Briefing Following Discovery.

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There is no meaningful need for discovery for the Court to certify a class in this matter; Defendants' practices and policies are uniform. If, however, the Court wishes for the Parties to engage in discovery, the Court should keep the instant motion pending during the discovery period, allow Plaintiff a supplemental brief, and defer Defendants' response and Plaintiff's reply. Plaintiff is moving as early as possible for class certification in part to avoid the "buy-off problem," which occurs when a defendant seeks to settle with a class representative on individual terms in an effort to moot the class claims asserted by the class representative. Plaintiff is also moving for class certification now because the class should be certified, and because no meaningful discovery is necessary to establish that fact. The instant motion is far more than a placeholder or barebones memorandum. Rather, Plaintiff's full arguments are set forth based on the facts known at this extremely early stage of litigation. Should the Court wish for more detailed factual information, the briefing schedule should be extended.

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IV. Conclusion

For the reasons stated above, Plaintiff respectfully requests that the Court enter an Order: (1) certifying Plaintiff's claims as a class action; (2) appointing Plaintiff John Stidwell as Class Representative; (3) appointing Stephan Zouras, LLP as Class Counsel; and (4) authorizing court-facilitated notice of this class action to the class. In the alternative, this Court should allow discovery, allow Plaintiff to supplement this briefing, and defer response and reply briefs.

Date: November 1, 2018

Respectfully Submitted,

/s/ Haley R. Jenkins
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I, the attorney, hereby certify that on November 1, 2018, I electronically filed the attached with the Clerk of the Court using the ECF system which will send such filing to all attorneys of record.

/s/ Haley R. Jenkins

Return Date: No return date scheduled
Hearing Date: 11/13/2018 9:00 AM - 9:00 AM
Courtroom Number:
Location:

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COOK COUNTY, IL
2018CH13599

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EXHIBIT A

FILED DATE: 11/1/2018 1:50 PM 2018CH13599

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

JOHN STIDWELL, individually,)
and on behalf of all others similarly situated,)

Plaintiff,)

v.)

NFI, LLC and KRONOS, INC.,)

Defendants.)

Case No. 2018-CH-13599

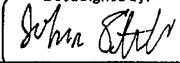
AFFIDAVIT OF JOHN STIDWELL

I, John Stidwell, being first duly cautioned, swear and affirm as follows:

1. I am over the age of 18 and competent to testify.
2. I am the Named Plaintiff and proposed Class Representative in this case.
3. I understand what it means to be a class representative. As a class representative, I am looking out for the interests of the other class members.
4. I do not have any conflicts with the class members because they were treated like I was with respect to this lawsuit. I have their interests in mind, as well as my own, in bringing this lawsuit.

FURTHER YOUR AFFIANT SAYETH NOT.

Date: 10/31/2018

DocuSigned by:

John Stidwell

Return Date: No return date scheduled
Hearing Date: 11/13/2018 9:00 AM - 9:00 AM
Courtroom Number:
Location:

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COOK COUNTY, IL
2018CH13599

EXHIBIT B

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

JOHN STIDWELL, individually,)
and on behalf of all others similarly situated,)

Plaintiff,)

v.)

NFI, LLC and KRONOS, INC.,)

Defendants.)

Case No. 2018-CH-13599

AFFIDAVIT OF HALEY R. JENKINS

I, Haley R. Jenkins, being first duly cautioned, swear and affirm as follows:

1. I am one of Plaintiff's Counsel in the above-referenced matter.
2. I submit this Affidavit in support of Plaintiff's Motion for Class Certification and Request for Discovery on Certification Issues.
3. I am an associate of the law firm of Stephan Zouras, LLP.. Attached hereto as Exhibit 1 is a true and correct copy of the firm's resume.

FURTHER YOUR AFFIANT SAYETH NOT.

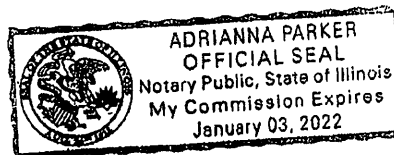
Date: November 1, 2018

/s/ Haley R. Jenkins

Haley R. Jenkins

Subscribed and sworn to
before me on this 1st day of
November, 2018


Notary Public



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EXHIBIT 1

STEPHANZOURAS

ATTORNEYS AT LAW

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FIRM PROFILE

STEPHAN ZOURAS, LLP is a law firm concentrating on helping people in class and individual civil litigation. The firm's attorneys have broad litigation, trial and appellate experience in the areas of wage and hour law and other employment disputes, mass torts and catastrophic personal injury, consumer protection, products liability and other complex litigation.

Our Chicago-based firm actively litigates cases in federal and state courts throughout the United States. The firm's two founding partners, James B. Zouras and Ryan F. Stephan, have successfully prosecuted claims ranging from individual wrongful death and other catastrophic injury cases to complex, multi-district class and collective actions on behalf of over one hundred thousand individuals against many of the largest corporations in the world.

PRINCIPAL ATTORNEYS

JAMES B. ZOURAS is a founder and principal of Stephan Zouras, LLP. A 1995 graduate of DePaul University College of Law, Jim served as Editor of the Law Review, graduated in the top 10% of his class and was admitted to the Order of the Coif. Jim has helped thousands of people recover tens of millions of dollars in damages in individual and class actions arising under federal wage and hour laws including the Fair Labor Standards Act ("FLSA") and comparable state wage laws, other complex litigation, and catastrophic personal injury actions involving wrongful death, vehicle crashes, products liability, premises liability and construction negligence. Jim has been appointed lead or co-lead counsel on a large number of contested class actions throughout the United States. He has successfully tried over a dozen jury trials and argued over 14 appeals as lead appellate counsel before the federal and state appellate courts. In 2000, Jim was named among the *Chicago Daily Law Bulletin's* "Top 40 Lawyers Under Age 40," one of the youngest lawyers ever bestowed that honor. Jim and his cases have been profiled by numerous media outlets including the Chicago Tribune, the Chicago Sun-Times, Bloomberg BNA, Billboard Magazine and TMZ. Jim has also been interviewed by CBS Consumer Watch. Jim is frequently invited as a speaker at national class action litigation seminars.

RYAN F. STEPHAN is a founder and principal of Stephan Zouras, LLP. A 2000 graduate from Chicago Kent College of Law, Ryan has helped thousands of clients recover damages in cases involving unpaid overtime, employment disputes, business litigation, products liability and personal injury. Ryan has successfully tried cases to verdict including obtaining a \$9,000,000 verdict on behalf of 200 employees who were misclassified and denied overtime pay. Ryan has also served as lead or co-lead counsel on numerous complex class and collective action cases involving wage and hour matters and has helped recover damages for tens of thousands of wronged employees. In these cases, Ryan has helped establish precedent in wage and hour law, forced major corporations to change unlawful employment practices and helped recover tens of millions of dollars in unpaid wages for his clients. Ryan and his cases have been profiled by numerous media outlets including Good Morning America, Fortune, ESPN, Fox News, The Guardian, The New York Times, Think Progress, USA Today and Vice Sports.

Ryan and Jim are admitted to the United States Supreme Court as well as the Trial Bar of the United States District Court for the Northern District of Illinois. In addition, they have been admitted or admitted *pro hac vice* to prosecute class actions in the Southern and Eastern Districts of New York, the District of New Jersey, the Eastern and Middle Districts of Pennsylvania, the Western District of North Carolina, the Superior Court for the State of California, the Central District

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of Illinois, the District of Minnesota the Eastern District of Michigan, the Eastern District of Missouri, the District of Maryland, the Southern District of Ohio, the Northern, Middle and Southern Districts of Florida, the Northern District of Texas, the District of Massachusetts, the District of Minnesota, the First Judicial District of Pennsylvania, the Western District of Washington and the Southern and Northern Districts of Iowa.

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

PARTNERS

ANDREW C. FICZKO graduated from Drake University Law School in 2009. A tireless advocate for working people, Andy has spent his entire professional career litigating on behalf of employees in class and collective actions nationwide. Andy has helped thousands of clients recover damages in cases involving unpaid minimum and overtime wages and other benefits. Andy served as the second chair in two major federal jury trials to verdict on behalf of Plaintiffs in wage and hour matters and one state jury trial to verdict on behalf of Plaintiffs in a breach of contract matter.

Andy has been admitted to the Trial Bar of the United States District Court for the Northern District of Illinois since December 2012 and has been admitted or admitted *pro hac vice* to the Southern District of New York, the Southern and Northern Districts of Iowa, District of Massachusetts, Eastern District of Pennsylvania, and the Western District of Washington.

In 2014, 2015, and 2016 Andy was recognized by Chicago Magazine's Super Lawyer section as a Rising Star, a distinction given to no more than 2.5% of Illinois lawyers.

TERESA M. BECVAR is a 2013 graduate of Chicago-Kent College of Law, where she served as Editor of the Law Review and graduated in the top 15% of her class. Teresa assists Stephan Zouras, LLP clients with employment and consumer protection issues. Teresa has experience working on a wide range of employment cases, including wage and hour class and collective actions and employment discrimination cases. Teresa has been admitted *pro hac vice* to the Eastern and Southern Districts of New York, the Western District of Washington, the Middle District of Florida and the Central District of California.

In 2016, Teresa was recognized by Chicago Magazine's Super Lawyer section as a Rising Star, a distinction given to no more than 2.5% of Illinois lawyers.

ASSOCIATE ATTORNEYS

CATHERINE T. MITCHELL graduated from The John Marshall Law School in 2015. Catherine litigates on behalf of Stephan Zouras, LLP's clients in both class action and individual litigation, representing people in a wide-range of legal disputes, including unpaid wages, employee misclassification, mass torts, antitrust, and consumer fraud. Catherine is an active member of the Women's Bar Association of Illinois and the Young Lawyers Society of the Chicago Bar Association, and served as a Chapter Editor for the Second Edition of BNA's Age Discrimination in Employment Act Treatise. Catherine is admitted to practice in Illinois, the District of Colorado, the Eastern District of Wisconsin and has been admitted *pro hac vice* to the Southern and Eastern District of New York, the District of Florida-Tampa Division, the Southern District

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of Iowa and the Eastern District of North Carolina.

HALEY R. JENKINS graduated *cum laude* from Chicago-Kent College of Law in 2016. Haley litigates on behalf of Stephan Zouras, LLP's clients in both class action and individual litigation. A spirited advocate, Haley represents clients in legal disputes involving unpaid wages, employee misclassification, antitrust, consumer fraud, whistleblower actions, and *qui tam* cases. She is currently a member of the legal team pursuing the first-ever lawsuit for minimum wage violations on behalf of the cheerleading squad of an NBA team. Haley is admitted to practice in Illinois and the District of Colorado and has been admitted *pro hac vice* to the Middle District of Pennsylvania.

OF COUNSEL

DAVID J. COHEN, a highly skilled and successful class-action attorney, joined Stephan Zouras, LLP in April 2016 and manages our Philadelphia office. Dave has spent 22 years fighting to protect the rights of thousands of employees, consumers, shareholders, and union members. Before joining Stephan Zouras, Dave worked on, and ran, dozens of significant antitrust, consumer, employment and securities matters for four highly-regarded Philadelphia firms. Before joining the private sector, Dave completed a unique clerkship with the Hon. Stephen E. Levin in the Philadelphia Court of Common Pleas, during which he not only helped to develop a respected and efficient system for the resolution of the Court's class action cases, but also contributed to several well-regarded works on class actions. Dave earned a J.D. from the Temple University School of Law in 1994. While attending law school, Dave was awarded the Barristers Award for excellence in trial advocacy and worked as a teaching assistant for Hon. Legrome Davis (E.D. Pa.) as part of Temple's award-winning Integrated Trial Advocacy program. Dave graduated with honors from the University of Chicago in 1991.

Dave is admitted to practice in the United States Court of Appeals for the Third Circuit, the United States Court of Appeals for the Sixth Circuit, the United States District Court for the Eastern District of Pennsylvania, the United States District Court for the Middle District of Pennsylvania, the United States District Court for the Western District of Pennsylvania, the United States District Court for the District of New Jersey and the state courts of Pennsylvania and New Jersey. He is a member of the American and Philadelphia Bar Associations.

PHILIP J. GIBBONS, JR., a highly-accomplished Plaintiff's class action attorney in his own right, joined Stephan Zouras, LLP in June 2017 and manages our Charlotte office. Phil focuses entirely on employment law, with an emphasis on helping employees recover unpaid wages including overtime. Phil began his legal career with a large national law firm, representing and counseling corporations and employers. Since 2001, Phil has exclusively represented employees. Phil is recognized by his peers as a highly skilled employment lawyer. He is listed in Best Lawyers in America and Super Lawyers. In addition, he has a perfect 10.0 rating on Avvo.com and an "A/V" rating with Martindale Hubble, which is the highest rating an attorney can receive. Phil has extensive experience litigating single and multi-plaintiff wage and hour lawsuits under the Fair Labor Standards Act, recovering unpaid overtime and minimum wages for thousands of employees throughout the United States.

Phil is admitted to practice in North Carolina, Indiana, Seventh Circuit Court of Appeals, Sixth Circuit Court of Appeals, Third Circuit Court of Appeals, Tenth Circuit Court of Appeals, U.S. District Courts Western District North Carolina, Middle District North Carolina, Southern District of Indiana, Northern District of Indiana, and Eastern District of Michigan.

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REPRESENTATIVE TRIALS, VERDICTS AND JUDGMENTS

Franco, et al. v. Ideal Mortgage Bankers, d/b/a Lend America 12/14/17 – Trial Court Judgment
No. 07-cv-3956 (United States District Court for the Eastern District of New York)

The Court entered a \$15.2 million judgment on behalf of several hundred loan officers who were deprived of minimum wages and overtime in violation of federal and state law.

Frisari v. DISH Network 8/25/16 – Arbitration Judgment
No. 18-160-001431-12 (AAA Arbitration)

The Arbitrator certified and granted final judgment in excess of seven figures for a class of over 1,000 New Jersey inside sales associates who performed work before and/or after their shifts without pay and were not paid the proper overtime rate when they worked in excess of 40 hours a week.

Huskey v. Ethicon Inc. 9/10/2014 – Jury Verdict
No. 2:12-cv-05201 (United States District Court for the Southern District of West Virginia)

Stephan Zouras, LLP helped secure a \$3,270,000.00 jury verdict in one of the bell-weather trial cases in the multi-district litigation against Johnson & Johnson's Ethicon unit for defective design, failure to warn and negligence related to transvaginal mesh device.

Lee v. THR 5/22/14 – Trial Court Judgment
No. 12-cv-3078 (United States District Court for the Central District of Illinois)

As a result of the efforts of class counsel Stephan Zouras, LLP, the Court entered a judgment for a class of employees given job titles such as "Buyers," "Auditors" and "Managers" for unpaid overtime in the sum of \$12,207,880.84.

Vilches et al. v. The Travelers Companies, Inc. 12/12/12 - Arbitration Judgment
No. 11-160-000355-11 (American Arbitration Association)

Following a contested evidentiary hearing, Stephan Zouras, LLP secured a significant monetary award on behalf of a group of insurance appraiser employees seeking unpaid earned overtime under the FLSA.

Kyriakoulis, at al. v. DuPage Health Center 11/8/12 - Jury Verdict
No. 10-cv-7902 (United States District Court for the Northern District of Illinois)

Stephan Zouras, LLP achieved a favorable jury verdict on behalf of several medical assistants deprived of minimum and overtime wages in violation of federal and Illinois law.

Smith v. Safety-Kleen Systems, Inc. 7/11/12 - Jury Verdict
No. 10-cv-6574 (United States District Court for the Northern District of Illinois)

Stephan Zouras, LLP achieved a favorable jury verdict on behalf of a chemical handler deprived of overtime wages in this donning and doffing action brought under the FLSA.

Wong v. Wice Logistics 1/30/12 - Jury Verdict
No. 08 L 13380 (Circuit Court of Cook County, Illinois)

Stephan Zouras, LLP recovered unpaid commissions and other damages for Plaintiff based on her claims under the Illinois Wage Payment and Collection Act.

FILED DATE: 11/1/2018 1:50 PM 2018CH13599

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Daniels et al. v. Premium Capital Financing

10/18/11 - Jury Verdict

No. 08-cv-4736 (United States District Court for the Eastern District of New York)

Stephan Zouras, LLP were appointed lead class and trial counsel and achieved a jury verdict in excess of \$9,000,000.00 on behalf of over 200 loan officers who were deprived of minimum wages and overtime pay.

Ferrand v. Lopas

5/22/01 - Jury Verdict

No. 00 L 2502 (Circuit Court of Cook County, Law Division, State of Illinois)

Jury verdict in excess of available liability insurance policy limits entered in favor of seriously-injured pedestrian, resulting in liability against insurance carrier for its bad faith refusal to tender the policy limits before trial.

REPRESENTATIVE RESOLVED CLASS AND COLLECTIVE ACTIONS

Courts have appointed the firm's partners as lead or co-lead counsel in numerous class and collective actions in which they achieved six, seven and eight-figure verdicts or settlements including:

Eggleston v. USCC Services, LLC.

2/16/18 – Final Approval

No. 16-cv-06775 (United States District Court for the Northern District of Illinois)

As co-lead counsel, Stephan Zouras, LLP helped obtain final approval of a \$1,250,000 class settlement for unpaid overtime wages on behalf of misclassified Sales Managers.

Caison v. Sogeti USA, LLC, et al.

2/12/18 – Final Approval

No. 17-cv-2786 (United States District Court for the Northern District of Illinois)

As lead counsel, Stephan Zouras, LLP achieved a class wide settlement on behalf of hundreds of Business Analysts who worked in excess of 40 hours per week and were not paid proper overtime compensation.

Kaminski v. Bank of America, N.A.

2/15/18 – Final Approval

No. 16-cv-10844 (United States District Court for the Northern District of Illinois)

Final approval for class settlement in the amount of \$850,000 in unpaid wages was granted and awarded to a class of approximately 100 employees working as Senior Specialist-Securities and Operation Market Professionals.

Byrne v. Centegra Health System

1/29/18 – Final Approval

No. 17-cv-00018 (United States District Court for the Northern District of Illinois)

The Court granted final approval of class settlement for \$425,000 in unpaid overtime wages on behalf of registered nurses, physical therapists, occupational therapists, speech therapists and other similarly-designated skilled care positions who were misclassified as exempt under federal and state wage laws.

Donoghue v. Verizon Communications, Inc.

11/16/17 – Final Approval

No. 16-cv-4742 (United States District Court for the Eastern District of Pennsylvania)

The Court granted final approval of class settlement for \$800,000 in unpaid overtime wages on behalf of wireline workers who were hired to fill in for Verizon employees during a strike. Despite regularly working 65 hours per week, these employees were classified as exempt and denied overtime wages.

Tompkins v. Farmers Insurance Exchange

9/27/17 – Final Approval

No. 14-cv-3737 (United States District Court for the Eastern District of Pennsylvania)

The Court granted final approval of a \$775,000.00 class settlement on behalf misclassified loan officers seeking unpaid overtime wages.

FILED DATE: 11/1/2018 1:50 PM 2018CH13599

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In re Sears Holdings Corporation Stockholder and Derivative Litigation

5/9/17 – Final Approval

No. 11081-VCL (Court of Chancery of the State of Delaware)

Stephan Zouras, LLP represented the Named Plaintiff in a \$40 million settlement in connection with a 2015 sale by Sears of 235 properties to Seritage Growth Properties.

Oaks v. Sears

4/12/17 – Final Approval

No. 1:15-cv-11318 (United States District Court for the Northern District of Illinois)

Stephan Zouras, LLP settled on behalf of thousands of consumers who own or once owned Sears Kenmore grills in a product defect class action.

Hauser v. Alexian Brothers Home Health

4/06/17 – Final Approval

No. 15-cv-6462 (United States District Court for the Northern District of Illinois)

Stephan Zouras, LLP settled for \$1 million on behalf of home health care clinicians who were misclassified as "exempt" and deprived of earned overtime wages.

Leiner v. Johnson & Johnson

1/31/17 – Final Approval

No. 15-cv-5876 (United States District Court for the Northern District of Illinois)

The Court granted final approval of a \$5 million settlement for consumers nationwide in a consumer fraud class action. Stephan Zouras, LLP represented consumers who were deceived into paying premium prices for Johnson & Johnson baby bedtime products which falsely claimed to help babies sleep better.

McPhearson v. 33 Management

11/3/16 – Final Approval

No. 15-ch-17302 (Circuit Court of Cook County, IL)

The Court granted final approval of class settlement on behalf of tenants of a Chicago apartment building where the landlords violated the City of Chicago Residential Landlord and Tenant Ordinance by collecting and holding tenant security deposits without paying interest earned.

Cook v. Bank of America

8/2/16 – Final Approval

No. 15-cv-07718 (United States District Court for the Northern District of Illinois)

The Court granted final approval of \$3,250,000 settlement for an Illinois Class and FLSA Collective on behalf of individuals who worked as Treasury Services Advisors and who were misclassified as exempt from earned overtime wages.

Altnor v. Preferred Freezer Services, Inc.

7/18/16 – Final Approval

No. 14-cv-7042 (United States District Court for the Eastern District of Pennsylvania)

The firm's attorneys served as lead counsel in this lawsuit seeking recovery of wages for unpaid meal break work for a class of 80 cold storage warehouse workers.

Lukas v. Advocate Health Care

6/29/16 – Final Approval

No. 14-cv-2740 (United States District Court for the Northern District of Illinois)

The Court granted final approval of a \$4,750,000 settlement for a federal FLSA and Illinois Minimum Wage Law collective class of home health care clinicians who were wrongly classified as "exempt" from federal and state overtime laws.

Kurgan v. Chiro One Wellness Centers LLC

4/27/16 – Final Approval

No. 10-cv-1899 (United States District Court for the Northern District of Illinois)

The Court granted Plaintiffs' motion for Section 216(b) certification of Plaintiffs' FLSA claim, granted Rule 23 certification of Plaintiffs' claims under the Illinois Minimum Wage Law and appointed Stephan Zouras, LLP as counsel for a class of chiropractic technicians and assistants.

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Heba v. Comcast

4/6/16 – Final Approval

No. 12-471 (First Judicial District of Pennsylvania Court of Common Pleas of Philadelphia)

The Court granted class certification to Customer Account Executives who worked at Comcast's Pennsylvania call centers and were required to work 15 minutes a day before their scheduled start time without pay. As lead counsel, Stephan Zouras, LLP achieved a favorable resolution for over 6,000 class members.

Johnson v. Casey's General Stores, Inc.

3/3/16 – Final Approval

No. 15-cv-3086 (United States District Court for the Western District of Missouri)

The Court granted final approval on behalf of a certified class of employees of Casey's General Stores, Inc. to redress violations of the Fair Credit Reporting Act (FCRA).

Fields v. Bancsource, Inc.

2/3/16 – Final Approval

No. 14-cv-7202 (United States District Court for the Northern District of Illinois)

The Court entered an order granted Plaintiffs' motion for Section 216(b) certification of a class of field engineers who were deprived of overtime for hours worked in excess of 40 in given workweeks.

Elder, et al. v. Comcast Corporation

1/11/16 – Final Approval

No. 12-cv-1157 (United States District Court for the Northern District of Illinois)

The Court granted Plaintiffs' motion for conditional certification and appointed Stephan Zouras, LLP as counsel for a class of cable technicians who allege they were deprived of overtime wages in violation of federal law.

Posada, et al. v. Continental Home Loans, Inc.

1/13/16 - Final Approval

15-cv-4203 (United States District Court for the Eastern District of New York)

Stephan Zouras, LLP was appointed class counsel and achieved a substantial settlement on behalf of a class of loan officers deprived of minimum and overtime wages.

Struett v. Susquehanna Bank

10/27/15 – Final Approval

No. 15-cv-176 (United States District Court for the Eastern District of Pennsylvania)

The firm's attorneys served as co-lead counsel in this lawsuit which recovered \$300,000 in unpaid overtime wages for 31 misclassified loan officers.

Faust, et al. v. Comcast Corporation

10/11/15 - Final Approval

No. 10-cv-2336 (United States District Court for the Northern District of Maryland)

The Court granted Plaintiffs' motion for conditional certification and appointed Stephan Zouras, LLP lead counsel for a class of call center employees.

Butler, et al. v. Direct Sat

9/3/15 - Final Approval

No. 10-cv-08747 DKC (United States District Court for the District of Maryland)

Stephan Zouras, LLP reached favorable resolution on behalf of a finally-certified collective class of technicians working in DirectSat's Maryland warehouses who were not paid overtime.

Sosnicki v. Continental Home Loans, Inc.

7/30/15 - Final Approval

No. 12-cv-1130 (United States District Court for the Eastern District of New York)

As lead class counsel, Stephan Zouras, LLP achieved a six-figure settlement on behalf of a collective class of loan officers who were deprived of minimum wages and overtime in violation of federal and state law.

Bordell v. Geisinger Medical Center

4/8/15 – Final Approval

No. 12-cv-1688 (Northumberland Court of Common Pleas)

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The firm's attorneys served as lead counsel in this lawsuit which challenged Defendant's workweek averaging practices and recovered \$499,000 in unpaid overtime wages for hospital workers.

Harvey, et al. v. AB Electrolux, et al.

3/23/15 – Final Approval

No. 11-cv-3036 (United States District Court for the Northern District of Iowa)

As lead counsel, Stephan Zouras, LLP achieved a six-figure settlement amount on behalf of hundreds of production workers seeking unpaid earned wages.

Price v. NCR Corporation

3/18/15 – Final Approval

No. 51-610-908-12 (AAA Arbitration)

As lead class counsel, Stephan Zouras, LLP achieved a seven figure, arbitrator approved settlement on behalf of thousands of Customer Engineers nationwide who were deprived overtime wages in violation of federal law.

Frebes, et al. v. Mask Restaurants, LLC

1/15/15 – Final Approval

No. 13-cv-3473 (United States District Court for the Northern District of Illinois)

Stephan Zouras, LLP was appointed class counsel and achieved a substantial settlement on behalf of hundreds of servers, bartenders and bussers forced to participate in an illegal "tip pool."

Jones v. Judge Technical Services Inc.

12/15/14 – Final Approval

No. 11-cv-6910 (United States District Court for the Eastern District of Pennsylvania)

As lead class counsel, Stephan Zouras, LLP prevailed on summary judgment and subsequently achieved a seven-figure settlement on behalf of IT workers who were designated under the "Professional Day" or "Professional Week" compensation plan, misclassified as exempt from the FLSA and denied overtime pay.

Howard, et al. v. Securitas Security Services USA, Inc.

5/7/14 – Final Approval

No. 08-cv-2746 (United States District Court for the Northern District of Illinois)

and Hawkins v. Securitas Security Services USA, Inc.

No. 09-cv-3633 (United States District Court for the Northern District of Illinois)

For settlement purposes, the Court certified a class of approximately ten thousand security guards seeking damages for unpaid wages and overtime under the FLSA and Illinois Minimum Wage Law.

Thomas v. Matrix Corporation Services

2/12/14 – Final Approval

No. 10-cv-5093 (United States District Court for the Northern District of Illinois)

As lead counsel, Stephan Zouras, LLP achieved a six-figure settlement on behalf of a class of hundreds of technicians who allege they were deprived of overtime wages in violation of federal law.

Ingram v. World Security Bureau

12/17/13 – Final Approval

No. 11-cv-6566 (United States District Court for the Northern District of Illinois)

Stephan Zouras secured a class settlement on behalf of several hundred security officers deprived of minimum wages and overtime in violation of federal and state law.

Sexton v. Franklin First Financial

9/30/13 – Final Approval

No. 08-cv-04950 (United States District Court for the Eastern District of New York)

Stephan Zouras, LLP achieved a settlement on behalf of a class of approximately 150 loan officers deprived of minimum wages and overtime in violation of the FLSA.

FILED DATE: 11/1/2018 1:50 PM 2018CH13599

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Outlaw v. Secure Health, L.P.

9/24/13 – Final Approval

No. 11-cv-602 (United States District Court for the Eastern District of Pennsylvania)

The firm's attorneys served as lead counsel in this lawsuit seeking recovery of wages for unpaid pre-shift, meal break and uniform maintenance work for a class of 35 nursing home workers.

Robinson v. RCN Telecom Services, Inc.

8/5/13 – Final Approval

No. 10-cv-6841 (United States District Court for the Eastern District of Pennsylvania)

The firm's attorneys served as co-lead counsel in this lawsuit which recovered \$375,000 in unpaid overtime wages for misclassified cable television installers.

Holland v. Securitas Security Services USA, Inc.

7/26/13 - Final Approval

No. BC 394708 (Superior Court of California, County of Los Angeles)

As class counsel, Stephan Zouras, LLP achieved a six figure settlement on behalf of thousands of security officers who allege they were deprived of overtime wages in violation of federal law.

Jankuski v. Heath Consultants, Inc.

7/2/13 - Final Approval

No. 12-cv-04549 (United States District Court for the Northern District of Illinois)

Stephan Zouras, LLP was appointed lead counsel and achieved a settlement on behalf of gas management technicians deprived of minimum wages and overtime in violation of the FLSA.

Ord v. First National Bank of Pennsylvania

6/21/13 – Final Approval

No. 12-cv-766 (United States District Court for the Western District of Pennsylvania)

The firm's attorneys served as co-lead counsel in this consumer fraud lawsuit which recovered \$3,000,000 for consumers who had been made to pay improper overdraft fees.

Holley v. Erickson Living Management, LLC

6/13/13 – Final Approval

No. 11-cv-2444 (United States District Court for the Eastern District of Pennsylvania)

The firm's attorneys served as lead counsel in this lawsuit seeking recovery of wages for unpaid pre-shift and meal break work for a class of 63 nursing home workers.

Hansen, et al. v. Per Mar Security Services

5/15/13 - Final Approval

No. 09-cv-459 (United States District Court for the Southern District of Iowa)

Stephan Zouras, LLP was appointed class counsel and secured a settlement for hundreds of security guards deprived of minimum wages and overtime in violation of federal and state law.

Pomphrett v. American Home Bank

3/14/13 – Final Approval

No. 12-cv-2511 (United States District Court for the Eastern District of Pennsylvania)

The firm's attorneys served as co-lead counsel in this lawsuit which recovered \$2,400,000 in unpaid overtime wages for misclassified loan officers.

Murphy v. Rayan Brothers, et al.

2/22/13 - Final Approval

No. 11 CH 03949 (Circuit Court of Cook County, Chancery Division, State of Illinois)

Stephan Zouras, LLP achieved class wide recovery on behalf of a class of tenants for violations of the Chicago Residential Landlord and Tenant Ordinance (RLTO).

FILED DATE: 11/1/2018 1:50 PM 2018CH13599

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Glatts v. Crozer-Keystone Health System

2/6/13 – Final Approval

No. 0904-1314 (Philadelphia Court of Common Pleas)

The firm's attorneys served as co-lead counsel in this lawsuit which challenged Defendant's workweek averaging practices and recovered \$1,200,000 in unpaid overtime wages for hospital workers.

Chambers v. Front Range Environmental, LLC

1/23/13 - Final Approval

No. 12-cv-891 (United States District Court for the Northern District of Illinois)

Stephan Zouras, LLP was appointed as class counsel and resolved this action on behalf of a class of maintenance workers.

Piehl v. Baytree National Bank

1/3/13 - Final Approval

No. 12-cv-1364 (United States District Court for the Northern District of Illinois)

Stephan Zouras, LLP was appointed class counsel and resolved this action on behalf of a class of Indiana loan officers who were paid on a commission-only basis and deprived of earned minimum wage and overtime in violation of the FLSA.

Searson v. Concord Mortgage Corporation

11/19/12 - Final Approval

No. 07-cv-3909 (United States District Court for the Eastern District of New York)

Stephan Zouras, LLP achieved a settlement on behalf of a class of 80 loan officers deprived of minimum wages and overtime in violation of the FLSA.

Ellenbecker, et al. v. North Star Cable Construction, Inc., et al.

11/14/12 - Final Approval

No. 09-cv-7293 (United States District Court for the Northern District of Illinois)

Stephan Zouras, LLP obtained Rule 23 certification, were appointed lead counsel, and achieved a significant monetary resolution for a class of several hundred cable technicians seeking unpaid overtime wages and the recovery of improper deductions from their pay.

Williams, et al. v. Securitas Security Services USA, Inc.

11/8/12 - Final Approval

No. 10-cv-7181 (United States District Court for the Eastern District of Pennsylvania)

As lead class counsel, Stephan Zouras, LLP achieved a settlement on behalf of a class of Pennsylvania security guards who were not paid for all time spent in training and orientation.

Lacy, et al. v. The University of Chicago Medical Center

11/6/12 – Final Approval

No. 11-cv-5268 (United States District Court for the Northern District of Illinois)

As lead class counsel, Stephan Zouras, LLP achieved a FLSA settlement for a collective class of hospital respiratory therapists.

Molyneux, et al. v. Securitas Security Services USA, Inc.

11/5/12 - Final Approval

No. 10-cv-588 (United States District Court for the Southern District of Iowa)

As lead class counsel, Stephan Zouras achieved a settlement on behalf of a class of Iowa and Wisconsin security guards who were not paid for all time spent in training and orientation.

Davis v. TPI Iowa, LLC

9/6/12 - Final Approval

No. 11-cv-233 (United States District Court for the Southern District of Iowa)

As class counsel, Stephan Zouras, LLP achieved a settlement on behalf of a collective class of production employees.

Kernats, et al. v. Comcast Corporation

5/28/12 - Final Approval

No. 09-cv-3368 (United States District Court for the Northern District of Illinois)

FILED DATE: 11/1/2018 1:50 PM 2018CH13599

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As lead class counsel, Stephan Zouras, LLP achieved a seven-figure settlement on behalf of over 7,500 Customer Account Representatives (CAEs) for unpaid wages in a Rule 23 class action brought under Illinois wage law.

Garcia, et al. v. Loffredo Fresh Produce Co., Inc.

5/24/12 - Final Approval

No. 11-cv-249 (United States District Court for the Southern District of Iowa)

As class counsel, Stephan Zouras, LLP achieved a settlement on behalf of a collective class of produce processing employees.

Larsen, et al. v. Clearchoice Mobility, Inc., et al.

3/21/12 - Final Approval

No. 11-cv-1701 (United States District Court for the Northern District of Illinois)

Stephan Zouras, LLP achieved an FLSA settlement on behalf of a collective class of retail sales consultants.

Etter v. Trinity Structural Towers

1/26/12 - Final Approval

No. 11-cv-249 (United States District Court for the Southern District of Iowa)

As class counsel, Stephan Zouras, LLP achieved a settlement on behalf of a collective class of production employees.

Petersen, et al v. Marsh USA, Inc. et al.

9/21/11 - Final Approval

No. 10-cv-1506 (United States District Court for the Northern District of Illinois)

Stephan Zouras, LLP achieved a six-figure settlement on behalf of over 30 analysts who claimed they were misclassified under the FLSA.

Thompson v. World Alliance Financial Corp.

8/5/11 - Final Approval

No. 08-cv-4951 (United States District Court for the Eastern District of New York)

Stephan Zouras, LLP were appointed lead counsel and achieved a settlement on behalf of a class of over one hundred loan officers deprived of minimum wages and overtime in violation of federal and state law.

Vaughan v. Mortgage Source LLC, et al.

6/16/11 - Final Approval

No. 08-cv-4737 (United States District Court for the Eastern District of New York)

Stephan Zouras, LLP were appointed lead counsel and achieved a settlement on behalf of a class of loan officers deprived of minimum wages and overtime in violation of federal and state law.

Harris, et al. v. Cheddar's Casual Cafe, Inc.

6/1/11 - Final Approval

No. 51 460 00557 10 (AAA Arbitration)

Stephan Zouras served as lead counsel in six-figure class settlement on behalf of over 100 restaurant workers deprived of minimum wages and overtime.

Turner v. Mercy Health System

4/20/11 - Final Approval

No. 0801-3670 (Philadelphia Court of Common Pleas)

The firm's attorneys served as co-lead counsel in this lawsuit which challenged Defendant's workweek averaging practices and, in a case of first impression, recovered \$2,750,000 in unpaid overtime wages for hospital workers.

Brown et al. v. Vision Works, et al.

3/4/11 - Final Approval

No. 10-cv-01130 (United States District Court for the Northern District of Illinois)

As lead class counsel, Stephan Zouras, LLP achieved a settlement on behalf of retail store managers improperly classified as exempt from overtime.

FILED DATE: 11/1/2018 1:50 PM 2018CH13599

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ATTORNEYS AT LAW

100 North Riverside Plaza, Suite 2150
Chicago, Illinois 60606
P 312-233-1550 | F 312-233-1560
stephanzouras.com

Havard v. Osceola Foods, Inc., et al.

2/28/11 - Final Approval

No. LA CV 0111290 (Iowa District for Clarke County, Iowa)

As lead class counsel, Stephan Zouras, LLP achieved a class settlement on behalf of meat processing plant employees who were not properly paid for donning and doffing activities performed before their shifts, during meal breaks and after their shifts.

Lagunas v. Cargill Meat Solutions Corp.

1/27/11 - Final Approval

No. 10-cv-00220 (United States District Court for the Southern District of Iowa)

Stephan Zouras, LLP served as co-lead counsel in class settlement on behalf of meat processing plant employees who were not properly paid for donning and doffing activities performed before their shifts, during meal breaks and after their shifts.

Anderson v. JCG Industries, Inc.

9/2/10 - Final Approval

No. 09-cv-1733 (United States District Court for the Northern District of Illinois)

As lead class counsel, Stephan Zouras, LLP achieved a six-figure settlement on behalf of meat processing plant employees who were not properly paid for time worked before their shifts, during meal breaks and after their shifts.

Cedeno, et al. v. Home Mortgage Desk, Corp., et al.

6/15/10 - Final Approval

No. 08-cv-1168 (United States District Court for the Eastern District of New York)

Stephan Zouras, LLP along with co-counsel was appointed lead counsel and achieved a six-figure settlement on behalf of a Section 216(b) collective class of loan officers deprived of overtime wages.

Perkins, et al. v. Specialty Construction Brands, Inc.

11/15/09 - Final Approval

No. 09-cv-1678 (United States District Court for the Northern District of Illinois)

As lead class counsel, Stephan Zouras, LLP achieved a six-figure wage and hour settlement on behalf of a collective class of plant employees for claims of unpaid overtime, including time worked before the start of their shifts, during breaks and after the end of their shifts.

Wineland, et al. v. Casey's General Stores, Inc.

10/22/09 - Final Approval

No. 08-cv-00020 (United States District Court for the Southern District of Iowa)

Stephan Zouras, LLP along with co-counsel was appointed lead counsel and achieved a seven-figure settlement on behalf of a Section 216(b) collective class and Rule 23 class of over 10,000 cooks and cashiers for unpaid wages, including time worked before and after their scheduled shifts and while off-the-clock.

Jones, et al. v. Casey's General Stores, Inc.

10/22/09 - Final Approval

No. 07-cv-400 (United States District Court for the Southern District of Iowa)

Stephan Zouras, LLP along with co-counsel was appointed lead counsel and achieved a seven-figure settlement on behalf of a Section 216(b) collective class and Rule 23 class of assistant store managers for unpaid wages, including time worked before and after their scheduled shifts and while off-the-clock.

Stuart, et al. v. College Park, et al.

12/11/07 - Final Approval

No. 05 CH 09699 (Circuit Court of Cook County, Chancery Division, State of Illinois)

The firm's partners served as co-lead counsel in this case brought on behalf of a class of tenants who were seeking the refund of their security deposits. As a result of their efforts, Mr. Stephan and Mr. Zouras helped achieve a six-figure settlement on behalf of a class of over 100 tenants.

FILED DATE: 11/1/2018 1:50 PM 2018CH13599

STEPHANZOURAS

ATTORNEYS AT LAW

100 North Riverside Plaza, Suite 2150
Chicago, Illinois 60606
P 312-233-1550 | F 312-233-1560
stephanzouras.com

Huebner et al. v. Graham C Stores

11/15/07 - Final Approval

No. 06 CH 09695 (Circuit Court of Cook County, Chancery Division, State of Illinois)

Ryan Stephan of Stephan Zouras, LLP served as co-lead counsel in this wage and hour case involving claims for unpaid wages by a class of gas station employees. Mr. Stephan helped achieve a six-figure settlement for over 100 employees.

Perez, et al. v. RadioShack Corporation

9/14/07 - Final Approval

No. 02-cv-7884 (United States District Court for Northern District of Illinois)

The firm's partners served as co-lead counsel in this nationwide Fair Labor Standards Act ("FLSA") overtime action brought on behalf of 4,000 retail store managers. Plaintiffs claimed they were improperly classified as exempt from the FLSA and owed overtime compensation for all hours worked in excess of 40 each week. In a case of first impression, the Court granted summary judgment in favor of a sub-class of Plaintiffs who did not "regularly and customarily" supervise at least 80 hours of subordinate time per week at least 80% of the time as required by the executive exemption of the FLSA. The reported decision is *Perez v. RadioShack Corp.*, 386 F. Supp. 979 (N.D. Ill. 2005). As a result of the efforts of Plaintiffs' counsel, Plaintiffs obtained a nearly \$9 million settlement on the eve of trial.

Reinsmith, et al. v. Castlepoint Mortgage

4/3/07 - Final Approval

No. 05-cv-01168 (United States District Court, Eastern District of Massachusetts)

The firm's partners served as co-lead counsel in this action brought on behalf of a collective class of loan officers seeking to recover unpaid overtime. Mr. Stephan and Mr. Zouras helped achieve a seven-figure settlement on behalf of over 100 loan officers in this case.

Kutcher, et al. v. B&A Associates

11/20/06 - Final Approval

No. 03 CH 07610 (Circuit Court of Cook County, Chancery Division, State of Illinois)

The firm's partners served as co-lead counsel in this case brought on behalf of a class of tenants who were seeking damages based on alleged security deposit violations. As a result of their efforts, Mr. Stephan and Mr. Zouras helped achieve a six-figure settlement on behalf of a class of over 100 tenants.

Ciesla, et al. v. Lucent Technologies, Inc.

7/31/06 - Final Approval

No. 05-cv-1641 (United States District Court for the Northern District of Illinois)

The firm's partners served as co-lead counsel in this breach of contract class action against a high-tech communications company. Mr. Stephan and Mr. Zouras helped obtain a seven-figure settlement on behalf of the class.

Casale, et al. v. Provident Bank

7/25/05 - Final Approval

No. 04-cv-2009 (United States District Court for the District of New Jersey)

The firm's partners served as co-lead counsel in this case brought on behalf of a collective class of over 100 loan officers who were seeking damages based on wage and hour violations of the FLSA. As a result of their efforts, Mr. Stephan and Mr. Zouras helped achieve a seven-figure settlement on behalf of the Plaintiffs.

Corbin, et al. v. Barry Realty

3/22/05 - Final Approval

No. 02 CH 16003 (Circuit Court of Cook County, Chancery Division, State of Illinois)

The firm's partners served as co-lead counsel in this case brought on behalf of a class of tenants who were seeking the refund and interest on their security deposits as called for by the Chicago Residential Landlord Tenant Ordinance. As a result of their efforts, Mr. Stephan and Mr. Zouras helped achieve a six-figure settlement on behalf of a class of over 100 tenants.

FILED DATE: 11/1/2018 1:50 PM 2018CH13599

STEPHANZOURAS

ATTORNEYS AT LAW

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stephanzouras.com

BIOMETRIC INFORMATION PRIVACY CLASS ACTION LAWSUITS

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

- Doporcyk, et al. v. Mariano's
No. 17-cv-05250 (United States District Court for the Northern District of Illinois)
- Dixon, et al. v. Smith Senior Living
No. 17-cv-08033 (United States District Court for the Northern District of Illinois)
- Fields, et al. v. Abra Auto Body & Glass
No. 17-CH-12271 (Circuit Court of Cook County, Chancery Division, State of Illinois)
- Goings, et al. v. Applied Acoustics
No. 17-CH-14954 (Circuit Court of Cook County, Chancery Division, State of Illinois)
- Liu, et al. v. Four Seasons
No. 17-CH-14949 (Circuit Court of Cook County, Chancery Division, State of Illinois)
- Mims, et al. v. Hilton
No. 17-CH-15781 (Circuit Court of Cook County, Chancery Division, State of Illinois)
- Morris, et al. v. Wow Bao
No. 17-CH-12029 (Circuit Court of Cook County, Chancery Division, State of Illinois)
- Ogen, et al. v. Wyndham Hotels & Resorts
No. 17-CH-15626 (Circuit Court of Cook County, Chancery Division, State of Illinois)
- Watts, et al. v. Chicago Lakeshore Hospital
No. 17-cv-07713 (United States District Court for the Northern District of Illinois)
- Williams, et al. v. Rockford Tool
No. 17-CH-000770 (Circuit Court of Winnebago County, Chancery Division, State of Illinois)



**SHERIFF'S OFFICE OF COOK COUNTY
AFFIDAVIT OF SERVICE**

CASE NUMBER: 2018CH13599 **SHERIFF NUMBER:** 02927860 **MULT. SER.:** 1 **DOC. TYPE:** CHAN
DIE DATE: 11/23/2018 **RECEIVED DATE:** 11/01/2018 **FILED DATE:** 10/31/2018 **DIST:** 604

DEFENDANT: KRONOS INC	PLAINTIFF: STIDWELL, JOHN
ADDRESS: 208 S LASALLE	ATTORNEY: STEPHAN ZOURAS LLP
CITY: CHICAGO	ADDRESS: 208 N RIVERSIDE PLZ 2150
STATE: IL ZIP CODE: 60604	CITY: CHICAGO
ATTACHED FEE AMT:	STATE: IL ZIP CODE: 60606
SERVICE INFORMATION: CT CORP	

I CERTIFY THAT I SERVED THE DEFENDANT/RESPONDENT AS FOLLOWS:

- ☐ **(1) PERSONAL SERVICE:** BY LEAVING A COPY OF THE WRIT/ORDER WITH THE DEFENDANT/RESPONDENT PERSONALLY, AND INFORMING DEFENDANT/RESPONDENT OF CONTENTS.
- ☐ **(2) SUBSTITUTE SERVICE:** BY LEAVING A COPY OF THE SUMMONS AND COMPLAINT AT THE DEFENDANT'S USUAL PLACE OF ABODE WITH A FAMILY MEMBER OR PERSON RESIDING THERE, 13 YEARS OR OLDER, AND INFORMING THAT PERSON OF THE CONTENTS OF THE SUMMONS. ALSO, A COPY OF THE SUMMONS WAS MAILED TO THE DEFENDANT AT HIS OR HER USUAL PLACE OF ABODE ON THE DAY OF 20.
- ☐ **(3) UNKNOWN OCCUPANTS:** BY LEAVING A COPY OF THE SUMMONS AND COMPLAINT NAMING "UNKNOWN OCCUPANTS" WITH A PERSON OF THE AGE OF 13 OR UPWARDS OCCUPYING SAID PREMISE.
- ☒ **(4) CORP/CO/BUS/PART:** BY LEAVING THE APPROPRIATE NUMBER OF COPIES OF THE SUMMONS, COMPLAINTS, INTERROGATORIES, JUDGMENTS, CERTIFICATIONS AND NOTICES WITH THE REGISTERED AGENT, AUTHORIZED PERSON OR PARTNER OF THE DEFENDANT CORPORATION COMPANY BUSINESS PARTNERSHIP
- ☐ **(5) PROPERTY RECOVERED:** NO ONE PRESENT TO RECEIVE ORDER OF COURT. ORDER POSTED IN PLAIN VIEW.
- ☐ **(6) S.O.S/D.O.I.:** BY LEAVING THE SUMMONS AND COMPLAINT WITH THE SECRETARY OF THE STATE/DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS, AN AGENT OF SAID DEFENDANT LISTED ABOVE. ANY AGENT OF SAID CORPORATION NOT FOUND IN THE COUNTY OF COOK.
- ☐ **(7) CERTIFIED MAIL**
- **** COMPLETE THIS SECTION IF WRIT IS A THIRD PARTY CITATION/GARNISHMENT ****
- ☐ **(8) AND BY MAILING ON THE** **DAY OF** **20** **A COPY OF THE THIRD PARTY GARNISHMENT/CITATION SUMMONS AND NOTICE TO THE JUDGMENT DEBTOR'S LAST KNOWN ADDRESS AS INDICATED IN THE NOTICE WITHIN (2) BUSINESS DAYS OF SERVICE UPON GARNISHEE/THIRD PARTY DEFENDANT.**

THE NAMED DEFENDANT WAS NOT SERVED FOR THE GIVEN REASON BELOW:

- | | | |
|--|---|--|
| <input type="checkbox"/> (01) NO CONTACT | <input type="checkbox"/> (05) WRONG ADDRESS | <input type="checkbox"/> (09) DECEASED |
| <input type="checkbox"/> (02) MOVED | <input type="checkbox"/> (06) NO SUCH ADDRESS | <input type="checkbox"/> (10) NO REGISTERED AGENT |
| <input type="checkbox"/> (03) EMPTY LOT | <input type="checkbox"/> (07) EMPLOYER REFUSAL | <input type="checkbox"/> (11) OUT OF COOK COUNTY |
| <input type="checkbox"/> (04) NOT LISTED | <input type="checkbox"/> (08) CANCELLED BY PLAINTIFF ATTY | <input type="checkbox"/> (12) OTHER REASON (EXPLAIN) |

EXPLANATION:

WRIT SERVED ON: K STARKS
SEX: F **RACE:** BL **AGE:** 40
THIS 05 **DAY OF** Novem 20 18
ber
TIME: 11:20 AM

ATTEMPTED SERVICES

Date	Time	Star #
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THOMAS J. DART,
 SHERIFF, BY: /S/ THOMAS, JOSHUA D/S #11069 , DEPUTY



SHERIFF'S OFFICE OF COOK COUNTY
AFFIDAVIT OF SERVICE

CASE NUMBER: 2018CH13599 SHERIFF NUMBER: 02927860 MULT. SER.: 1 DOC. TYPE: CHAN
DIE DATE: 11/23/2018 RECEIVED DATE: 11/01/2018 FILED DATE: 10/31/2018 DIST: 604

Date

Time

Star #

Order

(Rev. 02/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Stidwell
v.
NFI Industries, et al.

No. 18-CH-13599

4315

ORDER

This matter coming to be heard on Plaintiff's motion for class certification, the court being duly advised, it is so ordered:

Plaintiff's motion is entered and continued;

This matter is set for status on February 13, 2019 at 9:30am.

All other dates and deadlines are hereby stayed.

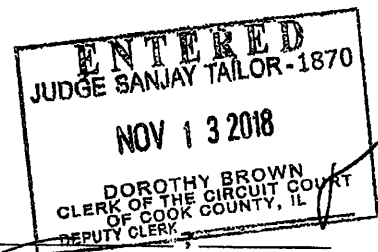
Attorney No.: 43734
Name: Haley Jenkins
Atty. for: Plaintiff
Address: 100 N. Riverside #2150
City/State/Zip: Chicago IL 60606
Telephone: 312-233-1550

ENTERED:

Dated: _____

Judge

Judge's No.



DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Return Date: No return date scheduled

Hearing Date: No hearing scheduled

Courtroom Number: No hearing scheduled

Location: No hearing scheduled

(12/30/15) CCL N530

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISIONFILED
11/13/2018 12:00 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018CH13599

John Stidwell

Plaintiff

v.

No. 2018 CH 13599

NFI, LLC and Kronos, Inc.

Defendant

Calendar: 09

APPEARANCE

☒ GENERAL APPEARANCE0900 - APPEARANCE - FEE PAID; 0909 - APPEARANCE - NO FEE;
0904 - APPEARANCE FILED - FEE WAIVED☐ JURY DEMAND1900 - APPEARANCE & JURY DEMAND - FEE PAID
1909 - APPEARANCE & JURY DEMAND - NO FEE

The undersigned enters the appearance of:

☐ Plaintiff☒ Defendant

Kronos Incorporated

(Insert litigant's name.)

/s/ Melissa A. Siebert

Signature

☒ INITIAL COUNSEL OF RECORD☐ PRO SE☐ ADDITIONAL APPEARANCE☐ SUBSTITUTE APPEARANCE

A copy of this appearance shall be given to all parties who have appeared and have not been found by the Court to be in default.

☒ Atty. No.: 46365 ☐ Pro Se 99500

(Please complete the following contact information.)

Name: BAKER & HOSTETLER LLP

Atty. for: Kronos Incorporated

Address: 191 N Wacker Dr, Suite 3100

City/State/Zip: Chicago, IL 60606

Telephone: 312-416-6200

Primary Email: msiebert@bakerlaw.com

Secondary Email: mneubeck@bakerlaw.com

Tertiary Email:

Pro Se Only: ☐ I have read and agree to the terms of the Clerk's Office Electronic Notice Policy and choose to opt in to electronic notice from the Clerk's office for this case at this email address:

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Appearance

(12/30/15) CCL N530

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISIONFILED
12/7/2018 2:44 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018CH13599

JOHN STIDWELL, individually, and on behalf of all others similarly situated

Plaintiff

v.

No. 2018 CH 13599

NFI, LLC and KRONOS, INC.

Defendant

Calendar: 09

APPEARANCE

☒ GENERAL APPEARANCE0900 - APPEARANCE - FEE PAID; 0909 - APPEARANCE - NO FEE;
0904 - APPEARANCE FILED - FEE WAIVED☐ JURY DEMAND1900 - APPEARANCE & JURY DEMAND - FEE PAID
1909 - APPEARANCE & JURY DEMAND - NO FEE

The undersigned enters the appearance of:

☐

Plaintiff

☒

Defendant

NFI Industries, Inc. (incorrectly named as NFI, LLC)

(Insert litigant's name.)

_____/s/ Sylvia Bokyoung St. Clair

Signature

☒ INITIAL COUNSEL OF RECORD☐ PRO SE☐ ADDITIONAL APPEARANCE☐ SUBSTITUTE APPEARANCE

A copy of this appearance shall be given to all parties who have appeared and have not been found by the Court to be in default.

☒ Atty. No.: 49091 _____ ☐ Pro Se 99500

(Please complete the following contact information.)

Name: Faegre Baker Daniels LLP

Atty. for: NFI Industries, Inc.Address: 311 South Wacker Drive, Suite 4300City/State/Zip: Chicago, IL 60606Telephone: (312) 212-6500Primary Email: gregory.abrams@faegrebd.comSecondary Email: sylvia.stclair@faegrebd.com

Tertiary Email:

Pro Se Only: ☐ I have read and agree to the terms of the Clerk's Office Electronic Notice Policy and choose to opt in to electronic notice from the Clerk's office for this case at this email address:

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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

JOHN STIDWELL, individually, and on behalf)
of all others similarly situated,)

Plaintiff,)

v.)

NFI, LLC and KRONOS, INC.,)

Defendant.)

Case No.: 2018-CH-13599

Judge Sanjay T. Tailor

**AGREED ORDER TO STAY PROCEEDINGS
AGAINST DEFENDANT NFI INDUSTRIES, INC.**

This Court having been duly advised in the agreement of counsel for Plaintiff and Defendant NFI Industries, Inc. (incorrectly named as NFI, LLC) to the entry of this Agreed Order, hereby orders:

1. All proceedings and discovery involving Defendant NFI Industries, Inc. shall be stayed pursuant to this Court's November 13, 2018 Order; and
2. The parties shall appear on February 13, 2019 for a status hearing.

Respectfully submitted,

/s/ Sylvia Bokyung St. Clair

George A. Stohner (ARDC# 6315938)

Gregory P. Abrams (ARDC# 6280767)

Sylvia Bokyung St. Clair (ARDC# 6314062)

Faegre Baker Daniels LLP

311 South Wacker Drive, Suite 4300

Chicago, Illinois 60606

Tel. No. (312) 212-6500

Firm No. 49091

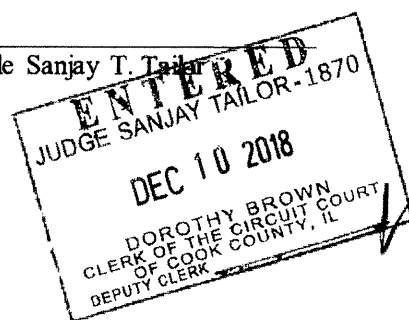
George.stohner@faegrebd.com

Gregory.abrams@faegrebd.com

Sylvia.stclair@faegrebd.com

ATTORNEYS FOR DEFENDANT

Honorable Sanjay T. Tailor



CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2018, I served the **AGREED ORDER** on all attorneys
of record.

/s/ Sylvia Bokyoung St. Clair

Return Date: No return date scheduled
Hearing Date: 1/8/2019 9:00 AM - 9:00 AM
Courtroom Number:
Location:

FILED
12/31/2018 11:14 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018CH13599

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

JOHN STIDWELL, individually, and on behalf)

of all others similarly situated,)

Plaintiff,)

Case No. 2018-CH-13599

v.)

NFI, LLC and KRONOS, INC.,)

Defendants.)

NOTICE OF MOTION

PLEASE TAKE NOTICE that on January 8th, 2019 at 9:00 a.m. or as soon thereafter as counsel may be heard, I shall appear before the Honorable Sanjay T. Tailor, or any judge sitting in his stead, in the courtroom usually occupied by him at 50 W. Washington St., Room 2008, and present **PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT.**

Respectfully submitted,

/s/ Haley R. Jenkins

Haley R. Jenkins

Ryan F. Stephan

James B. Zouras

Attorneys for Plaintiff

STEPHAN ZOURAS, LLP

100 N. Riverside Plaza, Suite 2150

Chicago, IL 60606

Telephone: 312-233-1550

hjenkins@stephanzouras.com

rstephan@stephanzouras.com

jzouras@stephanzouras.com

FILED DATE: 12/31/2018 11:14 AM 2018CH13599

CERTIFICATE OF SERVICE

I, the attorney, hereby certify that on December 31, 2018, I filed the attached with the Clerk of the Court using the electronic filing system which will send such filing to all attorneys of record.

/s/Haley R. Jenkins

Return Date: No return date scheduled
Hearing Date: 1/8/2019 9:00 AM - 9:00 AM
Courtroom Number:
Location:

FILED
12/31/2018 11:04 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018CH13599

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

JOHN STIDWELL, individually,)
and on behalf of all others similarly situated,)

Plaintiff,)

v.)

NFI, LLC and KRONOS, INC.,)

Defendants.)

Case No. 2018-CH-13599

PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

Named Plaintiff John Stidwell, by and through his counsel, moves this Honorable Court for leave to file Plaintiff's First Amended Complaint pursuant to the Illinois Rules of Civil Procedure, 735 ILCS 5/2-616. In support thereof, Plaintiff states as follows:

1. On October 31, 2018, Plaintiff filed a Class Action Complaint seeking damages for Defendants' alleged violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA"). In particular, Plaintiff alleges that Defendants unlawfully collect, store, use and disseminate employees' biometric data in violation of BIPA.

2. On December 20, 2018, Plaintiff's counsel received correspondence from Defendant NFI, LLC's counsel indicating that Plaintiff had named the wrong defendant. Included with the correspondence was an affidavit from NFI, LLC's sole member, affirming that NFI, LLC had never employed Plaintiff, nor had it ever collected, stored, or used biometric data, and a copy of NFI, LLC's Articles of Organization and Operating Agreement. *See* Exhibit 1.

3. Plaintiff now seeks leave to amend his Complaint to name the correct defendant, NFI Industries, Inc., and to dismiss NFI, LLC.

FILED DATE: 12/31/2018 11:04 AM 2018CH13599

FILED DATE: 12/31/2018 11:04 AM 2018CH13599

4. The Illinois Rules of Civil Procedure set forth a liberal policy for allowing a plaintiff to amend a complaint. *See* 735 ILCS 5/2-616.

5. At this point in the litigation, neither Defendant has filed an Answer to Plaintiff's original Complaint.

6. Furthermore, on December 10, 2018, this Court issued a stay of the proceedings pending the Illinois Supreme Court's upcoming decision in *Rosenbach v. Six Flags Ent. Corp.*, 98 N.E.3d 36 (2018). The stay has remained in effect as of the date of this filing.

7. The interests of justice are served by allowing Plaintiff to amend his Complaint. Moreover, such an amendment will not prejudice either Defendant.

For the foregoing reasons, Plaintiff respectfully requests that this Honorable Court grant him leave to file his First Amended Complaint, attached hereto as Exhibit 2, and to dismiss Defendant NFI, LLC.

Dated: December 31, 2018

Respectfully submitted,

/s/ Haley R. Jenkins

Haley R. Jenkins

STEPHAN ZOURAS, LLP

100 N. Riverside Plaza, Suite 2150

Chicago, IL 60606

312.233.1550

312.233.1560 f

Firm ID #43734

hjenkins@stephanzouras.com

ONE OF PLAINTIFF'S ATTORNEYS

CERTIFICATE OF SERVICE

I, the attorney, hereby certify that on December 31, 2018, I electronically filed the attached with the Clerk of the Court using the electronic filing system which will send such filing to all attorneys of record.

/s/ Haley R. Jenkins

FILED DATE: 12/31/2018 11:04 AM 2018CH13599

Return Date: No return date scheduled
Hearing Date: 1/8/2019 9:00 AM - 9:00 AM
Courtroom Number:
Location:

FILED
12/31/2018 11:04 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018CH13599

FILED DATE: 12/31/2018 11:04 AM 2018CH13599

EXHIBIT 1

OTTOSEN BRITZ KELLY COOPER GILBERT & DiNOLFO, LTD.

1804 North Naper Boulevard, Suite 350, Naperville, Illinois 60563
Phone 630.682.0085 Fax 630.682.0788 www.ottosenbritz.com

Stephen H. DiNolfo
Attorney at Law

Direct Line 630.614.7642
sdinolfo@ottosenbritz.com

December 20, 2018

Via emails to: rstephan@stephanzouras.com
jzouras@stephanzouras.com
aficzko@stephanzouras.com
hjenkins@stephanzouras.com

Ryan F. Stephan
James B. Zouras
Andrew C. Ficzkko
Haley R. Jenkins
Stephan Zouras, LLP
100 North Riverside Plaza, Suite 2150
Chicago, IL 60606

Re: Stidwell v. NFI, LLC and Kronos, Inc.
Case No. 2018 CH.13599

Dear Counsel,

As you know, I represent NFI, LLC, who you served with a Summons and Complaint on November 27, 2018. NFI, LLC., that was served, was organized on January 24, 2013 and its sole function is the farming of land in DeKalb and Lee Counties. They have never had any interaction, agreements, or dealings with any of the other parties in your case. Further, my client has never received or collected biometric information. Simply put, you have served the wrong entity.

I am enclosing for your file an affidavit from H. Alex Marshall indicating that he has no involvement with any of the parties and that he is not the proper defendant in this suit. Further, I am enclosing the Articles of Organization and the Operating Agreement.

Please review the enclosed and confirm that you will take the steps necessary to remove my client as a served defendant in this case. Otherwise, I will be forced to file a Motion to Quash and I will seek all remedies available.

I await your response.

Sincerely,



Stephen H. DiNolfo

SHD/sk

Enclosure

FILED DATE: 12/31/2018 11:04 AM 2018CH13599

AFFIDAVIT OF H. ALEX MARSHALL

I, H. ALEX MARSHALL, being first duly sworn on oath, state that I have personal knowledge of the following facts and, if called upon as a witness at trial, could competently testify as follows:

1. My name is H. Alex Marshall;
2. I am the sole member of NFI, L.L.C.;
3. I can testify to the information contained herein per personal knowledge;
4. NFI, L.L.C., was organized in Leland, Illinois;
5. NFI, L.L.C., farms land in DeKalb and Lee Counties;
6. NFI, L.L.C., has never had any dealings with Kronos, Inc.;
7. NFI, L.L.C., has never had any dealings with John Stidwell;
8. NFI, L.L.C., does not collect, store or in any way use biometric information;
9. The Articles of Organization and the Operating Agreement enclosed with the letter are true and accurate copies of same.

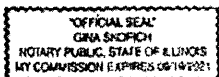
Further Affiant sayeth not.

Dated: 12-19-18


H. Alex Marshall

Subscribed and Sworn to before
me this 19th day of December, 2018


Notary Public



04187377

Form LLC-5.5 May 2012 Secretary of State Department of Business Services Limited Liability Division 501 S. Second St., Rm. 351 Springfield, IL 62756 217-524-8008 www.cyberdriveillinois.com Payment must be made by certified check, cashier's check, Illinois attorney's check, C.P.A.'s check or money order payable to Secretary of State.	Illinois Limited Liability Company Act Articles of Organization <div style="border: 1px solid black; padding: 2px; text-align: center;"> SUBMIT IN DUPLICATE Type or print clearly. </div> This space for use by Secretary of State. Filing Fee: \$500 Approved: <i>[Signature]</i>	FILE # This space for use by Secretary of State. <div style="text-align: center;"> FILED FEB 05 2013 JESSE WHITE SECRETARY OF STATE </div>
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- Limited Liability Company Name: NEI, L.L.C.
 The LLC name must contain the words Limited Liability Company, L.L.C. or LLC and cannot contain the terms Corporation, Corp., Incorporated, Inc., Ltd., Co., Limited Partnership or L.P.
- Address of Principal Place of Business where records of the company will be kept: (P.O. Box alone or c/o is unacceptable.)
2374 N. 45th Road
Leland, IL 60531
- Articles of Organization effective on: (check one)
☒ the filing date
☐ a later date (not to exceed 60 days after the filing date): _____

Month, Day, Year
- Registered Agent's Name and Registered Office Address:

Registered Agent:	<u>Craig</u>	<u>D.</u>	<u>Hasenbalg</u>
	First Name	Middle Initial	Last Name

Registered Office:	<u>2000 W. Galena Blvd., Suite 2310</u>		
(P.O. Box alone or c/o is unacceptable.)	Number	Street	Suite #
	<u>Aurora</u>	<u>IL</u>	<u>60506</u>
	City		ZIP Code
- Purpose(s) for which the Limited Liability Company is organized:
The transaction of any or all lawful business for which Limited Liability Companies may be organized under this Act.
 (LLCs organized to provide professional services must list the address(es) from which those services will be rendered if different from Item 2. If more space is needed, use additional sheets of this size.)

- Latest date, if any, upon which the company is to dissolve: _____
 (Leave blank if duration is perpetual.)

Month, Day, Year

LLC-5.5

7. (Optional) Other provisions for the regulation of the internal affairs of the Company: (If more space is needed, attach additional sheets of this size.) _____
- _____
- _____

8. The Limited Liability Company: (Check either a or b below.)

a. ☐ is managed by the manager(s) (List names and addresses.)

b. ☒ has management vested in the member(s) (List names and addresses.)

H. Alex Marshall, 2374 N. 45th Road, Leland, IL 60531

9. Name and Address of Organizer(s):

I affirm, under penalties of perjury, having authority to sign hereto, that these Articles of Organization are to the best of my knowledge and belief, true, correct and complete.

Dated January 24th, 2013

Month & Day Year

1. H. Alex Marshall

Signature

H. Alex Marshall

Name (type or print)

Name if a Corporation or other Entity, and Title of Signer

2. _____

Signature

Name (type or print)

Name if a Corporation or other Entity, and Title of Signer

1. 2374 N. 45th Road

Number Street

Leland

City/Town

IL 60531

State ZIP Code

2. _____

Number Street

City/Town

State ZIP Code

Signatures must be in black ink on an original document. Carbon copy, photocopy or rubber stamp signatures may only be used on conformed copies.

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OPERATING AGREEMENT OF
NFL, LLC

FILED DATE: 12/31/2018 11:04 AM 2018CH13599

OPERATING AGREEMENT OF NFI, LLC

THIS OPERATING AGREEMENT, is made this 11 day of March, 2014, to be effective from the date the Articles of Organization were filed with the Secretary of State of the State of Illinois, by H. Alex Marshall, (hereinafter called, individually, "Member," and collectively, "Members"):

WITNESSETH:

WHEREAS, the Member desires to engage generally in any and all phases of the business of owning, holding, managing, controlling, acquiring, purchasing, disposing of or otherwise dealing in or with any interests or rights in any real or personal property, directly or through one or more other entities or arrangements; and

WHEREAS, the Member has determined it to be in his best interests to form an organization to conduct a business for the purposes described above; and

WHEREAS, Articles of Organization for NFI, LLC ("Company") have been filed with the Secretary of State of Illinois. On February 5, 2013, said Articles of Organization were approved by the State of Illinois.

NOW, THEREFORE, the Member agrees as follows:

**ARTICLE I
DEFINITIONS**

1.01 "Act" shall mean the Illinois Limited Liability Company Act at 805 ILCS 180/1-1, et seq.

1.02 "Articles of Organization" shall mean the Articles of Organization of Company as filed with the Secretary of State of Illinois, and as thereafter amended from time to time.

1.03 "Assuming Member" shall mean any Member who assumes personal liability for all obligations of this Company.

1.04 "Capital Account" as of any given date shall mean the Capital Contribution to the Company by a Member as adjusted as of such date pursuant to Article IV.

1.05 "Capital Contribution" shall mean any contribution to the capital of the Company in cash or property by a Member whenever made. "Initial Capital Contribution" shall mean the initial contribution to the capital of the Company pursuant to this Operating Agreement.

1.06 "Code" shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.

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1.07 "Deficit Capital Account" shall mean with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the taxable year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amount which such Member is obligated to restore under Section 1.704-1(b)(2)(ii)(c) of the Treasury Regulations, as well as any addition thereto pursuant to the next to last sentence of Sections 1.704-2(g)(1) and (i)(5) of the Treasury Regulations, after taking into account thereunder any changes during such year in partnership minimum gain (as determined in accordance with Section 1.704-2(d) of the Treasury Regulations and in the minimum gain attributable to any Member for nonrecourse debt (as determined under Section 1.704-2(i)(3) of the Treasury Regulations); and

(ii) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations.

This definition of Deficit Capital Account is intended to comply with the provisions of Treasury Regulation Sections 1.704-1(b)(2)(ii)(d) and 1.704-2, and will be interpreted consistently with those provisions.

1.08 "Entity" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, foreign trust or foreign business organization or other form of business organization.

1.09 "Interest" or "Membership Interest" shall mean a Member's entire interest in the Company's capital, income, gain, loss, deduction and credit. Such Member's Interest shall include the Member's right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Operating Agreement and the Act.

1.10 "Majority Interest" shall mean one or more Interests of Members which in the aggregate is more than 50% of the total of all the Members' Interests.

1.11 "Member" shall mean each of the parties who executes a counterpart of this Operating Agreement as a Member and each of the parties who may hereafter become Members. To the extent a Manager has purchased a Membership Interest in the Company, the Manager will have all the rights of a Member with respect to such Membership Interest, and the term "Member" as used herein shall include a Manager to the extent the Manager has purchased such Membership Interest in the Company. If a person is a Member immediately prior to the purchase or other acquisition by such Person of an additional Membership Interest, such Person shall have all the rights of a Member with respect to such purchased or otherwise acquired Membership Interest.

1.12 "Net Profits" and "Net Losses" shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined in accordance with generally accepted accounting principles employed under the cash method of

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accounting used by the Company at the close of each fiscal year on the Company's tax return filed for federal income tax purposes.

1.13 "Operating Agreement" shall mean this Operating Agreement as originally executed and as amended from time to time.

1.14 "Percentage Interest" shall mean, for any Member, the percentage interest in the Company as set forth in Section 4.02, as may be changed from time to time by unanimous vote of the Members.

1.15 "Persons" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person" where the context to permits.

1.16 "Reserves" shall mean funds set aside or amounts allocated to reserves which shall be maintained in amounts deemed sufficient by the Manager(s) for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.

1.17 "Resigning Member" shall mean a Member who resigns or whose Membership Interest is terminated by virtue of a Withdrawal Event, regardless of whether such Withdrawal Event was a voluntary act by such Member.

1.18 "Selling Member" shall mean any Member who sells, assigns, pledges, hypothecates or otherwise transfers for consideration all or any portion of his Interest.

1.19 "Transferring Member" shall collectively mean a Selling Member as well as any Member who gives, bequeaths, or otherwise transfers a Membership Interest.

1.20 "Treasury Regulations" shall include proposed, temporary and final regulations promulgated under the Code.

1.21 "Withdrawal Event" shall occur upon the death, retirement, resignation, court declaration of incompetency, expulsion, or bankruptcy of any Member who is a Manager, or dissolution of a Member who is a Manager, or occurrence of any other event which terminates the continued Membership of a Member who is a Manager in the Company.

ARTICLE II FORMATION OF COMPANY

2.01 Organizer. The Member does hereby confirm that H. Alex Marshall, of Leland, Illinois is authorized to act as Organizer. The designated Organizer has signed the Articles of Organization as Organizer, and has filed same with the Secretary of the State of Illinois, and has done all such other things reasonably necessary to organize and form this Company under the laws of the State of Illinois.

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2.02 Formation. This Company is organized as an Illinois Limited Liability Company by the execution and deliverance of Articles of Organization to the Illinois Secretary of State in accordance with and pursuant to the Act.

2.03 Name. The name of the Company is NFI, LLC.

2.04 Principal Place of Business. The principal place of business of the Company within the State of Illinois shall be 2375 N. 45th Rd., Leland, IL 60531. The Company may locate its places of business and registered office at any other place or places as the Member may deem advisable.

2.05 Registered Office and Registered Agent. The Company's initial registered office shall be at the office of its registered agent at CDH LAW GROUP, LLC, 2000 W. Galena Blvd, Suite 210, Aurora, Illinois 60506, and the name of its initial registered agent shall be Craig D. Hasenbalg. The registered office and registered agent may be changed by filing the address of the new registered office and/or the name of the new registered agent with the Illinois Secretary of State pursuant to the Act.

2.06 Term. The term of the Company shall be perpetual, unless the Company is earlier dissolved in accordance with either the provisions of the Operating Agreement or the Act.

ARTICLE III PURPOSE OF COMPANY

3.01 Purpose of Company. The business of the Company shall be:

3.01.1 To farm by acceptable methods and practices, certain real estate suitable for farming;

3.01.2. To otherwise operate a farming business, using such methods upon such lands as the Company shall deem suitable; to borrow, invest funds, conduct its business, elect managers and appoint agents, establish and fund compensation plans, and become a partner of a general partnership, limited partnership, joint venture, any other L.L.C., or any other business entity; and

3.01.3 To transact and carry on any and all lawful businesses for which a Limited Liability Company may be permitted under the laws of the State of Illinois.

ARTICLE IV MEMBERS AND THEIR CAPITAL CONTRIBUTIONS

4.01 Members' Capital Contributions. Each Member shall contribute such amount as is set forth below as his or her share of the Initial Capital Contribution.

4.02 Names and Addresses of Each Member. The amount of Initial Capital which has been contributed by each Member and each Member's Percentage Interest is set forth opposite that Member's name below and may be adjusted or changed in the manner provided for in the Operating Agreement.

Name and Address	Initial Capital Contribution	Interest Percentage
H. Alex Marshall 2375 N. 45 th Leland, IL 60531		

4.03 Additional Capital Contributions.

4.03.1 The Member agrees to make such additional contributions from time to time to the capital of the Company as may be necessary, in the opinion of the Member, to pay all costs and expenses of carrying on the Company's business purpose.

4.03.2 Any additional capital contributions made pursuant to the provisions of Section 4.03.1 shall be contributed by the Member pro rata in accordance with his/her Percentage Interest in the Company.

4.03.3 If additional capital contributions are required pursuant to this section, and any Member shall refuse or otherwise fail to contribute his/her pro rata portion thereof within ten (10) days after said capital contribution is due, then that Member shall be in default, and the Company or the other Members, or any one of them, may bring an action to recover such contribution and damages for failure to make such contribution. In addition, and without limiting the foregoing remedy, such Member's contribution may be advanced by any other Member or Members, to be a personal debt from the defaulting Member or Members (which the Members hereby agree is for a business purpose), payable forthwith to the Member or Members making such advance, with interest at fifteen percent (15%) per annum from the date of said advance. Before any distribution shall be made by the Company to the defaulting Member after such advance, such advance and interest, plus an additional ten percent (10%) of such advance as minimum damages and not as a penalty, shall first be paid out of the distributive share of the defaulting Member to the Member or Members who have made such an advance.

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4.04 Advances. Each Member may from time to time advance additional funds to the Company, over and above his/her capital contributions, in such amounts and on such terms as shall be approved and agreed upon by a majority of the Members. No advance by any Member pursuant to the provisions of this Section 4 shall be deemed capital or entitle said contributing Member to any increase in his Percentage Interest or his share of the distributions of the Company. The amount of any such advance shall be an obligation of the Company to said Member and shall bear interest at the rate of twelve percent (12%) per annum, unless a different rate of interest is agreed to by the contributing Member and a Majority Interest of the other Members, provided that such advances shall be payable or collectible only out of the Company assets and no Member shall be personally obligated to pay any part thereof. Until such time as all advances made pursuant to this Section 4 have been repaid in full, any distribution by the Company to the Members shall be in partial or complete repayment of all advances of Members then outstanding, and shall be made to each Member in the proportion which the total of the then outstanding advances (including accrued interest) from such Member bears to the total of the then outstanding advances (including accrued interest) from all Members. The interest, if any, payable to any Member on any such advance shall be considered an expense when paid in determining income or loss of the Company and shall be income to the Member receiving it.

4.05 Capital Accounts

4.05.1 A separate Capital Account will be maintained for each Member. Each Member's Capital Account will be increased by (1) the amount of money contributed by such member to the Company; (2) the fair market value of property contributed by such Member of the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Code Section 752); (3) allocations to such Member of Net Profits and Net Losses; and (4) allocations to such Member of income described in Code Section 705(a)(1)(B). Each Member's Capital Account will be decreased by (1) the amount of money distributed to such Member by the Company; (2) the fair market value of property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Code Section 752); (3) allocations to such Member of expenditures described in Code Section 704(a)(2)(B); (4) allocations to the account of such Member of Company loss and deduction as set forth in such Regulations, taking into account adjustments to reflect book value.

4.05.2 In the event of a permitted sale or exchange of a Membership Interest, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Membership Interest in accordance with §1.704-1(b)(2)(iv) of the Treasury Regulations.

4.05.3 The manner in which Capital Accounts are to be maintained pursuant to this Section 4.05 is intended to comply with the requirements of Rev. Proc. 95-10, Code §704(b) and the Treasury Regulations promulgated thereunder. If the Company determines that the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Section 4.05 should be modified in order to comply with Code

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§704(b) and the Treasury Regulations, then notwithstanding anything to the contrary contained in the preceding provisions of this Section 4.05, the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members as set forth in the Operating Agreement.

4.05.4 Upon liquidation of the Company (or any Member's Membership Interest), liquidating distributions will be made in accordance with the positive Capital Account balances of the Members, as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs. Liquidation proceeds will be paid within sixty (60) days of the end of the taxable year (or, if later, within one hundred twenty (120) days after the date of the liquidation). The Company may offset damages for breach of this Operating Agreement by a Member whose interest is liquidated (either upon the withdrawal of the Member or the liquidation of the Company) against the amount otherwise distributable to such Member.

4.05.5 Except as otherwise required in the Act or this Agreement, no Member shall have any liability to restore all or any portion of a deficit balance in such Member's Capital Account.

4.06 Withdrawal or Reduction of Members' Contributions to Capital.

4.06.1 A Member shall not receive out of the Company's property any part of its Capital Contribution until all liabilities of the Company, except liabilities to Members on account of their Capital Contributions, have been paid or there remains property of the Company sufficient to pay them.

4.06.2 A Member, irrespective of the nature of its Capital Contribution, has only the right to demand and receive cash in return for its Capital Contribution.

**ARTICLE V
GOVERNANCE**

5.01 Management. The business and affairs of the Company shall be managed by its Members, by simple majority vote, voting according to percentage interests, unless otherwise specified herein.

5.02 Bank Accounts. The Members may from time to time open bank accounts in the name of the Company, and the signature requirements shall be determined by them. Except as otherwise provided in this Operating Agreement, the Members shall not make any expenditure which in any instance exceeds \$20,000.00 without approval by the Members.

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ARTICLE VI RIGHTS AND OBLIGATIONS OF MEMBERS

6.01 Limitation of Liability. Each Member's liability shall be limited as set forth in this Operating Agreement, the Act and other applicable law.

6.02 Company Debt Liability. A Member will not be personally liable for any debts or losses of the Company beyond his respective Capital Contributions or any obligation of the Member under Sections 4.01 and 4.03 to make Capital Contributions, except as otherwise required by law. A Member may become personally liable for the debts or loss of the Company if the Member elects to become an Assuming Member. A Member may elect to become an Assuming Member by giving written notice of this election to the Manager. This election, once given, cannot be terminated or withdrawn without the consent of all the Members.

6.03 Approval of Sale of All Assets. The Members shall have the right, by the affirmative vote of Members holding more than fifty percent (50%) interests of the members, to approve the sale, exchange or other disposition of all, or substantially all, of the Company's assets which is to occur as part of a single transaction or plan.

6.07 Company Books. The Manager shall maintain and preserve, during the term of the Company, the accounts, books, and other relevant Company documents described in Section 5.06. Upon reasonable written request, each Member shall have the right, at a time during ordinary business hours, as reasonably determined by the Manager, to inspect and copy, at the requesting Member's expense, the Company documents identified under the relevant inspection portion of the Act, and such other documents which the Manager, in their discretion, deem appropriate.

6.08 Priority and Return of Capital. Except as may be expressly provided in Article IX, no Member shall have the priority over any other Member, either as to the return of Capital Contributions or as to Net Profits, Net Losses or distributions; provided that this Section shall not apply to loans which a Member has made to the Company.

6.09 Liability of a Member to the Company. A Member who receives a distribution or the return in whole or in part of its contribution is liable to the Company only to the extent provided by the Act.

ARTICLE VII MEETINGS OF MEMBERS

7.01 Meetings. Meetings of the Members, for any purpose or purposes, may be called by any Member or Members holding at least twenty-five percent (25%) of the Percentage Interests, or by the Tax Matters Partner.

7.02 Place of Meetings. The Member(s) calling the meeting may designate any place, either within or outside the State of Illinois, as the place of meeting for any meeting of the

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Members. If no designation is made, or if a special meeting be called by the Tax Matters Partner or otherwise called, the place of meeting shall be the principal place of business of the Company in the State of Illinois.

7.03 Notice of Meetings. Except as provided in Section 7.4, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than three (3) days nor more than thirty (30) days before the date of the meeting, either personally or by mail, by or at the direction of the Member or Members calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered two (2) calendar days after being deposited in the United States mail, addressed to the Member at its address as it appears on the books of the Company, with postage thereon prepaid.

7.04 Meeting of All Members. If all of the Members shall meet at any time and place, either within or outside of the State of Illinois, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

7.05 Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting has been made as provided in this Section, such determination shall apply to any adjournment thereof.

7.06 Quorum. Members holding at least fifty percent (50%) of all Percentage Interests, represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any such meeting, a majority of the Percentage Interests so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of that number of Percentage Interests whose absence would cause loss of a quorum.

7.07 Manner of Acting. If a quorum is present, the affirmative vote of Members holding a Majority Interest shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Act, by the Articles of Organization, or by this Operating Agreement. Unless otherwise expressly provided herein or required under applicable law, only Members who have a Membership Interest may vote or consent upon any matter their vote or consent, as the case may be, shall be counted in the determination of whether the matter was approved by the Members.

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7.08 Proxies. At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Tax Matters Partner before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

7.09 Action by Members Without a Meeting. Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each Member entitled to vote, and delivered to the Tax Matters Partner for inclusion in the minutes or for filing with the Company records. Action taken under this Section is effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date.

7.10 Waiver of Notice. When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

7.11 Telephonic Meetings. A Member may participate in a meeting of Members by means of conference telephone or similar communications equipment enabling all Members participating in the meeting to hear one another. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

7.12 Voting. Unless otherwise prohibited by this Agreement, or the Articles of Organization, a Member may vote in person or by proxy.

ARTICLE VIII ALLOCATIONS, DISTRIBUTIONS AND REPORTS

8.01 Allocation. The Net Profits of the Company shall be divided among the Members, and the Net Losses shall be borne by them, pro rata in accordance with their Interests in the Company. Special Allocations, if any (and none are planned or anticipated), shall comply with: (i) section 704 of the Code; (ii) the regulations promulgated under section 704 of the Code; and, (iii) any and all other applicable legal or accounting authority.

8.02 Distributions. Except as may otherwise be provided herein, all distributions of distributable cash shall be made to the Members pro rata in proportion to the respective interest of the Members in Net Profits and Net Losses as set forth in Section 5.01 on the record date of such distribution. Except as provided in Section 5.03, all distributions of distributable cash and property shall be made at such time as determined by the Manager. All amounts withheld pursuant to the Code or any provisions of state or local tax law with respect to any payment or distribution to the Members from the Company shall be treated as amounts distributable to the relevant Member or Members pursuant to this paragraph.

8.03 Limitation Upon Distributions. No distributions or return of contributions shall be made and paid if, after the distribution or return of distribution is made, either:

8.03.1 The Company would be insolvent; or

8.03.2 The net assets of the Company would be less than zero.

The Members may base a determination that distribution or return of contribution may be made in good faith reliance upon a balance sheet and profit and loss statement of the Company represented to be correct by the person having charge of its books of account or certified by an independent public or certified public accountant or firm of accountants to fairly reflect the financial condition of the Company.

8.04 Salaries, Drawings and Interest on Capital Contributions. No Member shall receive any salary or drawings for services rendered to the Company in his capacity as a Member, nor shall any Member receive any interest on his contributions to the capital of the Company. However, each Member shall be reimbursed by the Company for all costs and expenses incurred by him in connection with, and attributable to, the Company business. No payment shall be made by reason of this paragraph unless all of the Members unanimously agree.

8.05 Accounting Period. The Company's accounting period shall be the calendar year ("Fiscal Year").

8.06 Records, Audits and Reports. At the expense of the Company, the Member or Members shall maintain records and accounts of the operations and expenditures of the Company. At a minimum, the Company shall keep at its principal place of business the following records:

8.06.1 A current list of the full name and last known address of each Member setting forth the amount of cash each Member has contributed, a description and statement of the agreed value of the other property or services each Member has contributed or has agreed to contribute in the future, and the date on which each became a Member;

8.06.2 A copy of the Articles of Organization of the Company and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendments, or certificates have been executed;

8.06.3 Copies of the Company's federal, state, and local income tax returns and reports, if any, for the three (3) most recent years;

8.06.4 Copies of the Company's currently effective written Operating Agreement and any amendments thereto, and copies of any financial statements of the Company for the three (3) most recent years;

8.06.5 Minutes of every meeting;

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8.06.6 Any written consents or Memoranda of Action obtained from Members for actions taken by Members without a meeting; and

8.06.7 Unless contained in the Articles of Organization or the Operating Agreement, a writing prepared by the Manager setting out the following:

(a) The times at which or events on the happening of which any additional contributions agreed to be made by each Member are to be made; and

(b) Any right of a Member to receive distributions that include a return of all or any part of the Member's contributions.

8.07 Returns and Other Elections. The Members shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year upon the Members' written request.

8.08 Loans to Company. Nothing in this Operating Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company.

8.09 Tax Matters Partner. H. Alex Marshall is designated as the "Tax Matters Partner" (as defined in Code Section 6231), and are authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including, without limitation, administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. The Members agree to cooperate with each other and to do or refrain from doing any and all things reasonably required to conduct such proceedings.

ARTICLE IX TRANSFERABILITY -- SALES, TERMINATION, AND ADDITIONS

9.01 Restrictions on Transfer. Except as provided in this Article, no Member may assign his Interest and be admitted as a Member without the prior written consent of a Majority in Interest of the Members. However, any Member may assign his or her Interest to another Member without securing the approval of a Majority in Interest of the Members. Furthermore, no transfer or assignment of any Member's Interest may be made at any time if such transfer or assignment would, in the opinion of counsel for the Company, result in (i) a termination or dissolution of the Company for purposes of §708 of the Code, or any comparable provision then in effect, or (ii) the Company being treated as an association taxable as a corporation for federal income tax purposes.

9.02 Void Transfer. In no event shall any Member's Interest, or any portion thereof, be assigned or transferred to a minor or an incompetent or in violation of any state or federal law. Any such attempted transfer or assignment shall be void and ineffectual and shall not bind the Company or the Manager.

9.03 Party to Operating Agreement. Any person becoming a Member shall be subject to and bound by all the provisions of this Operating Agreement as if originally a party to this Agreement.

9.04 Effective Date of Assignment. The assignment of Membership Interests shall be effective sixty (60) days after notice of the assignment is given to the remaining Members, or is otherwise specified in writing by the remaining Members within said sixty (60) day period.

9.05 Right of First Refusal.

- (a) If a selling Member desires to sell all or any portion of its Membership Interest or Economic Interest in the Company to a third party purchaser, the selling Member shall obtain from such third party purchaser a bona fide written offer to purchase such interest, stating the terms and conditions upon which the purchase is to be made and the consideration offered. The selling Member shall give written notification to the remaining Members, by certified mail or personal delivery, of its intention to so transfer such interest, furnishing to the remaining Members a copy of the written offer to purchase such interest, and the name and business and personal addresses of the proposed transferee.
- (b) Primary Option to Purchase. Within thirty-five (35) business days of the receipt of the notice of intention to transfer a Percentage Interest by the last of the Members to receive such notice, each remaining Member may exercise an option to purchase that proportion of the Percentage Interest proposed to be transferred which equals the proportion which the Percentage Interest owned by such remaining Member at the time of his receipt of the notice is of the total of the Percentage Interests then owned by all the remaining Members. The purchase option granted in this paragraph is herein referred to as the "Primary Option".
- (c) Secondary Option to Purchase. If a Member fails to exercise a Primary Option granted to him to purchase the Percentage Interest proposed to be transferred, each remaining Member who is granted and who exercises a Primary Option may, within ten (10) business days after the expiration of the thirty-five (35) day option period provided for above, exercise an option to purchase the Percentage Interest with respect to which such Member has failed to exercise his Primary Option (hereinafter "the Option Interest"). In the case of a single remaining Member, his option shall be to purchase all of the Option Interest. In the case of two or more remaining Members,

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each such remaining Member's option shall be to purchase the portion of Option Interest which bears the same proportion to the total Option Interest as the Percentage Interest owned by each such remaining Member at the time of receipt of the notice provided for above bears to the total Percentage Interest then owned by all such remaining Members; provided that all such remaining Members may, by agreement among themselves, determine the proportions in which some or all of their number may exercise the option granted in this paragraph. The purchase option granted by this paragraph is referred to as the "Secondary Option".

- (d) In the event the remaining Members (or any one or more of the remaining Members) give written notice to the selling Member of their desire to exercise this right of first refusal and to purchase all of the selling Member's interest in the Company which the selling Member desires to sell upon the same terms and conditions as are stated in the aforesaid written offer to purchase, the remaining Members shall have the right to designate the time, date, and place of closing, provided that the date of closing shall be within sixty (60) business days after written notification to the selling Member of the remaining Member or Members' election to exercise their right of first refusal.
- (e) As a condition to the Company recognizing the effectiveness of the purchase of the selling Member's interest in the Company by a third party purchaser or the gift of an interest in the Company (including an Economic Interest), (subject to Section 10.3), the substitution of a new Member, the remaining Members, must agree by unanimous vote approve the transfer and then may require the selling Member, Gifting Member or the proposed purchaser, donee or successor-in-interest, as the case may be, to execute, acknowledge, and deliver to the remaining Members such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the remaining Members may deem necessary or desirable to:
 - (1) verify the purchase, gift or transfer, as the case may be;
 - (2) confirm that the person desiring to acquire an interest in the Company, or to be admitted as a Member, has accepted, assumed, and agreed to be subject and bound by all of the terms, obligations and conditions of this Operating Agreement, (whether such Person is to be admitted as a new Member or an Economic Interest Owner);
 - (3) maintain the status of the Company as a partnership for federal tax purposes; and

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- (4) assure compliance with any applicable state and federal laws including security laws and regulations.
- (f) Any sale or gift of a Membership Interest or Economic Interest or admission of a Member in compliance with this Article 10 shall be deemed effective as of the last day of the calendar month in which the remaining Members' consent thereto was given, or, if no such consent was required, pursuant to Section 10.02(e), then on such date that the donee or successor interest complies with the conditions set forth in Section 10.2(c) or 10.2(e). The selling Member agrees, upon request of the remaining Members to execute such certificates or other documents and to perform such other acts as may be reasonably requested by the remaining Members from time to time in connection with such sale, transfer, assignment or substitution. The selling Member hereby indemnifies the Company and the remaining Members against any and all loss, damage or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of this Article 10.

9.06 Transferee Not Member in Absence of Unanimous Consent.

- (a) Notwithstanding anything contained herein to the contrary (including, without limitation, Section 9.05 hereof), if all of the remaining Members do not approve by unanimous written consent of the proposed sale or gift of the Transferring Member's Membership Interest or Economic Interest to a transferee or donee which is not a Member immediately prior to the sale or gift, then the proposed transferee or donee shall have no right to participate in the management of the business and affairs of the Company or to become a Member. The transferee or donee shall be merely an Economic Interest Owner. The transfer of a Member's interest in the Company (including any transfer of the Economic Interest or any other transfer that has not been approved by unanimous written consent of the Members) shall be effective unless and until written notice (including the name and address of the proposed transferee or donee and the date of such transfer) has been provided to the Company and the non-transferring Member(s).
- (b) Upon and contemporaneously with any sale or gift of a Transferring Member's Economic Interest in the Company which does not at the same time transfer the balance of the rights associated with the Economic Interest transferred by the Transferring Member (including, without limitation, the rights of the Transferring Member to participate in the management of the business and affairs of the Company), all remaining rights and interest that were owned by the Transferring Member immediately prior to such sale or gift or that were associated with the transferred Economic Interest shall immediately lapse until either (1) the remaining Members, by unanimous consent, reinstate such rights to the Economic Interest Owners who did not

previously obtain the unanimous written consent of the Members or (2) upon the remaining Members, by unanimous written consent, reinstating such rights to a successor or transferee of such Economic Interest Owner.

- (c) The restrictions or transfer contained in Section 10.3 are intended to comply (and shall be interpreted consistently) with the restrictions on transfer set forth in Article 30 of the Act.

9.07 Admission of Additional Members. The Members may, upon approval in writing of a Majority in Interest of the Members, permit the admission of additional Members and determine the amount of Capital Contribution of such Members.

ARTICLE X DISSOLUTION AND TERMINATION

10.01 Dissolution.

10.01.1 The Company shall be dissolved upon the occurrence of any of the following events:

(1) When the period fixed for the duration of the Company shall expire pursuant to Section 2.06 hereof;

(2) By the written agreement of a Majority in Interest of the Members;

(3) Upon the occurrence of a Withdrawal Event, unless the business of the Company is continued, within ninety (90) days after the Withdrawal Event, by the consent of Members owning a Majority in Interest provided those Members hold a Majority of the Capital Accounts of all remaining Members and there are at least two remaining Members; or

(4) Entry of a decree of judicial or administrative dissolution pursuant to the provisions of the Act.

10.01.2 If a Member who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the Member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the Member's rights for the purpose of settling his estate or administering his property.

10.01.3 A Member shall not take any voluntary action which directly causes a Withdrawal Event. Unless otherwise approved by a Majority in Interest of the remaining Members owning a Majority Interest, a Member shall not be entitled to receive any distributions in excess of those distributions to which such Member would have been

entitled had such Member remained a Member. Damages for breach of this Section shall be monetary damages only (and not specific performance), and such damages may be offset against distributions by the Company to which the Resigning Member would otherwise be entitled.

10.02 Winding Up, Liquidation and Distribution of Assets.

10.02.1 Upon dissolution, an accounting shall be made by the Company's independent accountants of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Members shall immediately proceed to wind up the affairs of the Company and shall, pursuant to the provisions of the Act, give notice to all potential claimants of the Company and otherwise comply with the distribution requirements of the Act.

10.02.2 If the Company is dissolved and its affairs are to be wound up, the Members shall:

(1) Sell or otherwise liquidate all of the Company's assets as promptly as practicable;

(2) Allocate any profit or loss resulting from such sales to the Member's Capital Accounts in accordance with Article IV;

(3) Discharge all liabilities of the Company, including liabilities to Members who are creditors, to the extent otherwise permitted by law, in satisfaction of the liabilities of the Company, other than liabilities to Members for distributions, and establish Reserves as may be reasonably necessary to provide for contingent liabilities of the Company (for purposes of determining the Capital accounts of the Members the amounts of such Reserves shall be deemed to be an expense of the Company);

(4) Distribute the remaining assets in the following order:

(i) If any assets of the Company are to be distributed in kind, the net fair market value of such assets as of the date of dissolution shall be determined by independent appraisal or by agreement of all of the Members. Such assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and the Capital Accounts of the Members shall be adjusted pursuant to the provisions of Article IV of this Operating Agreement to reflect such deemed sale;

(ii) The positive balance (if any) of each Member's Capital Account (as determined after taking into account all Capital

Account adjustments for the Company's taxable year during which the liquidation occurs) shall be distributed to the Members either in cash or in kind as determined by the Members with any assets distributed in kind being valued for this purpose at their fair market value. Any such distributions to the Members in respect to their Capital Accounts shall be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Treasury Regulations.

10.02.3 Upon liquidation, notwithstanding anything to the contrary contained in this Operating Agreement, if any Member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution, and the negative balance of such Member's Capital Account shall not be considered a debt owned by such Member to the Company or to any other Person for any purpose whatsoever.

10.02.4 Upon completion of the winding up, liquidation and distribution of the assets, the Company shall be deemed terminated.

10.02.5 The Members shall comply with all requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

10.03 Articles of Dissolution. When all debts, liabilities and obligations of the Company have been paid and discharged or adequate provisions have been made therefore and all of the remaining property and assets of the Company have been distributed to the Members, Articles of Dissolution, as required by the Act, shall be executed in duplicate and filed with the Illinois Secretary of State.

10.04 Effect of Filing of Articles of Dissolution. Upon the filing of Articles of Dissolution with the Illinois Secretary of State, the existence of the Company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided in the Act. The Manager shall, pursuant to the Act, have authority to distribute any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company.

10.05 Return of Contribution Nonrecourse to Other Members. Except as provided by law or as expressly provided in this Operating Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution of one or more Members, such Member or Members shall have no recourse against any other Members, except as otherwise provided by law.

ARTICLE XI

AMENDMENTS

11.01 Amendments. This Agreement may only be modified or amended by an agreement, in writing, adopted by the Members and approved, in writing. The approving and adopting Members must own, at least, a fifty (50%) percent Interest in the Company.

ARTICLE XII MISCELLANEOUS

12.01 Notices. Any notice, demand, or communication required or permitted to be given by any provision of this Operating Agreement shall be deemed to have been sufficiently given or serviced for all purposes if delivered personally to the party or to an executive officer of the party to whom the same is directed or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Member's and/or Company's address, as appropriate, which is set forth after the signature lines in this Operating Agreement. Except as otherwise provided herein, any such notice shall be deemed to be given on the date on which the same was deposited in the United States mail, addressed and sent as aforesaid.

12.02 Application of Illinois Law. This Operating Agreement and its interpretation shall be governed exclusively by its terms and by the laws of the State of Illinois, and specifically the Act.

12.03 Waiver of Action for Partition. Each Member irrevocably waives during the term of the Company any right that it may have to maintain any action for the partition with respect to the property of the Company.

12.04 Execution of Additional Instruments. Each Member hereby agrees to execute such other and further statements of interest and holdings, designations and other instruments necessary to comply with any laws, rules or regulations.

12.05 Construction. Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

12.06 Headings. The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

12.07 Waivers. The failure of any party to seek redress for default of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a default, from having the effect of an original default.

12.08 Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not

preclude or waive the right to use any other remedy. Said rights and remedies are given in addition to any other legal rights the parties may have.

12.09 Severability. If any provision of this Operating Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

12.10 Heirs, Successors and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

12.11 Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditors of the Company.

12.12 Rights of Creditor of a Member. On application to a court of competent jurisdiction by any judgment creditor of a Member, the court may charge the Member's share of profits and right to distributions with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of any assignee. This Article shall not deprive any Member of the benefit of any exemption laws applicable to that Member's Interest in the Company.

12.13 Counterparts. This Operating Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

12.14 Representations and Warranties. Each Member, and in the case of an organization, the person(s) executing the Operating Agreement on behalf of the organization, hereby represents and warrants to the Company and each other Member: (a) that if that Member is an organization, that it is duly organized, validly existing, and in good standing under the law of its state of organization and that it has full organizational power to execute and agree to the Operating Agreement to perform its obligations hereunder; (b) that the Member is acquiring its interest in the Company for the Member's own account as an investment and without an intent to distribute the interest; and (c) that the Member acknowledges that the interests have not been registered under the Securities Act of 1933 or any state securities laws, and may not be resold or transferred by the Member without appropriate registration or the availability of an exemption from such requirements.

12.15 Entire Agreement. This Operating Agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them. It contains the entire agreement of the parties. It may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

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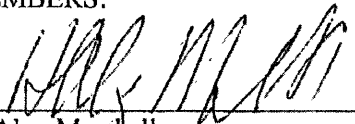
12.16 Joint Preparation. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

12.17 Incorporation of Exhibits, Annexes, and Schedules. The Exhibits, Annexes and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

12.18 Books of Account and Records. Proper and complete records and books of account shall be kept or shall be caused to be kept by the Tax Matters Partner in which shall be entered fully and accurately all transactions relating to the Company's business in such detail and completeness as is customary and usual for business of the type engaged in by the Company. Such books and records shall be maintained as provided in Section 9.9. The books and records shall at all times be maintained at the principal place of business of the Company.

IN WITNESS WHEREOF, the parties hereto have caused their signatures, or the signatures of their duly authorized representatives, to be set forth below on the day and year identified below.

MEMBERS:

 3-11-12)

H. Alex Marshall Date

Return Date: No return date scheduled
Hearing Date: 1/8/2019 9:00 AM - 9:00 AM
Courtroom Number:
Location:

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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018CH13599

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EXHIBIT 2

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

Plaintiff,

V.

NFI INDUSTRIES, INC., and KRONOS, INC.,)

CLASS ACTION COMPLAINT

NATURE OF THE ACTION

2. When NFI hires an employee, he or she is enrolled in its Kronos employee database. NFI uses the employee database to monitor the time worked by NFI hourly employees.

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3. While many employers use conventional methods for tracking time worked (such as ID badge swipes or punch clocks), NFI employees are required to have their fingerprints scanned by a biometric timekeeping device.

4. Biometrics are not relegated to esoteric corners of commerce. Many businesses – such as Defendants’ – and financial institutions have incorporated biometric applications into their workplace in the form of biometric timeclocks, and into consumer products, including such ubiquitous consumer products as checking accounts and cell phones.

5. Unlike ID badges or time cards – which can be changed or replaced if stolen or compromised – fingerprints are unique, permanent biometric identifiers associated with each employee. This exposes NFI’s employees to serious and irreversible privacy risks. For example, if a database containing fingerprints or other sensitive, proprietary biometric data is hacked, breached, or otherwise exposed – like in the recent Yahoo, eBay, Equifax, Uber, Home Depot, MyFitnessPal, Panera, Whole Foods, Chipotle, Omni Hotels & Resorts, Trump Hotels, and Facebook/Cambridge Analytica data breaches or misuses – employees have no means by which to prevent identity theft, unauthorized tracking or other unlawful or improper use of this highly personal and private information.

6. In 2015, a data breach at the United States Office of Personnel Management exposed the personal identification information, including biometric data, of over 21.5 million federal employees, contractors, and job applicants. U.S. Off. of Personnel Mgmt., *Cybersecurity Incidents* (2018), available at <https://www.opm.gov/cybersecurity/cybersecurity-incidents>.

7. A black market already exists for biometric data. Hackers and identity thieves have targeted Aadhaar, the largest biometric database in the world, which contains the personal and biometric data – including fingerprints, iris scans, and a facial photograph – of over a billion Indian

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citizens. See Vidhi Doshi, *A Security Breach in India Has Left a Billion People at Risk of Identity Theft*, The Washington Post (Jan. 4, 2018), available at https://www.washingtonpost.com/news/worldviews/wp/2018/01/04/a-security-breach-in-india-has-left-a-billion-people-at-risk-of-identity-theft/?utm_term=.b3c70259f138.

8. In January 2018, an Indian newspaper reported that the information housed in Aadhaar was available for purchase for less than \$8 and in as little as 10 minutes. Rachna Khaira, *Rs 500, 10 Minutes, and You Have Access to Billion Aadhaar Details*, The Tribune (Jan. 4, 2018), available at <http://www.tribuneindia.com/news/nation/rs-500-10-minutes-and-you-have-access-to-billion-aadhaar-details/523361.html>.

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

10. Notwithstanding the clear and unequivocal requirements of the law, Defendants disregard NFI employees’ statutorily protected privacy rights and unlawfully collect, store, disseminate, and use employees’ biometric data in violation of BIPA. Specifically, Defendants have violated and continue to violate BIPA because they did not and continue not to:

- a. Properly inform Plaintiff and others similarly situated in writing of the specific purpose and length of time for which their fingerprints were being collected, stored, disseminated and used, as required by BIPA;
- b. Provide a publicly available retention schedule and guidelines for permanently destroying Plaintiff’s and other similarly-situated individuals’ fingerprints, as required by BIPA; and
- c. Receive a written release from Plaintiff and others similarly situated to collect, store, disseminate or otherwise use their fingerprints, as required by BIPA.

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11. Plaintiff and other similarly-situated individuals are aggrieved because they were not: (1) informed in writing of the purpose and length of time for which their fingerprints were being collected, stored, disseminated and used; (2) provided a publicly available retention schedule or guidelines for permanent destruction of the biometric data; and (3) provided (nor did they execute) a written release, as required by BIPA.

12. Upon information and belief, Defendant NFI improperly discloses its employees' fingerprint data to at least one out-of-state third-party vendor, Kronos.

13. Upon information and belief, both Defendants improperly disclose employees' fingerprint data to other, currently unknown, third parties, including, but not limited to third parties that host biometric data in their data center(s).

14. Upon information and belief, each Defendant lacks retention schedules and guidelines for permanently destroying Plaintiff's and other similarly-situated individuals' biometric data and have not and will not destroy their biometric data as required by BIPA.

15. Plaintiff and others similarly situated are aggrieved by each Defendant's failure to destroy their biometric data when the initial purpose for collecting or obtaining such data has been satisfied or within three years of the employee's last interactions with the company.

16. Plaintiff and others similarly situated have suffered an injury in fact based on each Defendant's improper disclosures of their biometric data to third parties.

17. Plaintiff and others similarly situated have suffered an injury in fact based on each Defendant's violations of their legal rights.

18. These violations have raised a material risk that Plaintiff's and other similarly-situated individuals' biometric data will be unlawfully accessed by third parties. The Illinois

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Attorney General has ranked identity theft as the top scam targeting Illinois residents. (*See, e.g.*, Exhibit A).

19. Employees have a proprietary right to control their biometric information. In failing to comply with the requirements of BIPA, employers intentionally interfere with each employee's right of possession and control over their valuable, unique, and permanent biometric data.

20. Each Defendant is directly liable for, and had actual knowledge of, the BIPA violations alleged herein.

21. Accordingly, Plaintiff, on behalf of himself as well as the putative Class, seeks an Order: (1) declaring that each Defendant's conduct violates BIPA; (2) requiring each Defendant to cease the unlawful activities discussed herein; and (3) awarding statutory damages to Plaintiff and the proposed Class.

PARTIES

22. Plaintiff John Stidwell is a natural person and a citizen of the State of Illinois.

23. Defendant NFI Industries, Inc., is a corporation existing under the laws of the State of New Jersey, with its principal place of business in Cherry Hill, New Jersey. NFI is registered with the Illinois Secretary of State and conducts business in the State of Illinois, including Cook County.

24. Defendant Kronos, Inc. is a Massachusetts corporation registered to do business in Illinois. Upon information and belief, Kronos provides biometric timekeeping devices to NFI.

JURISDICTION AND VENUE

25. This Court has jurisdiction over Defendants pursuant to 735 ILCS 5/2-209 because they conduct business transactions in Illinois, committed statutory violations and tortious acts in Illinois, and are registered to conduct business in Illinois.

26. Venue is proper in Cook County because Plaintiff resides in Cook County.

FACTUAL BACKGROUND

I. The Biometric Information Privacy Act.

27. Major national corporations started using Chicago and other locations in Illinois in the early 2000s to test “new applications of biometric-facilitated financial transactions, including finger-scan technologies at grocery stores, gas stations, and school cafeterias” 740 ILCS 14/5(c). Given its relative infancy, an overwhelming portion of the public became wary of this then-growing yet unregulated technology. *See* 740 ILCS 14/5.

28. 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. The bankruptcy was alarming to the Illinois legislature because there was suddenly a serious risk that millions of fingerprint records – which, similar to other 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 used the company’s fingerprint scanners were completely unaware the scanners were not 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.

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

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30. Additionally, to ensure compliance, BIPA provides that, for each violation, the prevailing party may recover \$1,000 or actual damages, whichever is greater, for negligent violations and \$5,000, or actual damages, whichever is greater, for intentional or reckless violations. 740 ILCS 14/20.

31. 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:

- a. Informs the subject in writing that a biometric identifier or biometric information is being collected or stored;
- b. 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
- c. Receives a written release executed by the subject of the biometric identifier or biometric information.”

See 740 ILCS 14/15(b).

32. 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.

33. 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. *Id.*

34. BIPA also establishes standards for how companies must handle Illinois citizens’ biometric identifiers and biometric information. *See, e.g.,* 740 ILCS 14/15(c)-(d). For example,

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BIPA prohibits private entities from disclosing a person's or customer's biometric identifier or biometric information without first obtaining consent for that disclosure. *See* 740 ILCS 14/15(d)(1).

35. BIPA also prohibits selling, leasing, trading, or otherwise profiting from a person's biometric identifiers or biometric information (740 ILCS 14/15(c)) and 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).

36. The Illinois legislature enacted BIPA due to the increasing use of biometric data in financial and security settings, the general public's hesitation to use biometric information, and – most significantly – the unknown ramifications of biometric technology. Biometrics are biologically unique to the individual and, once compromised, an individual is at heightened risk for identity theft and left without any recourse.

37. BIPA provides individuals with a private right of action, protecting their right to privacy regarding their biometrics as well as protecting their rights to know the precise nature for which their biometrics are used and how they are being stored and ultimately destroyed. Unlike other statutes that only create a right of action if there is a qualifying data breach, BIPA strictly regulates the manner in which entities may collect, store, use, and disseminate biometrics and creates a private right of action for lack of statutory compliance.

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38. Plaintiff, like the Illinois legislature, recognizes how imperative it is to keep biometric information secure. Biometric information, unlike other personal identifiers such as a social security number, cannot be changed or replaced if hacked or stolen.

II. Defendants Violate the Biometric Information Privacy Act.

39. By the time BIPA passed through the Illinois legislature in mid-2008, most companies who had experimented using employees' biometric data as an authentication method stopped doing so.

40. However, Defendants failed to take note of the shift in Illinois law governing the collection and use of biometric data. As a result, each Defendant continues to collect, store, use, and disseminate employees' biometric data in violation of BIPA.

41. Specifically, when employees are hired by NFI, they are required to have their fingerprints captured and stored to enroll them in its Kronos employee database(s).

42. NFI uses an employee time tracking system supplied by Kronos that requires employees to use their fingerprint as a means of authentication. Unlike a traditional timeclock, all NFI employees must use their fingerprints to "punch" in and out of work.

43. Upon information and belief, NFI fails to inform its employees that it discloses their fingerprint data to at least one out-of-state third-party vendor, Kronos; fails to inform its employees that it discloses their fingerprint data to other, currently unknown third parties, which host the biometric data in their data centers; fails to inform its employees of the purposes and duration for which it collects their sensitive biometric data; and fails to obtain written releases from employees before collecting their fingerprints.

44. Upon information and belief, Kronos fails to inform NFI employees that it discloses their fingerprint data to other, currently unknown third parties, which host the biometric data in

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their data centers; fails to inform NFI employees of the purposes and duration for which it collects their sensitive biometric data; and fails to obtain written releases from employees before collecting their fingerprints.

45. Furthermore, each Defendant fails to provide employees with a written, publicly available policy identifying their retention schedule and guidelines for permanently destroying employees' fingerprints when the initial purpose for collecting or obtaining their fingerprints is no longer relevant, as required by BIPA.

46. The Pay by Touch bankruptcy, which triggered the passage of BIPA, highlights why such conduct – where individuals are aware that they are providing a fingerprint but are not aware to whom or for what purposes they are doing so – is dangerous. This bankruptcy spurred Illinois citizens and legislators into realizing that it is crucial for individuals to understand when providing biometric identifiers such as a fingerprint, who exactly is collecting their biometric data, where it will be transmitted, for what purposes it will be transmitted, and for how long. Each Defendant disregards these obligations and their employees' statutory rights and instead unlawfully collect, store, use, and disseminate employees' biometric identifiers and information, without ever receiving the individual's informed written consent required by BIPA.

47. Upon information and belief, each Defendant lacks retention schedules and guidelines for permanently destroying Plaintiff's and other similarly-situated individuals' biometric data and have not and will not destroy Plaintiff's and other similarly-situated individuals' biometric data when the initial purpose for collecting or obtaining such data has been satisfied or within three years of the employee's last interaction with each company.

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48. NFI employees are not told what might happen to their biometric data if and when any Defendant merges with another company or worse, if and when each Defendant's business folds, or when the other third parties' that have received their biometric data businesses fold.

49. Since Defendants neither publish BIPA-mandated data retention policies nor disclose the purposes for their collection of biometric data, NFI employees have no idea whether any Defendant sells, discloses, re-discloses, or otherwise disseminates their biometric data. Moreover, Plaintiff and others similarly situated are not told to whom any Defendant currently discloses their biometric data to, or what might happen to their biometric data in the event of a merger or a bankruptcy.

50. These violations have raised a material risk that Plaintiff's and other similarly-situated individuals' biometric data will be unlawfully accessed by third parties.

51. By and through the actions detailed above, Defendants disregarded Plaintiff's and other similarly-situated individuals' legal rights in violation of BIPA.

III. Plaintiff John Stidwell's Experience

52. Plaintiff John Stidwell worked as a Forklift Operator for NFI from November 2016 until October 16, 2018.

53. As a condition of employment, Stidwell was required to scan his fingerprint so NFI could use it as an authentication method to track his time.

54. NFI subsequently stored Stidwell's fingerprint data in its Kronos database(s).

55. Stidwell was required to scan his fingerprint each time he began and ended his workday.

56. Stidwell has never been informed of the specific limited purposes or length of time for which any Defendant collected, stored, used, and/or disseminated his biometric data.

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57. Stidwell has never been informed of any biometric data retention policy developed by any Defendant, nor has he ever been informed whether any Defendant will ever permanently delete his biometric data.

58. Stidwell has never been provided with nor ever signed a written release allowing any Defendant to collect, store, use or disseminate his biometric data.

59. Stidwell has continuously and repeatedly been exposed to the risks and harmful conditions created by each Defendants' violations of BIPA alleged herein.

60. No amount of time or money can compensate Stidwell if his biometric data is compromised by the lax procedures through which each Defendant captured, stored, used, and disseminated his and other similarly-situated individuals' biometrics, and Stidwell would not have provided his biometric data to any Defendant if he had known that they would retain such information for an indefinite period of time without his consent.

61. A showing of actual damages is not necessary in order to state a claim under BIPA. Nonetheless, Stidwell has been aggrieved because he suffered an injury-in-fact based on each Defendant's violations of his legal rights. Defendants intentionally interfered with Stidwell's right to possess and control his own sensitive biometric data. Additionally, Stidwell suffered an invasion of a legally protected interest when each Defendant secured his personal and private biometric data at a time when it had no right to do so, a gross invasion of his right to privacy. BIPA protects employees like Stidwell from this precise conduct, and Defendants had no lawful right to secure this data or share it with third parties absent a specific legislative license to do so.

62. Stidwell's biometric information is economically valuable, and such value will increase as the commercialization of biometrics continues to grow. As such, Stidwell was not sufficiently compensated by any Defendant for its retention and use of his and other similarly-

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situated employees' biometric data. Stidwell would not have agreed to work for NFI for the compensation he received if he had known that Defendants would retain his biometric data indefinitely.

63. Stidwell also suffered an informational injury because each Defendant failed to provide him with information to which he was entitled by statute. Through BIPA, the Illinois legislature has created a right: an employee's right to receive certain information prior to an employer securing their highly personal, private and proprietary biometric data; and an injury – not receiving this extremely critical information.

64. Further, Stidwell suffered an injury in fact because each Defendant improperly disseminated his biometric identifiers and/or biometric information to third parties, including but not limited to Kronos and any other third party that hosted the biometric data in their data centers, in violation of BIPA.

65. Pursuant to 740 ILCS 14/15(b), Stidwell was entitled to receive certain information prior to Defendants securing his biometric data; namely, information advising him of the specific limited purpose(s) and length of time for which each Defendant collects, stores, uses and disseminates his private biometric data; information regarding each Defendant's biometric retention policy; and, a written release allowing each Defendant to collect, store, use, and disseminate his private biometric data. By depriving Stidwell of this information, Defendants injured him. *Public Citizen v. U.S. Department of Justice*, 491 U.S. 440, 449 (1989); *Federal Election Commission v. Akins*, 524 U.S. 11 (1998).

66. Finally, as a result of each Defendant's conduct, Stidwell has experienced personal injury in the form of mental anguish. For example, Stidwell experiences mental anguish and injury when contemplating what would happen to his biometric data if any Defendant went bankrupt,

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whether any Defendant will ever delete his biometric information, and whether (and to whom) any Defendant would share his biometric information.

67. Stidwell has plausibly inferred actual and ongoing harm in the form of monetary damages for the value of the collection and retention of his biometric data; in the form of monetary damages by not obtaining additional compensation as a result of being denied access to material information about Defendants' policies and practices; in the form of the unauthorized disclosure of his confidential biometric data to third parties; in the form of interference with his right to control and possess his confidential biometric data; and, in the form of the continuous and ongoing exposure to substantial and irreversible loss of privacy.

68. As Stidwell is not required to allege or prove actual damages in order to state a claim under BIPA, he seeks statutory damages under BIPA as compensation for the injuries caused by Defendants.

CLASS ALLEGATIONS

69. Pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/2-801, Plaintiff brings claims on his own behalf and as a representative of all other similarly-situated individuals pursuant to BIPA, 740 ILCS 14/1, *et seq.*, to recover statutory penalties, prejudgment interest, attorneys' fees and costs, and other damages owed.

70. As discussed *supra*, Section 14/15(b) of BIPA prohibits a company from, among other things, collecting, capturing, purchasing, receiving through trade, or otherwise obtaining a person's or a customer's biometric identifiers or biometric information, unless it first (1) informs the individual in writing that a biometric identifier or biometric information is being collected or stored; (2) informs the individual in writing of the specific purpose and length of time 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.

71. Plaintiff seeks class certification under the Illinois Code of Civil Procedure, 735 ILCS 5/2-801 for the following class of similarly-situated employees under BIPA:

All individuals working for NFI in the State of Illinois who had their fingerprints collected, captured, received, or otherwise obtained or disclosed by any Defendant during the applicable statutory period.

72. This action is properly maintained as a class action under 735 ILCS 5/2-801 because:

- A. The class is so numerous that joinder of all members is impracticable;
- B. There are questions of law or fact that are common to the class;
- C. The claims of the Plaintiff are typical of the claims of the class; and,
- D. The Plaintiff will fairly and adequately protect the interests of the class.

Numerosity

73. The total number of putative class members exceeds fifty (50) individuals. The exact number of class members can easily be determined from NFI's payroll records.

Commonality

74. There is a well-defined commonality of interest in the substantial questions of law and fact concerning and affecting the Class in that Plaintiff and all members of the Class have been harmed by Defendants' failure to comply with BIPA. The common questions of law and fact include, but are not limited to the following:

- A. Whether any Defendant collected, captured or otherwise obtained Plaintiff's biometric identifiers or biometric information;
- B. Whether any Defendant properly informed Plaintiff of their purposes for collecting, using, and storing his biometric identifiers or biometric information;

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- C. Whether any Defendant obtained a written release (as defined in 740 ILCS 14/10) to collect, use, and store Plaintiff's biometric identifiers or biometric information;
- D. Whether any Defendant has disclosed or re-disclosed Plaintiff's biometric identifiers or biometric information;
- E. Whether any Defendant has sold, leased, traded, or otherwise profited from Plaintiff's biometric identifiers or biometric information;
- F. Whether any 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 with the employee, whichever occurs first;
- G. Whether any Defendant complies with any such written policy (if one exists);
- H. Whether any Defendant used Plaintiff's fingerprints to identify him;
- I. Whether any Defendant's violations of BIPA have raised a material risk that Plaintiff's biometric data will be unlawfully accessed by third parties;
- J. Whether the violations of BIPA were committed negligently; and
- K. Whether the violations of BIPA were committed willfully.

75. Plaintiff anticipates that Defendants will raise defenses that are common to the class.

Adequacy

76. Plaintiff will fairly and adequately protect the interests of all members of the class, and there are no known conflicts of interest between Plaintiff and class members. Plaintiff, moreover, has retained experienced counsel who are competent in the prosecution of complex litigation and who have extensive experience acting as class counsel.

Typicality

77. The claims asserted by Plaintiff are typical of the class members he seeks to

represent. Plaintiff has the same interests and suffers from the same unlawful practices as the class members.

78. Upon information and belief, there are no other class members who have an interest individually controlling the prosecution of his or her individual claims, especially in light of the relatively small value of each claim and the difficulties involved in bringing individual litigation against one's employer. However, if any such class member should become known, he or she can "opt out" of this action pursuant to 735 ILCS 5/2-801.

Predominance and Superiority

79. The common questions identified above predominate over any individual issues, which will relate solely to the quantum of relief due to individual class members. A class action is superior to other available means for the fair and efficient adjudication of this controversy because individual joinder of the parties is impracticable. Class action treatment will allow a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expense if these claims were brought individually. Moreover, as the damages suffered by each class member are relatively small in the sense pertinent to class action analysis, the expenses and burden of individual litigation would make it difficult for individual class members to vindicate their claims.

80. Additionally, important public interests will be served by addressing the matter as a class action. The cost to the court system and the public for the adjudication of individual litigation and claims would be substantially more than if claims are treated as a class action. Prosecution of separate actions by individual class members would create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendants and/or substantially impair or impede the ability of class members to protect their interests. The issues in

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this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can and is empowered to, fashion methods to efficiently manage this action as a class action.

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

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

82. BIPA requires companies to obtain informed written consent from employees before acquiring their biometric data. Specifically, 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).

83. BIPA also prohibits private entities from disclosing a person’s or customer’s biometric identifier or biometric information without first obtaining consent for that disclosure. *See* 740 ILCS 14/15(d)(1).

84. Furthermore, BIPA 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 (at most three years after the company’s last interaction with the individual); and (ii) actually adhere to that retention schedule and actually delete the biometric information. *See* 740 ILCS 14/15(a).

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85. Each Defendant fails to comply with these BIPA mandates.

86. Defendant NFI is a New Jersey corporation registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS 14/10.

87. Defendant Kronos, Inc. is a Massachusetts corporation registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS 14/10.

88. Plaintiff is an individual who had his “biometric identifiers” collected by each Defendant (in the form of his fingerprints), as explained in detail in Sections II and III, *supra*. *See* 740 ILCS 14/10.

89. Plaintiff’s biometric identifiers were used to identify him and, therefore, constitute “biometric information” as defined by BIPA. *See* 740 ILCS 14/10.

90. Each Defendant systematically and automatically collected, used, stored, and disclosed Plaintiff’s biometric identifiers and/or biometric information without first obtaining the written release required by 740 ILCS 14/15(b)(3).

91. Upon information and belief, NFI systematically disclosed Plaintiff’s biometric identifiers and biometric information to at least one third-party vendor, Kronos.

92. Upon information and belief, each Defendant systematically disclosed Plaintiff’s biometric identifiers and biometric information to other, currently unknown, third parties, which hosted the biometric data in their data centers.

93. No Defendant informed Plaintiff in writing that his biometric identifiers and/or biometric information were being collected, stored, used, and disseminated, nor did Defendant inform Plaintiff in writing of the specific purpose and length of time for which his biometric identifiers and/or biometric information were being collected, stored, used and disseminated as required by 740 ILCS 14/15(b)(1)-(2).

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94. No Defendant provides a publicly available retention schedule or guidelines for permanently destroying biometric identifiers and biometric information as specified by BIPA. *See* 740 ILCS 14/15(a).

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

96. Upon information and belief, each Defendant lacks retention schedules and guidelines for permanently destroying Plaintiff's and the Class's biometric data and have not and will not destroy Plaintiff's and the Class's biometric data when the initial purpose for collecting or obtaining such data has been satisfied or within three years of the employee's last interaction with the company.

97. These violations have raised a material risk that Plaintiff's and the Class's biometric data will be unlawfully accessed by third parties.

98. On behalf of himself and the Class, Plaintiff seeks: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Defendants to comply with BIPA's requirements for the collection, storage, and use of biometric identifiers and biometric information as described herein; (3) statutory damages of \$5,000 for each willful and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2) or, in the alternative, statutory damages of \$1,000 for each negligent violation of BIPA pursuant to 740 ILCS 14/20(1); and (4) reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3).

SECOND CAUSE OF ACTION
Negligence
(On Behalf of Plaintiff and the Class)

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

100. Each Defendant owed Plaintiff and the Class a duty of reasonable care. Such duty required Defendants to exercise reasonable care in the collection and use of Plaintiff's and the Class's biometric data.

101. Additionally, NFI owed Plaintiff and the Class a heightened duty – under which it assumed a duty to act carefully and not put Plaintiff and the Class at undue risk of harm – because of the employment relationship of the parties.

102. Each Defendant breached its duties by failing to implement a BIPA-compliant biometric time tracking system with reasonable data security safeguards.

103. Specifically, each Defendant breached its duties by failing to properly inform Plaintiff and the Class in writing of the specific purpose or length of time for which their fingerprints were being collected, stored, used, and disseminated.

104. Defendants also breached their duties by failing to provide a publicly available retention schedule and guidelines for permanently destroying Plaintiff's and the Class's fingerprint data.

105. Upon information and belief, each Defendant breached its duties because each Defendant lacks retention schedules and guidelines for permanently destroying Plaintiff's and the Class's biometric data and have not and will not destroy Plaintiff's and the Class's biometric data when the initial purpose for collecting or obtaining such data has been satisfied or within three years of the employee's last interaction with either company.

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106. These violations have raised a material risk that Plaintiff's and the Class's biometric data will be unlawfully accessed by third parties.

107. As a direct and proximate cause of each Defendant's negligent misrepresentations, Plaintiff and the other Class members have suffered from diminution in the unique identifying value of their biometric information caused by Defendants' repeated dissemination and exposure of such information to multiple third-parties, including Kronos, and data storage vendors, among others.

108. Defendants knew or should have known that their breach would cause Plaintiff and the other Class members to experience the foreseeable harms associated with the exposure of their biometrics to third parties, including the discontinuation of Plaintiff's and the Class members' exclusive possession and control of their biometrics and the accompanying loss of the unique identifying value of their biometrics.

109. Further, each Defendant's breach of its duty proximately caused and continues to cause an invasion of Plaintiff's and the Class's privacy, an informational injury, and mental anguish, in addition to the statutory damage provided in BIPA.

110. Accordingly, Plaintiff seeks an order declaring that Defendants' conduct constitutes negligence and awarding Plaintiff and the Class damages in an amount to be calculated at trial.

PRAYER FOR RELIEF

Wherefore, Plaintiff John Stidwell respectfully requests that this Court enter an Order:

- A. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff John Stidwell as Class Representative, and appointing Stephan Zouras, LLP, as Class Counsel;
- B. Declaring that Defendants' actions, as set forth above, violate BIPA;
- C. Awarding statutory damages of \$5,000 for *each* willful and/or reckless violation of

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BIPA pursuant to 740 ILCS 14/20(2) or, in the alternative, statutory damages of \$1,000 for *each* negligent violation of BIPA pursuant to 740 ILCS 14/20(1);

- D. Declaring that Defendants' actions, as set forth above, constitute negligence;
- E. Declaring that Defendants' actions, as set forth above, were willful;
- F. Awarding injunctive and other equitable relief as is necessary to protect the interests of Plaintiff and the Class, including an Order requiring Defendants to collect, store, use and disseminate biometric identifiers and/or biometric information in compliance with BIPA;
- G. Awarding Plaintiff and the Class their reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3);
- H. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable;
- I. Provide such further relief as the Court deems just and equitable.

JURY TRIAL

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

Date: December 31, 2018

Respectfully Submitted,

/s/ Haley R. Jenkins

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Return Date: No return date scheduled
Hearing Date: 1/8/2019 9:00 AM - 9:00 AM
Courtroom Number:
Location:

FILED
12/31/2018 11:04 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018CH13599

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

JOHN STIDWELL, individually,)
and on behalf of all others similarly situated,)

Plaintiff,)

v.)

NFI INDUSTRIES, INC., and KRONOS, INC.,)

Defendants.)

Case No. 2018-CH-13599

**ORDER ON PLAINTIFF'S MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT**

This matter coming to be heard on Plaintiff's Motion for Leave to File First Amended Complaint, due notice having been given and the Court being duly advised on the premises, IT IS SO ORDERED:

Plaintiff's Motion for Leave to File First Amended Complaint is granted;

Defendant NFI, LLC is dismissed with prejudice;

The stay in this matter remains in effect, and counsel for all parties will appear for status on February 13, 2019 for a status hearing.

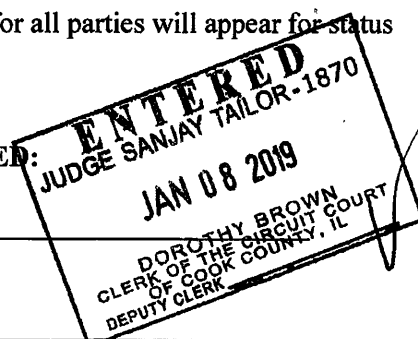
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Counsel for Plaintiff

ENTERED:

Dated: _____

Hon. Sanjay Tailor



From: enotice@cookcountycourt.com
Sent: Thursday, January 17, 2019 8:51 PM
To: +FaegreBD Docket
Subject: PostCard ID=CH2018CH13599____20190117000020

Sent by Clerk of the Circuit Court, Cook County

1 CIRCUIT COURT OF COOK COUNTY
CHANCERY DIV., RM. 802 DALEY CTR.
CHICAGO, IL. 60602

0 ID: CH2018CH13599 20190117000020
TO: FAEGRE BAKER DANIELS LLP
AT: FAEGREBDDOCKET@FAEGREBD.COM

0 ***** NOTICE *****

CASE 18-CH-13599

CALENDAR 09

0 STIDWELL JOHN V. NFI, LLC

THERE WILL BE A CASE MANAGEMENT CALL OF YOUR CASE ON THURSDAY
THE 28TH DAY OF FEBRUARY 2019 IN ROOM 2008 AT 9:30 A.M.
RICHARD J. DALEY CENTER, CHICAGO, IL. 60602.

***** YOU MUST APPEAR OR AN APPROPRIATE ORDER *****

***** MAY BE ENTERED AFFECTING YOUR RIGHTS *****

NOTE: IF THIS CASE HAS BEEN ALREADY DISMISSED OR IF THIS CASE
HAS A COURT DATE SET BY COURT ORDER, YOU MAY DISREGARD THIS
NOTICE

Return Date: No return date scheduled
Hearing Date: 2/28/2019 9:30 AM - 9:30 AM
Courtroom Number: 2008
Location: District 1 Court
Cook County, IL

FILED
1/29/2019 1:28 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018CH13599

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

JOHN STIDWELL, individually,)
and on behalf of all others similarly situated,)

Plaintiff,)

v.)

NFI INDUSTRIES, INC., and KRONOS, INC.,)

Defendants.)

Case No. 2018-CH-13599

NOTICE OF AUTHORITY

Please take notice that Plaintiff hereby submits the attached Illinois Supreme Court Opinion in *Rosenbach v. Six Flags Entertainment Corp.*, No. 123186 (Jan. 25, 2019), for the Court's consideration.

Date: January 29, 2019

Respectfully Submitted,

/s/ Haley R. Jenkins

ONE OF PLAINTIFF'S ATTORNEYS

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CERTIFICATE OF SERVICE

I, the attorney, hereby certify that on January 29, 2019, I filed the attached with the Clerk of the Court using the electronic filing system which will send such filing to all attorneys of record.

/s/ Haley R. Jenkins

Return Date: No return date scheduled
Hearing Date: 2/28/2019 9:30 AM - 9:30 AM
Courtroom Number: 2008
Location: District 1 Court
Cook County, IL

FILED
1/29/2019 1:28 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018CH13599

FILED DATE: 1/29/2019 1:28 PM 2018CH13599

Attachment 1

2019 IL 123186

IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS

(Docket No. 123186)

STACY ROSENBACH, as Mother and Next Friend of Alexander Rosenbach, Appellant, v.
SIX FLAGS ENTERTAINMENT CORPORATION *et al.*, Appellees.

Opinion filed January 25, 2019.

CHIEF JUSTICE KARMEIER delivered the judgment of the court, with opinion.

Justices Thomas, Kilbride, Garman, Burke, Theis, and Neville concurred in the judgment and opinion.

OPINION

¶ 1

The Biometric Information Privacy Act (Act) (740 ILCS 14/1 *et seq.* (West 2016)) imposes numerous restrictions on how private entities collect, retain, disclose and destroy biometric identifiers, including retina or iris scans, fingerprints, voiceprints, scans of hand or face geometry, or biometric information. Under the Act, any person “aggrieved” by a violation of its provisions “shall have a

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right of action *** against an offending party” and “may recover for each violation” the greater of liquidated damages or actual damages, reasonable attorney fees and costs, and any other relief, including an injunction, that the court deems appropriate. *Id.* § 20. The central issue in this case, which reached the appellate court by means of a permissive interlocutory appeal pursuant to Illinois Supreme Court Rule 308 (eff. Jan. 1, 2016), is whether one qualifies as an “aggrieved” person and may seek liquidated damages and injunctive relief pursuant to the Act if he or she has not alleged some actual injury or adverse effect, beyond violation of his or her rights under the statute. The appellate court answered this question in the negative. In its view, “a plaintiff who alleges only a technical violation of the statute without alleging *some* injury or adverse effect is not an aggrieved person” within the meaning of the law. (Emphasis in original.) 2017 IL App (2d) 170317, ¶ 23. We granted leave to appeal (Ill. S. Ct. R. 315(a) (eff. Nov. 1, 2017)) and now reverse and remand to the circuit court for further proceedings.

¶ 2

BACKGROUND

¶ 3

The question the appellate court was asked to consider in this case arose in the context of a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)). We therefore take the following well-pleaded facts from the complaint and accept them as true for purposes of our review. *Cochran v. Securitas Security Services USA, Inc.*, 2017 IL 121200, ¶ 11.

¶ 4

Six Flags Entertainment Corporation and its subsidiary Great America LLC own and operate the Six Flags Great America amusement park in Gurnee, Illinois. Defendants sell repeat-entry passes to the park. Since at least 2014, defendants have used a fingerprinting process when issuing those passes. As alleged by the complaint, their system “scans pass holders’ fingerprints; collects, records and stores ‘biometric’ identifiers and information gleaned from the fingerprints; and then stores that data in order to quickly verify customer identities upon subsequent visits by having customers scan their fingerprints to enter the theme park.” According to the complaint, “[t]his makes entry into the park faster and more seamless, maximizes the time pass holders are in the park spending money, and eliminates lost revenue due to fraud or park entry with someone else’s pass.”

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¶ 5 In May or June 2014, while the fingerprinting system was in operation, Stacy Rosenbach's 14-year-old son, Alexander, visited defendants' amusement park on a school field trip. In anticipation of that visit, Rosenbach had purchased a season pass for him online. Rosenbach paid for the pass and provided personal information about Alexander, but he had to complete the sign-up process in person once he arrived at the amusement park.

¶ 6 The process involved two steps. First, Alexander went to a security checkpoint, where he was asked to scan his thumb into defendants' biometric data capture system. After that, he was directed to a nearby administrative building, where he obtained a season pass card. The card and his thumbprint, when used together, enabled him to gain access as a season pass holder.

¶ 7 Upon returning home from defendants' amusement park, Alexander was asked by Rosenbach for the booklet or paperwork he had been given in connection with his new season pass. In response, Alexander advised her that defendants did "it all by fingerprint now" and that no paperwork had been provided.

¶ 8 The complaint alleges that this was the first time Rosenbach learned that Alexander's fingerprints were used as part of defendants' season pass system. Neither Alexander, who was a minor, nor Rosenbach, his mother, were informed in writing or in any other way of the specific purpose and length of term for which his fingerprint had been collected. Neither of them signed any written release regarding taking of the fingerprint, and neither of them consented in writing "to the collection, storage, use sale, lease, dissemination, disclosure, redisclosure, or trade of, or for [defendants] to otherwise profit from, Alexander's thumbprint or associated biometric identifiers or information."

¶ 9 The school field trip was Alexander's last visit to the amusement park. Although he has not returned there since, defendants have retained his biometric identifiers and information. They have not publicly disclosed what was done with the information or how long it will be kept, nor do they have any "written policy made available to the public that discloses [defendants'] retention schedule or guidelines for retaining and then permanently destroying biometric identifiers and biometric information."

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¶ 10 In response to the foregoing events, Rosenbach, acting in her capacity as mother and next friend of Alexander (see 755 ILCS 5/11-13(d) (West 2016)), brought this action on his behalf in the circuit court of Lake County.¹ The action seeks redress for Alexander, individually and on behalf of all other similarly situated persons, under the Act (740 ILCS 14/1 *et seq.* (West 2016)), which, as noted at the outset of this opinion, provides that any person “aggrieved” by a violation of the Act’s provisions “shall have a right of action *** against an offending party” and “may recover for each violation” the greater of liquidated damages or actual damages, reasonable attorney fees and costs, and any other relief, including an injunction, that the court deems appropriate (*id.* § 20).

¶ 11 The complaint, as amended, is in three counts. Count I seeks damages on the grounds that defendants violated section 15(b) of the Act (*id.* § 15(b)) by (1) collecting, capturing, storing, or obtaining biometric identifiers and biometric information from Alexander and other members of the proposed class without informing them or their legally authorized representatives in writing that the information was being collected or stored; (2) not informing them in writing of the specific purposes for which defendants were collecting the information or for how long they would keep and use it; and (3) not obtaining a written release executed by Alexander, his mother, or members of the class before collecting the information. Count II requests injunctive relief under the Act to compel defendants to make disclosures pursuant to the Act’s requirements and to prohibit them from violating the Act going forward. Count III asserts a common-law action for unjust enrichment.

¶ 12 Defendants sought dismissal of Rosenbach’s action under both sections 2-615 and 2-619 of the Code (735 ILCS 5/2-615, 2-619 (West 2016)) in a combined motion filed pursuant to section 2-619.1 (*id.* § 2-619.1). As grounds for their motion, defendants asserted that one of the named defendants had no relation to the facts alleged, that plaintiff had suffered no actual or threatened injury and therefore

¹ Although Stacy Rosenbach has been referred to as the plaintiff in these proceedings, that is not technically accurate. Alexander is the plaintiff. Rosenbach is his next friend. A next friend of a minor is not a party to the litigation but simply represents the real party, who, as a minor, lacks capacity to sue in his or her own name. See *Blue v. People*, 223 Ill. App. 3d 594, 596 (1992). During oral argument, counsel for Rosenbach confirmed that she appears here solely on behalf of her son and asserts no claim for herself.

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lacked standing to sue, and that plaintiff's complaint failed to state a cause of action for violation of the Act or for unjust enrichment.

¶ 13 Following a hearing, and proceeding only under section 2-615 of the Code, the circuit court denied the motion as to counts I and II, which sought damages and injunctive relief under the Act, but granted the motion as to count III, the unjust enrichment claim, and dismissed that claim with prejudice.

¶ 14 Defendants sought interlocutory review of the circuit court's ruling under Illinois Supreme Court Rule 308 (eff. Jan. 1, 2016) on the grounds that it involved a question of law as to which there is substantial ground for a difference of opinion and that an immediate appeal might materially advance the ultimate termination of the litigation. The following two questions of law were identified by the circuit court:

(1) "[w]hether an individual is an aggrieved person under §20 of the Illinois Biometric Information Privacy Act, 740 ILCS 14/20, and may seek statutory liquidated damages authorized under §20(1) of the Act when the only injury he alleges is a violation of §15(b) of the Act by a private entity who collected his biometric identifiers and/or biometric information without providing him the required disclosures and obtaining his written consent as required by §15(b) of the Act," and

(2) "[w]hether an individual is an aggrieved person under §20 of the Illinois Biometric Information Privacy Act, 740 ILCS 14/20, and may seek injunctive relief authorized under §20(4) of the Act, when the only injury he alleges is a violation of §15(b) of the Act by a private entity who collected his biometric identifiers and/or biometric information without providing him the required disclosures and obtaining his written consent as required by §15(b) of the Act."

¶ 15 The appellate court granted review of the circuit court's order and answered both certified questions in the negative. In its view, a plaintiff is not "aggrieved" within the meaning of the Act and may not pursue either damages or injunctive relief under the Act based solely on a defendant's violation of the statute. Additional injury or adverse effect must be alleged. The injury or adverse effect need not be pecuniary, the appellate court held, but it must be more than a "technical violation of the Act." 2017 IL App (2d) 170317, ¶ 28.

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¶ 16 Rosenbach petitioned this court for leave to appeal. Ill. S. Ct. R. 315 (eff. Nov. 1, 2017). We allowed her petition and subsequently permitted friend of the court briefs to be filed in support of her position by the Electronic Privacy Information Center and by a consortium of groups including the American Civil Liberties Union, the Center for Democracy and Technology, and the Electronic Frontier Foundation. See Ill. S. Ct. R. 345 (eff. Sept. 20, 2010). The court also permitted the Restaurant Law Center and Illinois Restaurant Association, the Internet Association, and the Illinois Chamber of Commerce to file friend of the court briefs in support of defendants.

¶ 17 ANALYSIS

¶ 18 Because this appeal concerns questions of law certified by the circuit court pursuant to Illinois Supreme Court Rule 308 (eff. Jan. 1, 2016), our review is *de novo*. *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶ 21. *De novo* review is also appropriate because the appeal arose in the context of an order denying a section 2-615 motion to dismiss (*Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006)) and its resolution turns on a question of statutory interpretation (*Eads v. Heritage Enterprises, Inc.*, 204 Ill. 2d 92, 96 (2003)).

¶ 19 The Biometric Privacy Information Act (740 ILCS 14/1 *et seq.* (West 2016)), on which counts I and II of Rosenbach's complaint are founded, was enacted in 2008 to help regulate "the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and information." *Id.* § 5(g). The Act defines "biometric identifier" to mean "a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry." *Id.* § 10. "Biometric information" means "any information, regardless of how it is captured, converted, stored, or shared, based on an individual's biometric identifier used to identify an individual." *Id.* It is undisputed that the thumbprint collected by defendants from Rosenbach's son, Alexander, when they processed his season pass constituted a biometric identifier subject to the Act's provisions and that the electronically stored version of his thumbprint constituted biometric information within the meaning of the law.

¶ 20 Section 15 of the Act (*id.* § 15) imposes on private entities such as defendants various obligations regarding the collection, retention, disclosure, and destruction of biometric identifiers and biometric information. Among these is the following:

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“(b) No private entity may collect, capture, purchase, receive through trade, or otherwise obtain a person’s or a customer’s biometric identifier or biometric information, unless it first:

(1) informs the subject or the subject’s legally authorized representative in writing that a biometric identifier or biometric information is being collected or stored;

(2) informs the subject or the subject’s legally authorized representative 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 or the subject’s legally authorized representative.” *Id.* § 15(b).

¶ 21 These provisions are enforceable through private rights of action. Specifically, section 20 of the Act provides that “[a]ny person aggrieved by a violation of this Act shall have a right of action in a State circuit court or as a supplemental claim in federal district court against an offending party.” *Id.* § 20. Section 20 further provides that

“[a] prevailing party may recover for each violation:

(1) against a private entity that negligently violates a provision of this Act, liquidated damages of \$1,000 or actual damages, whichever is greater;

(2) against a private entity that intentionally or recklessly violates a provision of this Act, liquidated damages of \$5,000 or actual damages, whichever is greater;

(3) reasonable attorneys’ fees and costs, including expert witness fees and other litigation expenses; and

(4) other relief, including an injunction, as the State or federal court may deem appropriate.” *Id.*

¶ 22 As noted earlier in this opinion, Rosenbach’s complaint alleges that defendants violated the provisions of section 15 of the Act when it collected her son’s

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thumbprint without first following the statutorily prescribed protocol. For the purposes of this appeal, the existence of those violations is not contested. The basis for defendants' current challenge is that no other type of injury or damage to Rosenbach's son has been alleged. Rosenbach seeks redress on her son's behalf and on behalf of a class of similarly situated individuals based solely on defendants' failure to comply with the statute's requirements. In defendants' view, that is not sufficient. They contend that an individual must have sustained some actual injury or harm, apart from the statutory violation itself, in order to sue under the Act. According to defendants, violation of the statute, without more, is not actionable.

¶ 23 While the appellate court in this case found defendants' argument persuasive, a different district of the appellate court subsequently rejected the identical argument in *Sekura v. Krishna Schaumburg Tan, Inc.*, 2018 IL App (1st) 180175. We reject it as well, as a recent federal district court decision correctly reasoned we might do. *In re Facebook Biometric Information Privacy Litigation*, 326 F.R.D. 535, 545-47 (N.D. Cal. 2018).

¶ 24 We begin our analysis with basic principles of statutory construction. When construing a statute, our primary objective is to ascertain and give effect to the legislature's intent. That intent is best determined from the plain and ordinary meaning of the language used in the statute. When the statutory language is plain and unambiguous, we may not depart from the law's terms by reading into it exceptions, limitations, or conditions the legislature did not express, nor may we add provisions not found in the law. *Acme Markets, Inc. v. Callanan*, 236 Ill. 2d 29, 37-38 (2009).

¶ 25 Defendants read the Act as evincing an intention by the legislature to limit a plaintiff's right to bring a cause of action to circumstances where he or she has sustained some actual damage, beyond violation of the rights conferred by the statute, as the result of the defendant's conduct. This construction is untenable. When the General Assembly has wanted to impose such a requirement in other situations, it has made that intention clear. Section 10a(a) of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/10a(a) (West 2016)) is an example. To bring a private right of action under that law, actual damage to the plaintiff must be alleged. *Oliveira v. Amoco Oil Co.*, 201 Ill. 2d 134, 149 (2002); *Haywood v. Massage Envy Franchising, LLC*, 887 F.3d 329, 333 (7th Cir. 2018).

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¶ 26 In contrast is the AIDS Confidentiality Act (410 ILCS 305/1 *et seq.* (West 2016)). There, the legislature authorized private rights of action for monetary relief, attorney fees, and such other relief as the court may deem appropriate, including an injunction, by any person “aggrieved” by a violation of the statute or a regulation promulgated under the statute. *Id.* § 13. Proof of actual damages is not required in order to recover. *Doe v. Chand*, 335 Ill. App. 3d 809, 822 (2002).

¶ 27 Section 20 of the Act (740 ILCS 14/20 (West 2016)), the provision that creates the private right of action on which Rosenbach’s cause of action is premised, clearly follows the latter model. In terms that parallel the AIDS Confidentiality Act, it provides simply that “[a]ny person aggrieved by a violation of this Act shall have a right of action in a State circuit court or as a supplemental claim in federal district court against an offending party.” *Id.*

¶ 28 Admittedly, this parallel, while instructive (*Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 25), is not dispositive. Separate acts with separate purposes need not, after all, define similar terms in the same way. Rather, “ ‘the same word may mean one thing in one statute and something different in another, dependent upon the connection in which the word is used, the object or purpose of the statute, and the consequences which probably will result from the proposed construction. [Citations.]’ ” *People v. Ligon*, 2016 IL 118023, ¶ 26 (quoting *Mack v. Seaman*, 113 Ill. App. 3d 151, 154 (1983)). Accepted principles of statutory construction, however, compel the conclusion that a person need not have sustained actual damage beyond violation of his or her rights under the Act in order to bring an action under it.

¶ 29 As with the AIDS Confidentiality Act, the Act does not contain its own definition of what it means to be “aggrieved” by a violation of the law. Where, as here, a statutory term is not defined, we assume the legislature intended for it to have its popularly understood meaning. Likewise, if a term has a settled legal meaning, the courts will normally infer that the legislature intended to incorporate that established meaning into the law. *People v. Johnson*, 2013 IL 114639, ¶ 9. Applying these canons of construction, it is clear that defendants’ challenge to Rosenbach’s right to bring suit on behalf of her son is meritless.

¶ 30 More than a century ago, our court held that to be aggrieved simply “means having a substantial grievance; a denial of some personal or property right.” *Glos v.*

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People, 259 Ill. 332, 340 (1913). A person who suffers actual damages as the result of the violation of his or her rights would meet this definition of course, but sustaining such damages is not necessary to qualify as “aggrieved.” Rather, “[a] person is prejudiced or aggrieved, in the legal sense, when a legal right is invaded by the act complained of or his pecuniary interest is directly affected by the decree or judgment.” (Emphasis added.) *Id.*

¶ 31 This understanding of the term has been repeated frequently by Illinois courts and was embedded in our jurisprudence when the Act was adopted. See *American Surety Co. v. Jones*, 384 Ill. 222, 229-30 (1943); *In re Estate of Hinshaw*, 19 Ill. App. 2d 239, 255 (1958); *In re Estate of Harmston*, 10 Ill. App. 3d 882, 885 (1973); *Greeling v. Abendroth*, 351 Ill. App. 3d 658, 662 (2004). We must presume that the legislature was aware of that precedent and acted accordingly. See *People v. Cole*, 2017 IL 120997, ¶ 30.

¶ 32 The foregoing understanding of the term is also consistent with standard definitions of “aggrieved” found in dictionaries, which we may consult when attempting to ascertain the plain and ordinary meaning of a statutory term where, as here, the term has not been specifically defined by the legislature. *In re M.I.*, 2016 IL 120232, ¶ 26. Merriam-Webster’s Collegiate Dictionary, for example, defines aggrieved as “suffering from an infringement or denial of legal rights.” Merriam-Webster’s Collegiate Dictionary 25 (11th ed. 2006). Similarly, the leading definition given in Black’s Law Dictionary is “having legal rights that are adversely affected.” Black’s Law Dictionary 77 (9th ed. 2009). This is therefore the meaning we believe the legislature intended here.

¶ 33 Based upon this construction, the appellate court’s response to the certified questions was incorrect. Through the Act, our General Assembly has codified that individuals possess a right to privacy in and control over their biometric identifiers and biometric information. See *Patel v. Facebook Inc.*, 290 F. Supp. 3d 948, 953 (N.D. Cal. 2018). The duties imposed on private entities by section 15 of the Act (740 ILCS 14/15 (West 2016)) regarding the collection, retention, disclosure, and destruction of a person’s or customer’s biometric identifiers or biometric information define the contours of that statutory right. Accordingly, when a private entity fails to comply with one of section 15’s requirements, that violation constitutes an invasion, impairment, or denial of the statutory rights of any person

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or customer whose biometric identifier or biometric information is subject to the breach. Consistent with the authority cited above, such a person or customer would clearly be “aggrieved” within the meaning of section 20 of the Act (*id.* § 20) and entitled to seek recovery under that provision. No additional consequences need be pleaded or proved. The violation, in itself, is sufficient to support the individual’s or customer’s statutory cause of action.

¶ 34 In reaching a contrary conclusion, the appellate court characterized violations of the law, standing alone, as merely “technical” in nature. 2017 IL App (2d) 170317, ¶ 23. Such a characterization, however, misapprehends the nature of the harm our legislature is attempting to combat through this legislation. The Act vests in individuals and customers the right to control their biometric information by requiring notice before collection and giving them the power to say no by withholding consent. *Patel*, 290 F. Supp. 3d at 953. These procedural protections “are particularly crucial in our digital world because technology now permits the wholesale collection and storage of an individual’s unique biometric identifiers—identifiers that cannot be changed if compromised or misused.” *Id.* at 954. When a private entity fails to adhere to the statutory procedures, as defendants are alleged to have done here, “the right of the individual to maintain [his or] her biometric privacy vanishes into thin air. The precise harm the Illinois legislature sought to prevent is then realized.” *Id.* This is no mere “technicality.” The injury is real and significant.

¶ 35 This construction of the law is supported by the General Assembly’s stated assessment of the risks posed by the growing use of biometrics by businesses and the difficulty in providing meaningful recourse, once a person’s biometric identifiers or biometric information has been compromised. In enacting the law, the General Assembly expressly noted that

“[b]iometrics are unlike other unique identifiers that are used to access finances or other sensitive information. For example, social security numbers, when compromised, can be changed. Biometrics, however, are biologically unique to the individual; therefore, once compromised, the individual has no recourse, is at heightened risk for identity theft, and is likely to withdraw from biometric-facilitated transactions.” 740 ILCS 14/5(c) (West 2016).

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The situation is particularly concerning, in the legislature's judgment, because "[t]he full ramifications of biometric technology are not fully known." *Id.* § 5(f).

¶ 36 The strategy adopted by the General Assembly through enactment of the Act is to try to head off such problems before they occur. It does this in two ways. The first is by imposing safeguards to insure that individuals' and customers' privacy rights in their biometric identifiers and biometric information are properly honored and protected to begin with, before they are or can be compromised. The second is by subjecting private entities who fail to follow the statute's requirements to substantial potential liability, including liquidated damages, injunctions, attorney fees, and litigation expenses "for each violation" of the law (*id.* § 20) whether or not actual damages, beyond violation of the law's provisions, can be shown.

¶ 37 The second of these two aspects of the law is as integral to implementation of the legislature's objectives as the first. Other than the private right of action authorized in section 20 of the Act, no other enforcement mechanism is available. It is clear that the legislature intended for this provision to have substantial force. When private entities face liability for failure to comply with the law's requirements without requiring affected individuals or customers to show some injury beyond violation of their statutory rights, those entities have the strongest possible incentive to conform to the law and prevent problems before they occur and cannot be undone. Compliance should not be difficult; whatever expenses a business might incur to meet the law's requirements are likely to be insignificant compared to the substantial and irreversible harm that could result if biometric identifiers and information are not properly safeguarded; and the public welfare, security, and safety will be advanced. That is the point of the law. To require individuals to wait until they have sustained some compensable injury beyond violation of their statutory rights before they may seek recourse, as defendants urge, would be completely antithetical to the Act's preventative and deterrent purposes.

¶ 38 In sum, defendants' contention that redress under the Act should be limited to those who can plead and prove that they sustained some actual injury or damage beyond infringement of the rights afforded them under the law would require that we disregard the commonly understood and accepted meaning of the term "aggrieved," depart from the plain and, we believe, unambiguous language of the

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law, read into the statute conditions or limitations the legislature did not express, and interpret the law in a way that is inconsistent with the objectives and purposes the legislature sought to achieve. That, of course, is something we may not and will not do. *Solich v. George & Anna Portes Cancer Prevention Center of Chicago, Inc.*, 158 Ill. 2d 76, 83 (1994); *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 275 (2009).

¶ 39

CONCLUSION

¶ 40

For the foregoing reasons, we hold that the questions of law certified by the circuit court must be answered in the affirmative. Contrary to the appellate court's view, an individual need not allege some actual injury or adverse effect, beyond violation of his or her rights under the Act, in order to qualify as an "aggrieved" person and be entitled to seek liquidated damages and injunctive relief pursuant to the Act. The judgment of the appellate court is therefore reversed, and the cause is remanded to the circuit court for further proceedings.

¶ 41

Certified questions answered.

¶ 42

Appellate court judgment reversed.

¶ 43

Cause remanded.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [NFI, Kronos Hit with Biometric Information Privacy Class Action in Illinois](#)
