EXHIBIT A

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

JENNIFER ROTTNER, individually and on behalf of all others similarly situated,

Plaintiff,

v.

PALM BEACH TAN, INC., a Texas corporation, PBT ACQUISITION I, LLC, a Texas limited liability company, and JOHN DOE DEFENDANTS 1-20, Illinois citizens,

Defendants.

Case No.: 2015-CH-16695

Hon. Celia G. Gamrath

PLAINTIFF'S MOTION FOR AND MEMORANDUM OF LAW FOR ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARD

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I. INTRODUCTION

Almost seven years ago, Plaintiff Jennifer Rottner ("Plaintiff" or "Rottner") brought this class action lawsuit against Palm Beach Tan, Inc. and PBT Acquisition I, LLC (collectively, "Defendants" or "Palm Beach Tan") in what was one of the first cases ever brought under the Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1 *et seq*. (the "Action"). Plaintiff alleged that Defendants violated BIPA by collecting its tanning salon customers' fingerprint data through its customer identification system without authorization and without creating and abiding by a publicly available retention policy.

This Action was litigated vigorously—including a trip to the Appellate Court and a petition for leave to appeal to the Illinois Supreme Court—before Ms. Rottner and Palm Beach Tan finally reached a class-wide settlement to resolve this Action.[1] As a result of Class Counsel's efforts in this Action, they have secured a remarkably strong settlement. In terms of monetary relief, the agreement creates a non-reversionary Settlement Fund of $10,300,000.00 for 46,598 Settlement Class members, representing one of the highest per-person gross monetary recoveries in a consumer BIPA settlement to date. (Agreement § 1.27.) After fees and costs are deducted, Class Members who submit an Approved Claim Form will receive a *pro rata* share of the Settlement Fund. Based on the current claims rate and anticipated claims from the forthcoming reminder notices, individual cash payments are estimated to be approximately $1,400, which represents a 10% claim rate. To allow Palm Beach Tan to satisfy these obligations, the Settlement Fund will be paid in four equal installments over four years, amounting to cash payments of approximately $350 per year. (*Id.* § 1.28.) Moreover, Palm Beach Tan discontinued

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

its collection of biometric data at its tanning salons as of March 24, 2016—no doubt a result of Plaintiff filing this this lawsuit in November 2015—and has agreed to delete all biometric data obtained from Illinois customers and promises to comply with BIPA should it ever resume using biometric technology to collect and/or retain Illinois customers' biometric data again. (*Id.* § 2.2.)

In light of this excellent result, Class Counsel now respectfully request 35% of the Settlement Fund, or a total of $3,605,000.00 paid over four years. (*Id.* §§ 1.27, 8.1.) Class Counsel will be paid when the class is, in four equal installments over the coming years. (*Id.* § 8.2.) This is well in line with common fund fee awards in BIPA cases in Illinois and the Northern District (*see* Exhibit 2, Chart 1 (listing 35% fee awards)), and in fact less as a percentage than that commonly awarded in BIPA cases. (*Id.*, Chart 2 (listing 40% fee awards).) An award of 35% reasonably and fairly reflects the outstanding result produced here. *See Ryan v. City of Chi.*, 274 Ill. App. 3d 913, 924 (1st Dist. 1995).

Plaintiff Rottner's requested incentive award of $5,000 is similarly reasonable, particularly because incentive awards in class action settlements frequently exceed $10,000. (Agreement § 8.3.) *See* Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303, 1308 (2006) (finding that "[t]he average award per class representative was $15,992"). Here, Plaintiff's requested award reflects her participation throughout the six and a half years of this case, including in the investigation of the action, substantial motion practice, several exchanges of discovery, multiple appeals, and the settlement process, and is comfortably in line with what has been awarded in similar BIPA cases. (*See* Exhibit 2, Chart 3 (listing incentive awards ranging from $5,000 to $10,000 in BIPA cases.))

For all of these reasons and as explained further below, Plaintiff's requests for an award of attorneys' fees and expenses to Class Counsel and an incentive award to Plaintiff as Class Representative are reasonable and deserving of this Court's approval.

II. BACKGROUND

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

A. Illinois Biometric Information Privacy Act.

The genesis of the law sheds light on its purpose. In the early 2000s, a company called Pay By Touch began installing fingerprint-based checkout terminals at grocery stores, gas stations, and school cafeterias. (Third Amended Compl. ("TAC") ¶ 16.) The premise was simple: swipe your credit card and let the machine scan your index finger, and the next time you buy groceries or gas, you won't need to bring your wallet—you'll just need to provide your fingerprint. But by the end of 2007, Pay By Touch had filed for bankruptcy. (*Id.* ¶ 17.) When Solidus, Pay By Touch's parent company, began shopping its database of Illinois consumers' fingerprints as an asset to its creditors, a public outcry erupted.[2] Though the bankruptcy court eventually ordered Pay By Touch to destroy its database of fingerprints (and their ties to credit card numbers), the Illinois legislature took note of the grave dangers posed by the irresponsible collection and storage of biometric data without any notice, consent, or other protections. *See* Ill. House Transcript, 2008 Reg. Sess. No. 276; (*Id.* ¶ 18).

[2] *See*, *e.g.*, Meg Marco, *Creepy Fingerprint Pay Processing Company Shuts Down*, CONSUMERIST, available at https://goo.gl/rKJ8oP (last accessed May. 13, 2022); Matt Marshall, *Pay By Touch In Trouble, Founder Filing For Bankruptcy*, VENTURE BEAT, available at http://goo.gl/xT8HZW (last accessed May 13, 2022).

Recognizing the "very serious need" to protect Illinois citizens' biometric data—which includes retina scans, fingerprints, voiceprints, and scans of hand or face geometry—the Illinois legislature unanimously passed BIPA in 2008 to provide individuals recourse when companies fail to appropriately handle their biometric data in accordance with the statute. (*See* TAC ¶¶ 18–19; 740 ILCS 14/5.) Thus, BIPA makes it unlawful for any private entity to "collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifier or biometric information, unless it first:

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

740 ILCS 14/15(b). BIPA also establishes standards for how companies must handle Illinois consumers' biometric identifiers and information, requiring companies to develop and comply with a written policy establishing a retention schedule that includes guidelines for permanently destroying biometric information. 740 ILCS 14/15(a). BIPA also prohibits companies from disclosing or disseminating biometric data except with consent or under limited circumstances. 740 ILCS 14/15(d). To enforce the statute, BIPA provides a civil private right of action and allows for the recovery of statutory damages in the amount of $1,000 for negligent violations—or $5,000 for willful violations—plus costs and reasonable attorneys' fees. *See* 740 ILCS 14/20.

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

> vests in individuals and customers the right to control their biometric information by requiring notice before collection and giving them the power to say no by

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

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

B. Plaintiff's Allegations and Defendants' Fingerprint Scanning System.

This case arises from Ms. Rottner's experience visiting a Palm Beach Tan tanning salon in Illinois. (TAC ¶¶ 45–54.) She claims that Palm Beach Tan required her—and all other customers—to scan her finger(s) on a fingerprint scanner to enroll as a new member in Palm Beach Tan's national membership database, and to subsequently use her fingerprint to "check in" at any Palm Beach Tan location before tanning. (*Id.* ¶¶ 25, 46–48.) In requiring her to do so, Plaintiff alleges that Palm Beach Tan collected, stored, and used her biometric fingerprint information without complying with BIPA's requirements. (*Id.* ¶¶ 24, 47–51.) Specifically, Plaintiff alleges that Palm Beach Tan violated section 15(a) of BIPA by (i) failing to develop a publicly 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 consumer); (ii) failing to publicly disclose any such policy, and (iii) actually adhering to that retention schedule and deleting the biometric information. (*Id.* ¶¶ 62–63.) Plaintiff further alleges that Palm Beach Tan violated section 15(b) of BIPA by (1) negligently failing to inform Plaintiff and the Class in writing that their biometric identifiers and biometric information were being collected and stored; (2) negligently failing to inform Plaintiff and the Class in writing of the specific purpose and length of term for which their biometric identifiers or biometric information was being

collected, stored, and used, and (3) negligently failing to obtain written releases from Plaintiff and the Class before it collected, used, and stored their biometric identifiers and biometric information. (*Id.* ¶¶ 6, 67–69.)

C. Litigation History and the Work Performed for the Class.

1. The Class Action

Class Counsel filed this case against Palm Beach Tan[3] on November 13, 2015, seeking redress for its alleged BIPA violations for herself and on behalf of customers who were required to scan their finger(s) at a Palm Beach Tan facility in Illinois. Although BIPA class actions are now ubiquitous, this case was one of the first cases brought under the statute.

Since then, this case has been litigated for some time—and all the way up to a petition for leave to appeal to the Illinois Supreme Court. At the outset of the case, the Parties engaged in initial settlement discussions and participated in a mediation on April 4, 2016, with the Honorable Robert V. Boharic, but were unable to reach resolution and promptly returned to litigation. (*See* Declaration of J. Eli Wade-Scott ("Wade-Scott Decl."), attached hereto as Exhibit 3, at ¶ 3.)

The first major obstacle Class Counsel encountered came just a month later, when Palm Beach Tan moved to dismiss Plaintiff's case on the then-undecided basis that Plaintiff was not a "person aggrieved" under BIPA's damages provision, 740 ILCS 14/20, arguing that Plaintiff lacked statutory standing because she had failed to identify a harm resulting from its violation of the statute other than her statutory right to privacy in her biometric data. (Def. Mot. to Dismiss at

[3] Plaintiff originally filed this putative class action against Palm Beach Tan, Inc. (a Delaware corporation) on November 13, 2015, but later amended the complaint to dismiss Palm Beach Tan, Inc. as a defendant and add Palm Beach Tan, Inc. (a Texas corporation) and PBT Acquisition I, LLC (a Texas limited liability Company) as defendants instead.

8-11.) The Court—acting through then-Judge Mikva—denied the motion, but questioned Plaintiff's ability to recover liquidated damages. Shortly thereafter, on September 7, 2016, Palm Beach Tan moved to strike Plaintiff's claim for liquidated damages on the grounds that BIPA's statutory damages were unavailable absent proof of actual damages caused by the alleged statutory privacy violation. This Court granted Palm Beach Tan's motion to strike, but later certified for appeal the question of whether BIPA permits recovery of liquidated damages where a party does not plead any actual damages or harm resulting from the statutory violation. *See* Ill. S. Ct. R. 308(a). Plaintiff subsequently filed her Petition for Permission to Appeal under Ill. Sup. Ct. R. 308(a). *Rottner v. Palm Beach Tan, Inc.*, 2017 IL App (1st) 1-17-2287, but the petition was denied by the First District on November 1, 2017.

Just a few months later, on December 21, 2017, the Second District Illinois Appellate Court decided *Rosenbach v. Six Flags Entertainment Corp*., 2017 IL App (2d) 170317, which held that a plaintiff could not state a cause of action under BIPA as an "aggrieved" person without some additional injury or harm. *Id.* ¶¶ 1, 20. Because *Rosenbach* was binding at the time, Palm Beach Tan moved to reconsider its July 18, 2016, denial of Defendants' motion to dismiss. On March 2, 2018, the Court dismissed Plaintiff's suit with prejudice and rendered the order final and appealable. Plaintiff appealed.

Shortly thereafter however, in *Sekura v. Krishna Schaumburg Tan, Inc.*, an analogous BIPA case concerning a tanning salon (and litigated by counsel here), the First District Appellate Court held that a plaintiff need not allege any harm beyond the invasion of her statutory rights in order to proceed as a person "aggrieved." 2018 IL App (1st) 180175, ¶ 72 (pre-*Rosenbach*, holding "[we] find[] that plaintiff may sue for a violation of [BIPA] without proving additional harm.").

While Plaintiff's appeal was pending, the Illinois Supreme Court issued its decision in *Rosenbach v. Six Flags Entertainment Corp.* on January 25, 2019, holding that "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." 2019 IL 123186, ¶ 40. Following the Illinois Supreme Court's *Rosenbach* decision, the First District held that "a plaintiff who proves a violation of the Biometric Information Privacy Act may recover liquidated damages without proof of actual damages beyond the violation of the Act." *Rottner,* 2019 IL App (1st) 180691-U, ¶ 1. Defendants sought leave to appeal to the Illinois Supreme Court, which was denied.

After issuance of the mandate, Plaintiff filed an amended motion for class certification. The Parties also engaged in additional written discovery, with both Plaintiff and Defendants serving and responding to each other's interrogatories and requests for production. Shortly after Plaintiff filed her class certification motion, this Court granted Defendants' request to extend the deadlines for class certification briefing and class certification expert discovery deadlines pending the anticipated decision by the Illinois Appellate Court for the First Judicial District in *Tims v. Black Horse Carriers, Inc.*, No. 1-20-056, regarding the applicable statute of limitations under BIPA.

2. The Settlement

While the Parties awaited a decision from the Illinois Appellate Court in *Tims v. Black Horse Carriers, Inc.*, they revisited the possibility of settlement. On September 1, 2021, the Court granted a third extension of the class certification deadlines due to the Parties' on-going settlement discussions. Over the next several months, the Parties exchanged numerous offers and counteroffers on the terms and structure of the settlement and engaged in several lengthy negotiations. The Parties' settlement discussions continued until late October 2021, when the

Parties reached agreement on the material terms of a class-wide settlement. On November 1, 2021, the Parties executed a Binding Memorandum of Understanding. From there, the Parties spent the next several months negotiating the finer deal points of the final, written settlement agreement, which they executed on February 8, 2022. Plaintiff then promptly moved for preliminarily approval of the settlement, which the Court granted on February 25, 2022. (Wade-Scott Decl. ¶ 19.)

Class Counsel has since worked with the Settlement Administrator to administer the notice program. The Settlement Administrator established the Settlement Website, www.pbtsettlement.com, so that the Settlement Class can easily access important information about the Settlement. Direct notice was issued to the class on March 23, 2022.[4] Since direct email notice was sent out in March 2022, follow-up notice "reminder" emails were sent on April 11, 2022 and May 13, 2022, and will continue once a week leading up to the Claims Deadline on May 30, 2022.

D. The Settlement Secures Excellent Relief for the Settlement Class.

As detailed in Plaintiff's motion for preliminary approval, the relief to the Settlement Class is outstanding. The Settlement creates a non-reversionary Settlement Fund of $10,300,000.00 for the 46,598 individuals who scanned their finger(s) on a finger scanner for tanning purposes at a Palm Beach Tan facility in Illinois between November 13, 2010 and March 24, 2016. (Agreement §§ 1.27, 7.2.) Based on the current rate of claims, Settlement Class

[4] The Settlement Agreement includes a multi-part Notice plan, where Direct Notice is first sent via email to all Settlement Class members for whom an email address is available on the Class List. (Agreement § 4.1(b)(ii).) The Settlement Administrator is authorized to send up to three reminder emails. (*Id.*) If no email address is available, or in the event that an email Notice results in a "bounce-back," the Settlement Administrator will send Notice via First Class U.S. Mail. (*Id.*)

Members who file a claim are expected to receive total payments of approximately $1,400 after fees and costs are deducted. Payments will be made in equal installments over four years, and the settlement provides Class Members the option to select an online payment method (Venmo, Zelle, Paypal) or checks. (*Id.* §§ 1.27; 1.28; 2.1(d)) If any checks go uncashed or any electronic payments are unable to be processed, those residual funds will be distributed to the Illinois Bar Foundation, or any other *cy pres* recipient selected by the Court. (*Id.* § 2.1(h).) No amount will revert to Defendants. (*Id.* § 1.27).

Finally, the Settlement also provides non-monetary relief. Notably, Palm Beach Tan stopped using and removed from their Illinois salons all finger scan hardware shortly after this litigation was commenced. (*Id.* § 2.2.) Should Palm Beach Tan resume use of any scan hardware in Illinois that collects and/or retains biometric data (such as fingerprints), the Settlement ensures that Palm Beach Tan will comply with BIPA going forward, including making BIPA-required disclosures, obtaining written releases, destroying biometric data that it no longer needs, and establishing a publicly-available retention policy. (*Id.*); *see also* 740 ILCS 14/1 *et seq*. The Settlement also requires Palm Beach Tan to destroy all biometric data in its possession that it collected from Illinois customers. (*Id.*)

III. THE REQUESTED ATTORNEYS' FEES AND INCENTIVE AWARD ARE REASONABLE AND SHOULD BE APPROVED

As one of the first BIPA cases ever filed, Class Counsel knew that it would be fraught with issues of first impression. This was a law that was at the time *entirely* untested—every term of which would be up for debate and litigation. Nevertheless, Class Counsel took the case on a contingent fee basis, confident in their ability to recover substantial relief for the class and to hold out until they did so. Now that Class Counsel has achieved an extraordinary result, they respectfully request compensation of 35% of the Settlement Fund, i.e., $3,605,000. This request

is comfortably in line with fee awards in similar class action cases, including numerous previous BIPA settlements. Accordingly, the fees should be approved.

A. Percentage-of-the-Recovery Should Be Used to Determine Fees Here.

Illinois has adopted the "common fund doctrine" for the payment of attorneys' fees in class action cases. *Wendling v. S. Ill. Hosp. Servs.*, 242 Ill. 2d 261, 265 (2011). "The doctrine provides that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Id.* (internal quotations omitted). The basis of the doctrine is the equitable principle that "successful litigants would be unjustly enriched if their attorneys were not compensated from the common fund created for the litigants' benefit[.]" *Brundidge v. Glendale Fed. Bank F.S.B.*, 168 Ill. 2d 235, 238 (1995). Consequently, "[b]y awarding fees payable from the common fund created for the benefit of the entire class, the court spreads the costs of litigation proportionately among those who will benefit from the fund." *Id.* (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)).

In determining the amount of a reasonable fee award in a common fund case, this Court has discretion to apply one of two methods: percentage-of-the-recovery or lodestar. *See Brundidge*, 168 Ill. 2d at 243-44. Under the percentage-of-the-recovery approach, as the name suggests, a reasonable attorneys' fee is awarded "based upon a percentage of the amount recovered on behalf of the plaintiff class." *Id.* at 238. Under the lodestar approach, on the other hand, a fee award is determined by taking the reasonable value of the services rendered (based on the hours devoted to the matter by class counsel multiplied by a reasonable hourly rate) and increasing that amount by "a weighted multiplier representing the significance of other pertinent

considerations," such as the contingent nature of the litigation, its complexity, and the benefit conferred upon class members. *Id.* at 239-40.

While the Court has discretion, the lodestar method has again recently been criticized in the appellate court as "increas[ing] the workload of an already overtaxed judicial system, . . . creat[ing] a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law, . . . le[ading] to abuses such as lawyers billing excessive hours, . . . not provid[ing] the trial court with enough flexibility to reward or deter lawyers so that desirable objectives will be fostered, . . . [and being] confusing and unpredictable in its administration*." McCormick, et al. v. Adtalem Global Educ. Inc., et al.*, 2022 IL App (1st) 201197-U, ¶ 26 (quoting *Ryan*, 274 Ill. App. 3d at 923 (summarizing findings of a Third Circuit task force appointed to compare the respective merits of the percentage-of-the-recovery and lodestar methods)); *see also Brundidge*, 168 Ill. 2d at 242-43 (criticizing lodestar method because "[e]valuating the hours actually expended is a laborious, burdensome, and time-consuming task that may be biased by hindsight[,]" and "[t]he risk multiplier is little short of a wild card in the already uncertain game of assessing fees under the lodestar calculation") (internal quotations omitted).

The percentage-of-the-recovery method is the most appropriate way to evaluate fees for this case. *See, e.g.*, *McCormick*, 2022 IL App (1st) 201197-U, ¶ 26 (noting the appointed Third Circuit task force "concluded that the percentage-of-recovery was the best way to calculate reasonable attorney fees in class action cases.") Percentage-of-the-recovery not only avoids some of the abuses and arbitrariness of the lodestar method, but it also "eliminates the need for additional major litigation and further taxing of scarce judicial resources which occur[] . . . as a result of plaintiffs' request for attorneys' fees." *Ryan*, 274 Ill. App. 3d at 924.

In fact, percentage-of-the-recovery has been used to determine the fee award in virtually every BIPA class action settlement, so long as the defendant—as here—created a monetary common fund. (*See* Exhibit 2, Charts 1 and 2.) In contrast, to counsel's knowledge, the lodestar approach hasn't once been used to evaluate fees in these cases where the class received a monetary benefit.[5] Further, the Court is not required to "cross-check" the reasonableness of the fee award determined by the percentage method by also using the lodestar method.[6] *See, e.g.*, *McCormick*, 2022 IL App (1st) 201197-U, ¶ 26; *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 59. Consequently, this Court should have no hesitation in applying the percentage-of-the-recovery method here. *See Ryan*, 274 Ill. App. 3d at 925 ("The circuit court did not abuse its discretion in determining attorneys' fees based upon percentage rather than lodestar analysis.").

B. 35% Is a Reasonable Fee Award in this Case.

The 35% fee request falls comfortably within the range of typical fee awards in Illinois. Under Illinois law, "an attorney is entitled to an award from the fund for the reasonable value of his or her services." *See Ryan*, 274 Ill. App. 3d at 922. Courts in Cook County and in federal court in the Northern District of Illinois have commonly awarded higher percentages of the fund than the 35% requested here, including in BIPA cases. (*See* Exhibit 2, Chart 2 (listing 40% fee awards).) Accordingly, the requested fee award is more than appropriate, and comfortably in line with other BIPA cases. (*Id.*, Chart 1 (listing 35% fee awards in Cook County and the Northern District).)

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[5] The court in *Carroll v. Crème de la Crème*, 2017-CH-01624 (Cir. Ct. Cook Cnty. June 6, 2018) awarded funds based on lodestar, which produced no monetary recovery for the class.

[6] Should the Court request, Settlement Class Counsel will provide their lodestar and relevant billing records for the last seven years for the Court's review.

In addition to falling within the range of typical fee awards, the 35% requested here is further justified—as explained below—in light of both (1) the risk Class Counsel undertook in pursuing this difficult litigation on a contingency basis, and (2) the excellent relief Class Counsel ultimately obtained for the Settlement Class. *See Ryan*, 274 Ill. App. 3d at 924 (affirming district court's attorneys' fee award due to the "extreme contingency risk" of pursuing the litigation, and the "hard cash benefit" obtained).

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

The 35% requested is well-calibrated to the risk involved in this case. Compared to typical contingent-fee litigation, the risks here were monumental at the outset. Every issue in BIPA cases is a matter of first impression, and when this case was launched in November 2015, not a single court had weighed in on any of them. *See Norberg v. Shutterfly, Inc.*, 152 F. Supp. 3d 1103, 1106 (N.D. Ill. 2015) ("The BIPA was enacted in 2008, and to this date, the Court is unaware of any judicial interpretation of the statute."). *See Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) ("Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel."). Class Counsel filed this case aware of these risks, but confident in their ability to achieve a superior result for the class—which they ultimately did. *See McCormick*, 2022 IL App (1st) 201197-U, ¶ 26 (recognizing that percentage-of-the-recovery compensation is normal and noting "the class would have chosen the compensation scheme that required the least monitoring to align the incentives of the class and its counsel[.]") (quoting *In re Cap. One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 793 (N.D. Ill. 2015)); *see also*

Gaskill v. Gordon, 160 F.3d 361, 363 (7th Cir. 1998) (recognizing that contingent fee contracts provide "a method of more closely aligning the lawyer's interests with those of his client[.]").

There were particularly acute risks here. The question of what the term "aggrieved" meant in BIPA's damages provision—an existential question for BIPA cases—was entirely open. After over a year and a half of litigating this case, the prevailing law in Illinois suggested Plaintiff would lose on this issue. *Rosenbach*, 2017 IL App (2d) 170317 (holding that to be "aggrieved" within the meaning of the statute required an actual injury or harm). This Court agreed and dismissed the case. At that point, Class Counsel could have easily folded or tried to resolve the case for pennies on the dollar. Instead, Class Counsel fought on and appealed. After the Illinois Supreme Court held that a violation of BIPA alone made a person "aggrieved" within the meaning of the statute in *Rosenbach v. Six Flags Entertainment Corp.*, the First District Appellate Court held the same here. *Rottner*, 2019 IL App (1st) 180691-U, ¶ 1. Had this issue gone in Palm Beach Tan's favor, Plaintiff's case likely would have been defeated entirely, sinking Class Counsel's substantial investment of time and effort in this case, and ultimately securing no relief for the Class. *See Shaun Fauley, Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 59 (noting trial court took into account "that class counsel accepted 'substantial risk in prosecuting this case under a contingency fee agreement given the vigorous defense of the case and defenses asserted'").

Even setting aside that central problem of the class's statutory standing as "aggrieved" persons, there were other major questions common in BIPA litigation that increased the risk of nonpayment. For example, Palm Beach Tan, like nearly every other BIPA defendant, was expected to argue that it hadn't actually collected biometric data, such as "fingerprints," regulated by the statute at all. This question is the subject of dispute in existing BIPA cases and

still hasn't been resolved by the courts. *Cf. In re Facebook Biometric Info. Priv. Litig.*, No. 3:15-cv-03747-JD, 2018 WL 2197546, at *2–3 (N.D. Cal. May 14, 2018) (denying motion for summary judgment on whether facial scans were biometric data regulated by BIPA); *Howe v. Speedway LLC*, No. 19-cv-01374, dkts. 125, 140, 149 (N.D. Ill. Feb. 25, 2019) (fully briefed motion for summary judgment on this issue in fingerprint scan case).

Moreover, at the time the Parties reached a deal, it was still unclear what statute of limitations applies to BIPA claims, a one-, two-, or five-year period, and when BIPA claims accrue. Shortly after the Parties settled, the First District in *Tims v. Black Horse Carriers, Inc.* ruled on the issue, finding that a five-year limitations period applies to claims brought under sections 15(a) and (b) of BIPA (for failure to comply with BIPA's retention policy and informed written consent requirements), and a one-year period applies to section 15(d) claims (for disclosure of biometric data without consent). *See* 2021 IL App (1st) 200563. Had the Parties continued litigating through the *Tims* decision, *Tims* would have barred the vast majority of the putative class members' section 15(d) claims in this case. Furthermore, the Seventh Circuit recently certified the question of whether section 15(b) and 15(d) claims "accrue each time a private entity scans a person's biometric identifier and each time a private entity transmits such a scan to a third party, respectively, or only upon the first scan and first transmission" to the Illinois Supreme Court, which the Court subsequently agreed to answer on December 23, 2021. *See Cothron v. White Castle Sys., Inc.*, 20 F.4th 1156, 1167 (7th Cir. 2021); *see also Cothron v. White Castle Sys.*, 2021 IL 128004 (currently pending before the Illinois Supreme Court with oral argument scheduled for May 17, 2022) In short, though Plaintiff believes the Illinois Supreme Court's consideration of the certified question in *Cothron* would not bar her BIPA

claims, the forthcoming decision could have affected the scope of the Class and demonstrates the considerable risks involved in this litigation.

Losses on any of these fronts would decimate the Class's—and Class Counsel's—recovery. In that light, the many risks Class Counsel have faced combine to further support that the requested attorneys' fees and expenses here are reasonable. *See Ryan*, 274 Ill. App. 3d at 924.

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

Given the large number of unresolved questions in BIPA cases, and the possibility that the class would recover nothing at all, the relief secured by Class Counsel is exceptional. The $10,300,000.00 Settlement Fund will result in individual cash payments of approximately $1,400 to be distributed up to 46,598 Settlement Class Members based on the estimated claims rate. Against a backdrop where many privacy claims under similar statutes settled for almost nothing or no monetary relief at all, the relief provided here is outstanding. *See, e.g.*, *In re: Hanna Andersson and Salesforce.com Data Breach Litig.*, No. 3:20-cv-00812-EMC (N.D. Cal. 2021) (approving $400,000 fund for more than 200,000 class members who received approximately $38 and awarding 25% in attorneys' fees); *In re: Google Plus Profile Litig.*, No. 5:18-cv-06164 (N.D. Cal. Jan. 25, 2021) (approving $7.5 million fund resulting in maximum payments of $12 to class members); *In re Google Referrer Header Priv. Litig.*, 869 F.3d 737, 740 (9th Cir. 2017), *vacated on other grounds by Frank v. Gaos*, 139 S. Ct. 1041 (2019) (approving 25% award of attorneys' fees on *cy pres*-only fund with not a penny to class members); *In re Google LLC Street View Elec. Commc'ns Litig.*, No. 10-md-02184-CRB, 2020 WL 1288377, at *11–14 (N.D. Cal. Mar. 18, 2020) (approving, over objections of class members and state attorney general, a settlement providing only *cy pres* relief for violations of Electronic Communications Privacy Act); *Adkins v. Facebook, Inc.*, No. 18-cv-05982-WHA, dkts. 350, 369 (N.D. Cal. May 6, 2021

and July 13, 2021) (approving settlement for injunctive relief only, in class action arising out of Facebook data breach, and granting $6.5 million in attorneys' fees and costs). Even BIPA settlements have produced weak relief in a number of cases, providing credit monitoring or reverting unclaimed funds back to defendants. *See, e.g.*, *Crème de la Crème*, 2017-CH-01624 (credit monitoring only); *Zhirovetskiy v. Zayo Grp., LLC*, 2017-CH-09323 (Cir. Ct. Cook Cnty. Apr. 8, 2019) ($900,000 fund for 2,200 class members, which capped payments at $400 and reverted up to $490,000 of unclaimed funds back to defendant).

The excellent relief here can be easily measured against comparator BIPA settlements in what is now a well-developed "market." The per-person monetary relief provided here is one of the highest among consumer BIPA settlements to date. And the settlement is a significant cash fund to be split among the claimants with no reversion to Defendants. In short, the settlement is an exceptional result. *See, e.g.*, *Kusinski v. ADP LLC*, 2017-CH-12364 (Cir. Ct. Cook Cnty. Feb. 10, 2021) ($25 million non-reversionary fund resulting in individual payments of approximately $375); *Crumpton v. Octapharma Plasma, Inc.*, No. 19-cv-8402 (N.D. Ill. 2021) ($10 million fund resulting in individual payments of $400 to $800); *In re Facebook Biometric Info. Priv. Litig.*, 522 F. Supp. 3d 617, 621 (N.D. Cal. 2021) ($650 million fund resulting in individual payments of $397); *Rosenbach*, 2016-CH-00013 (Cir. Ct. Lake Cnty.) (preliminarily approving $36 million fund for approximately 1,110,000 class members, which caps claimant payments at $200 or $60 depending on date of finger scan and reverts unclaimed funds to defendant); *Marshall v. LifeTime Fitness, Inc.*, 2017-CH-14262 (Cir. Ct. Cook Cnty. 2019) (finally-approved BIPA settlement providing claimants only in 6,000-member class $270 in cash).

Additionally, the non-monetary benefits created by a class action settlement are properly considered for purposes of determining fees. *See Hall v. Cole*, 412 U.S. 1, 5 n.7 (1973) (noting

that the common fund doctrine "must logically extend, not only to litigation that confers a monetary benefit on others, but also to litigation which corrects or prevents an abuse which would be prejudicial to the rights and interests of those others.") (internal quotations omitted). Here, Palm Beach Tan has stopped collecting its Illinois customers' biometric data, agreed to destroy any biometric data in its possession, and—agreed to comply with BIPA going forward should it ever resume using biometric technology to collect and/or retain Illinois customers' information. (*See* Agreement § 2.2.) This is spot-on relief for the goals of BIPA, and it will ensure that the law is followed, and BIPA rights are respected. Thus, awarding Class Counsel a 35% share of the common fund "equitably compensates counsel for the time, effort, and risks associated with representing the plaintiff class."[7] *Brundidge*, 168 Ill. 2d at 244.

Accordingly, Class Counsel respectfully requests that they receive fees of 35% of the total fund. The amount would be $901,250.00 each year of the Settlement as Palm Beach Tan funds the settlement over four years, for a total of $3,605,000.00.

IV. THE COURT SHOULD APPROVE THE REQUESTED INCENTIVE AWARD

The Settlement Agreement also provides for an incentive award of $5,000 to Plaintiff Jennifer Rottner for serving as Class Representative. Incentive awards are appropriate in class actions because a representative's efforts benefit the absent class members and encourage the filing of beneficial litigation. *See GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486,

[7] Class Counsel has also incurred $8,397.81 in reasonable litigation expenses and charges in acquiring a common fund for the class's benefit. (*See* Wade-Scott Decl. ¶ 24.) As the declaration reflects, the main expense was the cost of the parties' mediation efforts ($3,600 or 43% of the total expenses), along with filing fees, transcript costs, and process server fees. (*Id.*) Class Counsel submits that these expenses were reasonable and incurred for the ultimate benefit of the Settlement Class and are being considered as part of Class Counsel's percentage-of-the recovery request. *See Morris B. Chapman & Assocs., Ltd. v. Kitzman*, 193 Ill. 2d 560, 572–73 (2000) ("If the costs of litigation are not spread to the beneficiaries of the fund, they will be unjustly enriched by the attorney's efforts").

497 (1st Dist. 1992) (noting that incentive awards "are not atypical in class action cases . . . and serve to encourage the filing of class action[] suits"); *see also In re Synthroid Mktg. Litig.*, 264 F.3d 712, 722 (7th Cir. 2001) ("Incentive awards are justified when necessary to induce individuals to become named representatives.").

Here, Plaintiff Rottner's participation was critical to the case's ultimate resolution. Ms. Rottner's willingness to commit time to this litigation and undertake the responsibilities involved in representative litigation resulted in a substantial benefit to the class and fully justifies the requested incentive award. (Wade-Scott Decl. ¶¶ 25-27.) Throughout the case, Ms. Rottner expended time and effort conferring with Class Counsel, investigating her and her fellow class members' claims, providing information to Class Counsel to prepare the pleadings, responding to Palm Beach Tan's interrogatories and requests for production, and ultimately reviewing and approving the Settlement Agreement before signing it, all of which were necessary to secure the non-reversionary $10,300,000.00 Settlement Fund for the Settlement Class. (*Id.*) Ms. Rottner was also willing to attach her name to this litigation against Palm Beach Tan, which appeared in a published appellate decision and was transmitted via class notice to 46,598 people, subjecting herself to "scrutiny and attention" which is "certainly worth some remuneration." *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 601 (N.D. Ill. 2011).

As a monetary matter, Ms. Rottner's requested $5,000 incentive award is eminently reasonable: it's equal to the amounts awarded to plaintiffs in numerous other privacy cases, including BIPA cases, and a fraction of the amounts often awarded in comparable class settlements in Illinois and the Northern District, where awards frequently exceed $10,000. (*See* Exhibit 2, Chart 3 (listing incentive awards ranging from $5,000 to $10,000 in BIPA cases).); *see also* Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An*

Empirical Study, 53 UCLA L. Rev. 1303 (2006) (finding that "[t]he average award per class representative was $15,992"). Accordingly, a $5,000 incentive award is reasonable to compensate Ms. Rottner for her time and willingness to step up in this case.

V. CONCLUSION

For the foregoing reasons, Plaintiff Jennifer Rottner respectfully requests that this Court enter an order (1) granting Class Counsel's request for an award of attorneys' fees in the amount of $3,605,000 to be paid in four equal installments of $901,250 each year; (2) awarding Plaintiff a $5,000 incentive award; and (3) providing such further or alternative relief as the Court deems reasonable and just.

Respectfully submitted,

JENNIFER ROTTNER, individually and on behalf of the Settlement Class,

Dated: May 13, 2022

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

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CERTIFICATE OF SERVICE

I, J. Eli Wade-Scott, an attorney, hereby certify that I served the above and foregoing ***Plaintiff's Motion and Memorandum of Law for Attorneys' Fees, Expenses, and Incentive Award*** on all counsel of record by causing true and accurate copies of such paper to be filed through the Court's electronic filing system on May 13, 2022.

/s/ J. Eli Wade-Scott
J. Eli Wade-Scott

EXHIBIT 1

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

JENNIFER ROTTNER, individually and on behalf of all others similarly situated, Plaintiff, v. PALM BEACH TAN, INC., a Texas corporation, PBT ACQUISITION I, LLC, a Texas limited liability company, and JOHN DOE DEFENDANTS 1-20, Illinois citizens, Defendants.	Case No.: 2015-CH-16695 Hon. Celia G. Gamrath

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement ("Settlement Agreement") is entered into by and among Plaintiff Jennifer Rottner ("Rottner" or "Plaintiff"), for herself individually and on behalf of the Settlement Class, and Defendants Palm Beach Tan, Inc. and PBT Acquisition I, LLC (together "Palm Beach Tan" or "Defendants") (Plaintiff and Defendants are referred to individually as a "Party" and collectively referred to as the "Parties."). This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims upon and subject to the terms and conditions hereof, and is subject to the approval of the Court.

RECITALS

The Class Action

A. On November 13, 2015 Plaintiff Jennifer Rottner filed a putative class action complaint against Palm Beach Tan, Inc. (a Delaware Corporation) in the Circuit Court of Cook County, Illinois, alleging, *inter alia*, a claim for damages and an injunction under the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.* ("BIPA") (the "Action"). Plaintiff

alleged that Palm Beach Tan, Inc. (a Delaware Corporation) collected her fingerprint data as a customer at one of Palm Beach Tan's tanning salons in Illinois without authorization, through the use of a finger-scanning customer identification system.

B. This case has been litigated for nearly six years and has included several motions to dismiss, reconsideration, and appeals—including a petition for leave to appeal the First District's decision in this case to the Illinois Supreme Court. This litigation also occurred amidst a rapidly shifting landscape around BIPA generally.

C. On January 20, 2016, Plaintiff amended her Complaint to: (i) dismiss as a defendant Palm Beach Tan, Inc. (a Delaware Corporation); and (ii) add as defendants Palm Beach Tan, Inc. (a Texas Corporation) and PBT Acquisition I, LLC. Shortly thereafter, on January 27, 2016, Plaintiff served her first set of written discovery requests on Defendants, including interrogatories and requests for production. Defendants responded on May 20, 2016.

D. At the outset of the case, in March 2016, the Parties engaged in initial settlement discussions and collectively decided that mediation would be beneficial. On April 4, 2016 the Parties participated in a mediation with the Honorable Robert V. Boharic, of ADR Systems, but were unable to reach resolution at that time and returned to litigation.

E. On April 20, 2016 Plaintiff amended her Complaint a second time to add two common law claims for negligence and unjust enrichment.

F. On May 18, 2016 Palm Beach Tan moved to dismiss the case on, among others, the then-undecided basis that Plaintiff was not "aggrieved" under the meaning of BIPA's damages provision, 740 ILCS 14/20. On July 12, 2016 the circuit court—acting through Judge Mikva—denied the motion with respect to Plaintiff's BIPA claim. Thereafter, on August 12, 2016, Plaintiff amended her Complaint a third time.

G. On September 7, 2016, Defendants then moved to strike Plaintiff's claims for liquidated damages, arguing that the statutory damages provided by BIPA were unavailable absent proof of any actual damages caused by the alleged statutory violation. On December 20, 2016 this Court granted Defendants' motion to strike, but later certified for appeal, on August 22, 2017, the question of whether BIPA permits recovery of liquidated damages where a party does not plead any actual damages or harm resulting from the statutory violation. *See* Ill. S. Ct. R. 308(a).

H. On September 21, 2017, Plaintiff filed her Petition for Permission to Appeal under Ill. Sup. Ct. R. 308(a). *Rottner v. Palm Beach Tan, Inc.*, 2017 IL App (1st) 1-17-2287. The First District denied Plaintiff's petition on November 1, 2017. *Id.*

I. Just a few months later, on December 21, 2017, the Second District Illinois Appellate Court decided *Rosenbach v. Six Flags Entertainment Corp.*, 2017 IL App (2d) 170317, which held that a plaintiff could not state a cause of action under BIPA as an "aggrieved" person without some additional injury or harm. *Id.* ¶¶ 1, 20.

J. Because *Rosenbach* was binding in this District, on December 28, 2017, Defendants moved the Court to reconsider its July 18, 2016 denial of Defendants' motion to dismiss. On March 2, 2018, the Court dismissed Plaintiff's suit with prejudice and rendered the order final and appealable.

K. On January 25, 2019, and while Plaintiff's Rule 308(a) appeal was pending, the Illinois Supreme Court issued its decision in *Rosenbach v. Six Flags Entertainment Corp.*, holding that "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.'" 2019 IL 123186 ¶ 40.

L. On March 4, 2019, following the Illinois Supreme Court's *Rosenbach* decision, the First District held in interlocutory appeal in this case that "a plaintiff who proves a violation of the Biometric Information Privacy Act may recover liquidated damages without proof of actual damages beyond violation of the Act." *Rottner v. Palm Beach Tan, Inc.*, 2019 IL App (1st) 180691-U, A001-006, ¶ 1.

M. Defendants sought leave to appeal to the Illinois Supreme Court, which was denied.

N. On July 31, 2020 Plaintiff filed an amended motion for class certification. Thereafter, on September 8, 2020 Plaintiff filed a second amended motion for class certification following this Court's Order that the Parties meet and confer regarding the designation of confidential documents pursuant to the Protective Order entered in this case.

O. On October 6, 2020 Plaintiff served her second set of written discovery requests on Defendants, including interrogatories and requests for production. Defendants served their first set of written discovery requests to Plaintiff on October 8, 2020, including interrogatories, requests for production, and requests for admission. Defendants responded on November 17, 2020; and Plaintiff responded on November 5, 2020.

P. Defendants filed their first amended answer on October 19, 2020 to Plaintiff's operative complaint (the Third Amended Complaint) denying liability and asserting fifteen affirmative defenses.

Q. On January 13, 2021, Defendants moved to extend the deadlines for class certification expert discovery and class certification briefing by 120 days pending the anticipated decision by the Illinois Appellate Court for the First Judicial District in *Tims v. Black Horse Carriers, Inc.*, Case No. 1-20-056, regarding the applicable statute of limitations under BIPA.

The Court granted the extension, as modified.

R. On May 4, 2021, the Court granted a further extension of the class certification deadlines pending the *Tims* decision.

S. Then, in August 2021, while the Parties awaited a decision from the Illinois Appellate Court in *Tims v. Black Horse Carriers, Inc.*, the Parties revisited the possibility of classwide settlement.

T. On September 1, 2021 the Court granted a third 90-day extension due to the Parties' on-going discussions involving potential settlement.

U. Over several months, the Parties exchanged numerous offers and counter-offers on the terms and structure of the Settlement, and engaged in a number of lengthy negotiations over the phone (in light of the COVID-19 pandemic). The Parties' settlement discussions and negotiations continued until the Parties reached agreement on the material terms of a classwide settlement in October 2021, and executed a Binding Memorandum of Understanding on November 1, 2021.

V. Plaintiff and Class Counsel conducted a comprehensive examination of the law and facts relating to the allegations in the Complaint and Defendants' potential defenses. Plaintiff believes that the claims asserted in the Action have merit, that she would have ultimately succeeded in obtaining certification of the proposed Settlement Class through litigation, and that she would have prevailed on the merits at summary judgment or at trial. But Plaintiff and Class Counsel recognize that Defendants have raised factual and legal defenses in the Action that presented a risk that Plaintiff may not prevail and/or that a class might not be certified for trial. Class Counsel have also taken into account the uncertain outcome and risks of any litigation, especially in complex actions, as well as the difficulty and delay inherent in such litigation and

any appeals therefrom. Plaintiff and Class Counsel believe that this Agreement presents an exceptional result for the Settlement Class, and one that will be provided to the Settlement Class without delay. Therefore, Plaintiff believes that it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice, and barred pursuant to the terms and conditions set forth in this Settlement Agreement.

W. Defendants deny all allegations of wrongdoing and liability and deny all material allegations in the Complaint, and believe they have good defenses against class certification and on the merits. But Defendants have similarly concluded that this Settlement Agreement is desirable to avoid the time, risk, and expense of defending protracted litigation, and to avoid the risk posed by the Settlement Class's claims for liquidated damages under BIPA, particularly in view of the unsettled state of the law on issues in this case. Defendants thus desire to resolve finally and completely the pending and potential claims of Plaintiff and the Settlement Class.

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

AGREEMENT

1. DEFINITIONS

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

1.1 "**Action**" means the case captioned *Rottner v. Palm Beach Tan, Inc.*, Case 2015-CH-16695 (Cir. Ct. Cook Cty. Ill.).

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

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

1.4 "**Claims Deadline**" means the date by which all Claim Forms must be postmarked or submitted on the Settlement Website to be considered timely, and shall be set as a date no later than sixty-three (63) days following the Notice Date, subject to Court approval. The Claims Deadline shall be clearly set forth in the order preliminarily approving the Settlement, as well as in the Notice and the Claim Form.

1.5 "**Claim Form**" mean the documents substantially in the form attached hereto as Exhibits A and B, as approved by the Court. The Claim Form, which shall be completed by Settlement Class Members who wish to file a claim for a Settlement Payment, shall be available in paper and electronic format. The Claim Form will require claiming Settlement Class Members to provide the following information: (i) full name, (ii) current U.S. Mail address, (iii) current contact telephone number and email address, and (iv) a statement that he or she scanned their finger(s) for tanning purposes at a Palm Beach Tan facility in the state of Illinois between November 13, 2010 and March 24, 2016. The Claim Form will not require notarization, but will require affirmation that the information supplied is true and correct. The Claim Form will

provide Class Members with the option of having their Settlement Payment transmitted to them electronically through Venmo, Zelle, Paypal, or check.

1.6 "**Class Counsel**" means attorneys Jay Edelson, J. Eli Wade-Scott, and Theo J. Benjamin of Edelson PC.

1.7 "**Class Representative**" or "**Plaintiff**" means the named Plaintiff in the Action, Jennifer Rottner.

1.8 "**Court**" means the Circuit Court for Cook County, Illinois, the Honorable Celia G. Gamrath presiding, or any judge who shall succeed her as the Judge assigned to the Action.

1.9 "**Defendants**" mean Palm Beach Tan, Inc., a Texas corporation, and PBT Acquisition I, LLC, a Texas limited liability company.

1.10 "**Defendants' Counsel**" means attorneys Mike Lynn and Jared Eisenberg of Lynn Pinker Hurst & Schwegmann, LLP and Joseph Cancila and Nick Kahlon of Riley Safer Holmes & Cancila LLP.

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

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

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

1.14 "**Final Approval Hearing**" means the hearing before the Court where Plaintiff will request that the Final Judgment be entered by the Court finally approving the Settlement as fair, reasonable and adequate, and approving the Fee Award and the incentive award to the Class Representative.

1.15 "**Final Judgment**" means the final judgment to be entered by the Court approving the settlement of the Action in accordance with this Settlement Agreement after the Final Approval Hearing.

1.16 "**Notice**" means the notice of this proposed Settlement and Final Approval Hearing, which is to be disseminated to the Settlement Class substantially in the manner set forth in this Settlement Agreement, fulfills the requirements of Due Process and 735 ILCS 5/2-801 *et seq.*, and is substantially in the form of Exhibits B, C, and D attached hereto.

1.17 "**Notice Date**" means the date by which the Notice is disseminated to the Settlement Class, which shall be a date no later than twenty-eight (28) days after entry of Preliminary Approval.

1.18 "**Objection/Exclusion Deadline**" means the date by which a written objection to the Settlement Agreement must be filed with the Court or a request for exclusion submitted by a person within the Settlement Class must be postmarked or received by the Settlement Administrator, which shall be designated as a date sixty-three (63) days after the Notice Date, as approved by the Court. The Objection/Exclusion Deadline will be set forth in the Notice and on the Settlement Website.

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

1.20 "**Released Claims**" means any and all actual, potential, filed, unfiled, known or unknown (including "Unknown Claims" as defined below), fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys' fees and/or obligations, whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on the Illinois Biometric Information Privacy Act or other federal, state, local, statutory or common law or any other law, including all claims that were brought or could have been brought in the Action, arising out of or relating to actual or alleged facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act regarding

the collection, capture, receipt, storage, use, profit from, purchase, possession, retention, destruction, disclosure, and/or dissemination of biometric data.

1.21 "**Released Parties**" means Defendants Palm Beach Tan, Inc. and PBT Acquisition I, LLC, and each of their respective past, present, and future, direct and indirect heirs, assigns, associates, corporations, investors, owners, shareholders, parents, subsidiaries, joint venturers, entities commonly controlled, divisions, officers, directors, agents, employees, predecessors, successors, managers, insurers, reinsurers, franchisees, attorneys, managers, and administrators. This definition expressly includes, but is not limited to, PBT Holdings, Inc., Palm Beach Tan, Inc., Palm Beach Tan Holdings, Inc., PBT Atlantic Acquisition, LLC, PBT Acquisition I, LLC, and Palm Beach Tan Franchising, Inc.

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

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

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

1.25 "**Settlement Class**" means all individuals who scanned their finger(s) on a finger scanner for tanning purposes at a Palm Beach Tan facility in the state of Illinois between November 13, 2010 and March 24, 2016. Excluded from the Settlement Class are: (1) any Judge or Magistrate presiding over this action and members of their families, (2) Defendants, Defendants' subsidiaries, parent companies, successors, predecessors, and any entity in which Defendants or its parents have a controlling interest, (3) persons who properly execute and file a timely request for exclusion from the Settlement Class, and (4) the legal representatives, successors or assigns of any such excluded person.

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

1.27 "**Settlement Fund**" means the non-reversionary cash fund that shall be established by Defendants in the total amount of Ten Million, Three Hundred Thousand Dollars ($10,300,000.00) to be deposited into the Escrow Account as follows: First, Defendants shall pay $150,000 within seven (7) days of Preliminary Approval. Second, Defendants shall make a further payment (the "Down Payment") of $2,425,000 within 15 days of Final Judgment. If this Settlement is terminated or otherwise fails to become effective in accordance with Sections 7.1 and 9 of this Agreement, these amounts shall fully revert to Defendants less any amounts paid for notice costs, and Defendants shall have no obligation to make further payment to the Settlement Fund. Defendants shall then make three subsequent payments of $2,575,000 each (the "Subsequent Payments"), to be paid on the calendar anniversary of the execution of the Down Payment on each subsequent year for three years. To the extent Defendants fail to timely make any installment payment, Defendants shall have six (6) months from the date such payment was

otherwise due to cure and provide such payment (the "Cure Period"); during the Cure Period, interest on the unpaid installment payment shall accrue at the rate of nine percent (9%), starting from the time the payment was due and lasting through such time as the payment is made, and this interest shall be paid at such time as the installment payment is paid. If Defendants fail during the Cure Period to make any installment payment then owing, including interest, then Defendants agree that upon the end of the Cure Period the full amount of the Settlement Fund shall be immediately due and payable into the Escrow Account (less any amounts previously deposited) (the "Acceleration Payment"), with applicable Cure Period interest earned thereon at the rate of nine percent (9%) in accordance with 815 ILCS 205/4. Should Defendants fail to timely make any installment payment, but subsequently satisfy the requirements set forth in this Section 1.27 for the Cure Period or otherwise satisfy the Acceleration Payment, the Parties agree that Defendants shall not be in material breach of this Agreement. The Settlement Fund shall satisfy all monetary obligations of Defendants under this Settlement Agreement, including the Fee Award, litigation costs, Settlement Administration Expenses, Settlement Payments, any incentive award to the Class Representative, and any other payments or other monetary obligations contemplated by this Agreement. The Settlement Fund shall be kept in the Escrow Account with permissions granted to the Settlement Administrator to access said funds until such time as the above-listed payments are made. Except as otherwise stated in this Section 1.27, in no event shall any amount paid by Defendants into the Escrow Account, or any interest earned thereon, revert to Defendants or any other Released Party.

1.28 "**Settlement Payments**" means a *pro rata* portion of the Settlement Fund less any Fee Award, incentive award to the Class Representative, and Settlement Administration

Expenses, which will be paid in four installments, once a calendar year, as discussed in Section 2.

1.29 "**Settlement Website**" means the website to be created, launched, and maintained by the Settlement Administrator, which will provide access to relevant settlement administration documents, including the Notice, relevant court filings, and the ability to submit Claim Forms online. The Settlement Website shall be live and active by the Notice Date, and the URL of the Settlement Website shall be subsequently agreed to by the Parties.

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

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Upon the Effective Date, and by operation of the Final Judgment, each of the Releasing Parties shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United

States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Plaintiff, the other Settlement Class Members, and the Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Section.

2. SETTLEMENT RELIEF

2.1 Settlement Payments to Settlement Class Members.

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

b. The Settlement Administrator shall have sole and final authority for determining if Settlement Class Members' Claim Forms are complete, timely, and accepted as an Approved Claim.

c. Apart from those Settlement Administration Expenses of the Settlement Administrator incurred following entry of a Preliminary Approval Order, no disbursements will be made from the Settlement Fund to pay any portion of monetary relief to the Settlement Class, the incentive award to the Class Representative, or reasonable attorneys' fees to Class Counsel until at least five business days after the Effective Date.

d. Within twenty-eight (28) days after the Effective Date, or such other date more than five days after the Effective Date as the Court may set, the Settlement Administrator shall send the first of four Settlement Payments from the Settlement Fund

by the payment method selected by the Class Member. Class Members will have the option of having their Settlement Payment transmitted to them through Venmo, Zelle, Paypal, or check. Class Members who do not choose a payment method on the mail-in the Claim Form will be sent a check via First Class U.S. Mail to the mailing address provided on the Claim Form, as updated through the National Change of Address database if necessary by the Settlement Administrator.

e. The subsequent three (3) Settlement Payments will be made in the same manner as Section 2(c), within sixty (60) days of Defendants' funding the Escrow Account with each Subsequent Payment.

f. Each payment issued to a Class Member by check will state on the face of the check that it will become null and void unless cashed within ninety (90) calendar days after the date of issuance.

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

h. To the extent that any of the first three (3) checks issued to a Settlement Class Member are not cashed within ninety (90) days after the date of issuance or any of the first three (3) electronic deposits are unable to be processed within ninety (90) days of the first attempt, such funds shall be returned to the Settlement Fund for pro rata distribution in the remaining Settlement Payments. To the extent that a final check issued to a Settlement Class Member is not cashed within ninety (90) days after the date of issuance, or a final electronic deposit is unable to be processed within ninety (90) days of the first attempt, such funds distributed to the Illinois Bar Foundation, or any other *cy*

pres recipient selected by the Court, pursuant to 735 ILCS 5/2-807(b), subject to approval of the Court.

2.2 **Prospective Relief.**

a. Defendants stopped using and removed from their Illinois salons all finger scan hardware previously utilized as of March 24, 2016, following the filing of the Action. Should Defendants resume use of scan hardware in Illinois salons that collects and/or retains biometric identifiers (such as fingerprints) or any information based on biometric identifiers used to identify an individual (collectively referred to herein as "biometric data"), Defendants shall take all steps necessary to comply with the Illinois Biometric Information Privacy Act, including making BIPA-required disclosures, obtaining written releases, destroying biometric data that it no longer needs, and establishing a publicly-available retention policy. *See* 740 ILCS 14/1 *et seq.*

b. Defendants further agree to destroy all data in their possession obtained through the use of finger scan hardware previously utilized in their Illinois salons.

3. RELEASE

3.1 **The Release.** Upon the Effective Date, and in consideration of the settlement relief described herein, the Releasing Parties, and each of them, shall be deemed to have released, and by operation of the Final Judgment shall have, fully, finally, and forever, released, relinquished and discharged all Released Claims against each and every one of the Released Parties.

3.2 **No Assignment**. No member of the Settlement Class shall be permitted to assign any claim or right or interest from this settlement relating to any of the Released Claims against the Released Parties to any other person or party.

4. NOTICE TO THE CLASS

4.1 The Notice shall include:

a. *Class List.* Defendants shall provide the Settlement Administrator a list of all names, e-mail addresses (to the extent made available to Defendants), and last known U.S. mail addresses of all persons in the Settlement Class (the "Class List") as soon as practicable, but by no later than thirty (30) days after the execution of this Agreement. The Settlement Administrator shall keep the Class List and all personal information obtained therefrom, including the identity and mailing addresses of all persons strictly confidential. The Class List may not be used by the Settlement Administrator for any purpose other than advising specific individual Settlement Class members of their rights, mailing Settlement Payments, and otherwise effectuating the terms of the Settlement Agreement or the duties arising thereunder, including the provision of Notice of the Settlement.

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

i. *Update Addresses.* Prior to mailing any Notice, the Settlement Administrator will update the U.S. mail addresses of persons on the Class List using the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. The Settlement Administrator shall take all reasonable steps to obtain the correct address of any Settlement Class members for whom Notice is returned by the U.S. Postal Service as undeliverable and shall attempt re-mailings as described below in Section 5.1.

ii. *Direct Notice.* The Settlement Administrator shall send Notice via e-mail substantially in the form of Exhibit C to all persons in the Settlement Class for whom an email address is available on the Class List no later than the Notice Date. The Settlement Administrator is authorized to send up to three (3) reminder emails to each person on the Class List with an email at the request of Class Counsel, with a copy of any such request provided to Defendants' Counsel. The reminder emails shall be substantially in the form of Exhibit C, with minor, non-material modifications to indicate that it is a reminder email rather than an initial notice. If no email address is available for a person in the Class List, or in the event transmission of an e-mail Notice results in a "bounce-back," the Settlement Administrator shall, no later than thirty (30) days after the entry of Preliminary Approval, send a Notice via First Class U.S. Mail substantially in the form of Exhibit B to each such Settlement Class member's physical address in the Class List.

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

4.2 The Notice shall advise the Settlement Class of their rights under the Settlement Agreement, including the right to be excluded from or object to the Settlement Agreement or its terms. The Notice shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing, only if, on or before the Objection/Exclusion Deadline approved by the Court and

specified in the Notice, the person making an objection shall file notice of his or her intention to do so and at the same time (a) file copies of such papers he or she proposes to submit at the Final Approval Hearing with the Clerk of the Court, (b) file copies of such papers through the Court's eFileIL system if the objection is from a Settlement Class Member represented by counsel, who must also file an appearance, and (c) send copies of such papers via email, U.S. mail, hand, or overnight delivery service to Class Counsel and Defendants' Counsel.

4.3 **Right to Object or Comment.** Any Settlement Class Member who intends to object to this Settlement Agreement must present the objection in writing, which must be personally signed by the objector and must include: (a) the Settlement Class Member's full name and current address; (b) a statement that he or she believes himself or herself to be a member of the Settlement Class; (c) the specific grounds for the objection; (d) all documents or writings that the Settlement Class Member desires the Court to consider; (e) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection; and (f) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel, who must file an appearance or seek *pro hac vice* admission). All written objections must be filed with the Court and postmarked, e-mailed or delivered to Class Counsel and Defendants' Counsel no later than the Objection/Exclusion Deadline. Any Settlement Class Member who fails to timely file a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Section and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, and shall be foreclosed from seeking any

review of this Settlement Agreement or Final Judgment by appeal or other means and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other action or proceeding.

4.4 **Right to Request Exclusion.** Any person in the Settlement Class may submit a request for exclusion from the Settlement on or before the Objection/Exclusion Deadline. To be valid, any request for exclusion must (a) be in writing; (b) identify the case name *Rottner v. Palm Beach Tan, Inc.*, Case 2015-CH-16695 (Cir. Ct. Cook Cty. Ill.); (c) state the full name and current address of the person in the Settlement Class seeking exclusion; (d) be signed by the person seeking exclusion; and (e) be postmarked or received by the Settlement Administrator on or before the Objection/Exclusion Deadline. In light of the COVID-19 pandemic, the Settlement Administrator shall create a dedicated e-mail address to receive exclusion requests electronically. Each request for exclusion must also contain a statement to the effect that "I hereby request to be excluded from the proposed Settlement Class in *Rottner v. Palm Beach Tan, Inc.*, Case 2015-CH-16695 (Cir. Ct. Cook Cty. Ill.)." A request for exclusion that does not include all of the foregoing information, that is sent to an address or e-mail address other than that designated in the Notice, or that is not postmarked or delivered to the Settlement Administrator within the time specified, shall be invalid and the persons serving such a request shall be deemed to remain Settlement Class Members and shall be bound as Settlement Class Members by this Settlement Agreement, if approved. Any person who elects to request exclusion from the Settlement Class shall not (a) be bound by any orders or Final Judgment entered in the Action, (b) receive a Settlement Payment under this Settlement Agreement, (c) gain any rights by virtue of this Settlement Agreement, or (d) be entitled to object to any aspect of this Settlement Agreement or

Final Judgment. No person may request to be excluded from the Settlement Class through "mass" or "class" opt-outs.

5. SETTLEMENT ADMINISTRATION

5.1 Settlement Administrator's Duties.

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

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

c. *Maintenance of Records.* The Settlement Administrator shall maintain reasonably detailed records of its activities under this Settlement Agreement. The Settlement Administrator shall maintain all such records as required by applicable law in accordance with its business practices and such records will be made available to Class Counsel and Defendants' Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. Upon request, the Settlement Administrator shall provide Class Counsel and Defendants' Counsel with information concerning the Notice, any requests for exclusion, and the administration and implementation of the Settlement. Should the Court request, the Parties shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a post-distribution accounting of all amounts from the Settlement Fund paid to Settlement Class Members, the number and value of checks

not cashed, the number and value of electronic payments unprocessed, and the amount distributed to any *cy pres* recipient.

d. *Receipt of Requests for Exclusion.* The Settlement Administrator shall receive requests for exclusion from persons in the Settlement Class and provide to Class Counsel and Defendants' Counsel a copy thereof within five (5) days of the Objection/Exclusion Deadline. If the Settlement Administrator receives any requests for exclusion or other requests from Settlement Class Members after the deadline for the submission of requests for exclusion, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendants' Counsel. The Settlement Administrator shall create a dedicated e-mail address to receive exclusion requests electronically.

e. *Creation of Settlement Website.* The Settlement Administrator shall create the Settlement Website. The Settlement Website shall include a toll-free telephone number and mailing address through which persons in the Settlement Class may contact the Settlement Administrator and/or Class Counsel directly.

f. *Processing Claim Forms.* The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner. The Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud, including by cross-referencing Approved Claims with the Class List. The Settlement Administrator shall determine whether a Claim Form submitted by a Settlement Class Member is an Approved Claim and shall reject Claim Forms that fail to

(a) comply with the instructions on the Claim Form or the terms of this Agreement, or (b) provide full and complete information as requested on the Claim Form. In the event a person submits a timely Claim Form by the Claims Deadline, but the Claim Form is not otherwise complete, then the Settlement Administrator shall give such person reasonable opportunity to provide any requested missing information, which information must be received by the Settlement Administrator no later than twenty-eight (28) calendar days after the Claims Deadline. In the event the Settlement Administrator receives such information more than twenty-eight (28) calendar days after the Claims Deadline, then any such claim shall be denied. The Settlement Administrator may contact any person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form.

g. *Timing of Settlement Payments.* The Settlement Administrator shall make the Settlement Payments contemplated in Section 2 of this Settlement Agreement to Settlement Class Members as set forth in Sections 1.27 and 2.1.

h. *Tax reporting*. The Settlement Administrator shall be responsible for all tax filings related to the Escrow Account, including performing back-up withholding, and payments, if necessary from the Settlement Fund and making any required "information returns" as that term is used in 26 U.S.C. § 1 *et seq.*

6. PRELIMINARY APPROVAL AND FINAL APPROVAL

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

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

b. Appoint Class Counsel to represent the Settlement Class;

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

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

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

f. Schedule a Final Approval Hearing to review comments and/or objections regarding this Settlement Agreement, to consider its fairness, reasonableness and adequacy, to consider the application for a Fee Award and incentive award to the Class Representative, and to consider whether the Court shall issue a Final Judgment approving this Settlement Agreement and dismissing the Action with prejudice.

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

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

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

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

d. declare the Settlement to have released all pending and future lawsuits, claims, or other proceedings maintained, held, or to be held by or on behalf of Plaintiff and all other Settlement Class Members and Releasing Parties;

e. find that the Notice implemented pursuant to the Settlement Agreement (1) constitutes the best practicable notice under the circumstances, (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and their rights to object to or exclude themselves from this Settlement Agreement and to appear at the Final Approval Hearing, (3) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, and (4) fulfills the requirements of 735 ILCS 5/2-801 *et seq.*, Due Process, and the rules of the Court;

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

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

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

i. authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement and its implementing documents (including all Exhibits to this Settlement Agreement) that

(i) shall be consistent in all material respects with the Final Judgment, and (ii) do not limit the rights of Settlement Class Members;

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

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

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

7. TERMINATION OF THE SETTLEMENT AGREEMENT

7.1 **Termination.** Subject to Section 9 below, the Class Representative, on behalf of the Settlement Class, and Defendants shall have the right to terminate this Agreement by providing written notice of the election to do so to all other Parties within ten (10) days of any of the following events: (i) the Court's refusal to grant Preliminary Approval of this Agreement in any material respect; (ii) the Court's refusal to grant final approval of this Agreement in any material respect; (iii) the Court's refusal to enter the Final Judgment in this Action in any material respect; (iv) the date upon which the Final Judgment is modified or reversed in any material respect by the appellate court or the Supreme Court; or (v) the date upon which an Alternative Judgment, as defined in Paragraph 9.1 of this Agreement, is modified or reversed in any material respect by the appellate court or the Supreme Court.

7.2 **Confirmatory Discovery**. Defendants represent that the Settlement Class contains up to 46,598 class members. Defendants shall supplement their interrogatory responses to reflect this, or otherwise provide confirmatory discovery regarding the size of the Settlement Class within seven (7) days after the Parties execute this Agreement.

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

8.1 Defendants agree that Class Counsel is entitled to reasonable attorneys' fees and unreimbursed expenses incurred in the Action as the Fee Award. The amount of the Fee Award shall be determined by the Court based on petition from Class Counsel. Class Counsel has agreed, with no consideration from Defendants, to limit their request for attorneys' fees and unreimbursed costs to thirty-five percent (35%) of the Settlement Fund. Defendants may challenge the amount requested. Payment of the Fee Award shall be made from the Settlement Fund, as set forth in this Section 8 and Section 1.27. Should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this Section shall remain in the Escrow Account and be distributed to Settlement Class Members as Settlement Payments.

8.2 The Fee Award shall be paid in four equal installments following Defendants' deposit of the Down Payment and the Subsequent Payments. The first installment of the Fee Award shall be payable within five (5) business days after the Effective Date. The three subsequent installments shall be paid within (5) business days of each Subsequent Payment. Payments of the Fee Award shall be made by the Settlement Administrator via wire transfer to an account designated by Class Counsel after providing necessary information for electronic transfer.

8.3 Defendants agree that the Class Representative shall, as set forth in Section 1.27,

be paid an incentive award in the amount of Five Thousand Dollars ($5,000.00) from the Settlement Fund, in addition to any Settlement Payment pursuant to this Settlement Agreement and in recognition of her efforts on behalf of the Settlement Class, subject to Court approval. Should the Court award less than this amount, the difference in the amount sought and the amount ultimately awarded pursuant to this Section shall remain in the Escrow Account and be distributed to Settlement Class Members as Settlement Payments. Any award shall be paid by the Settlement Administrator from the Escrow Account (in the form of a check to the Class Representative that is sent care of Class Counsel) within five (5) business days after the Effective Date.

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

9.1 The Effective Date shall not occur unless and until each and every one of the following events occurs:

a. This Agreement has been signed by the Parties, Class Counsel, Defendants' Counsel;

b. The Court has entered an order granting Preliminary Approval of the Agreement;

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

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

e. If there is an appeal or appeals, the appeal or appeals are dismissed or affirm and leave in place the Final Judgment without any material modification (apart from the Fee Award or incentive award to the Class Representative).

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

9.3 If this Settlement Agreement is terminated or fails to become effective for the reasons set forth above, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement, and Defendants' entry into the Settlement Agreement shall not be considered, in any way, as an admission concerning liability or the propriety of class certification. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this

Settlement Agreement had never been entered into. In the event the Settlement is terminated or fails to become effective for any reason, the Settlement Fund, less any Taxes paid or due, less the Settlement Administrative Expenses actually incurred and paid or payable from the Settlement Fund identified in Section 1.27, shall be returned to Defendants within thirty (30) calendar days after written notification of such event in accordance with instructions provided by Defendants' Counsel to the Settlement Administrator.

10. MISCELLANEOUS PROVISIONS.

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

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

10.3 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff and the other Settlement Class Members, and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiff or defended by Defendants, or each or any of them, in bad faith or without a reasonable basis.

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

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

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

b. is, may be deemed, or shall be used, offered or received against Defendants an admission, concession or evidence of any fault, misrepresentation or

omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

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

d. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the Settlement, this Settlement Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Settlement Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Settlement Agreement. Moreover, if this Settlement Agreement is approved by the Court, any of the Released Parties may file this Settlement Agreement and/or the Final Judgment in any action that may be brought against such parties in order to support a defense or counterclaim;

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

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

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

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

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

10.9 This Settlement Agreement and its Exhibits A-D set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

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

10.11 Plaintiff represents and warrants that she has not assigned any claim or right or

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

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

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

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

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

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

10.17 Where this Settlement Agreement requires notice to the Parties, such notice shall

be sent to the undersigned counsel: Theo J. Benjamin, EDELSON PC, 350 North LaSalle Street, 14th Floor, Chicago, Illinois 60654; Jared Eisenberg of LYNN PINKER HURST & SCHWEGMANN, LLP, 2100 Ross Avenue, Suite 2700, Dallas, Texas 75201; Nick Kahlon of RILEY SAFER HOLMES & CANCILA LLP, 70 West Madison Street, Suite 2900, Chicago, Illinois 60602.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

JENNIFER ROTTNER

Dated: 02.08.2022

By (signature): Jennifer Rottner

Name (printed): Jennifer Rottner

EDELSON PC

Dated: 02/08/2022

By (signature): [signature]

Name (printed): J. Eli Wade-Scott

Its (title): Partner

PALM BEACH TAN, INC.

Dated: _____

By (signature): _____

Name (printed): _____

Its (title): _____

PBT ACQUISITION I, LLC

Dated: _____

By (signature): _____

Name (printed): _____

Its (title): _____

JENNIFER ROTTNER

Dated: _____ By (signature): _____

Name (printed): _____

EDELSON PC

Dated: _____ By (signature): _____

Name (printed): _____

Its (title): _____

PALM BEACH TAN, INC.

Dated: Feb 8, 2022 By (signature): /s/ Eric M Hall

Name (printed): ERIC M HALL

Its (title): CFO

PBT ACQUISITION I, LLC

Dated: Feb 8, 2022 By (signature): /s/ Eric M Hall

Name (printed): ERIC M HALL

Its (title): CFO

EXHIBIT A

Rottner v. Palm Beach Tan, Inc. No. 2015-CH-16695 (Cir. Ct. Cook Cty.)

CLAIM FORM

Instructions. *Fill out each section of this form and sign where indicated. Please select a payment method of check, Zelle, PayPal, or Venmo and provide the necessary information. If you opt for payment via check and your Claim Form is approved, you will receive checks in the mail at the address you provide below.* **THIS CLAIM FORM MUST BE SUBMITTED BY: [CLAIMS DEADLINE]**

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

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

- Check
- Zelle®
- PayPal®
- Venmo®

*If you selected to receive payment from Zelle, PayPal, or Venmo, please provide the email address or phone number associated with your account:

Email Address [for Zelle, PayPal, or Venmo]	**Cell Phone # [for Zelle or Venmo]**

Class Member Affirmation: By submitting this Claim Form, I declare that I am a member of the Settlement Class and that the following information is true and correct: I am an individual who scanned my finger(s) for tanning purposes at a Palm Beach Tan facility in the state of Illinois between November 13, 2010 and March 24, 2016.

Signature: _____ Date: ____ - ____ - ____
(MM-DD-YY)

Settlement Administrator Information:
[ADDRESS]

For more information, visit www._____.com.

EXHIBIT B

COURT AUTHORIZED NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

OUR RECORDS INDICATE YOU MAY HAVE USED A FINGER SCANNER AT A PALM BEACH TAN TANNING SALON BETWEEN NOVEMBER 13, 2010 AND MARCH 24, 2016 IN ILLINOIS AND MAY BE ENTITLED TO PAYMENTS FROM A CLASS ACTION SETTLEMENT.

XXX

Rottner v. Palm Beach Tan, Inc.
c/o Settlement Administrator
P.O. Box 0000
City, ST 00000-0000

First-Class Mail
US Postage Paid
Permit #__

||||||||||||||||||||||

Postal Service: Please do not mark barcode

XXX—«ClaimID» «MailRec»

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

By Order of the Court Dated: [date]

CLAIM FORM

THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR POSTMARKED BY [CLAIMS DEADLINE]

Instructions: Fill out each section of this form and sign where indicated. Select to receive payment via check, Zelle, PayPal, or Venmo and provide the necessary information. Or file a claim online at **www.[** tobedetermined**].com.** If you opt for payment via check and your Claim Form is approved, you will receive a check in the mail at the address you provide below:

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

Street Address: _____

City: _____ State: ____ ____ Zip Code: ____ ____ ____ ____ ____

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

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

• Check • Zelle® • PayPal® • Venmo®

*If you selected to receive your payments from Zelle, PayPal, or Venmo, please provide the email address or phone number associated with your account:

Email Address [for Zelle, PayPal, or Venmo]	**Cell Phone # [for Zelle or Venmo]**

Class Member Verification: By submitting this Claim Form, I declare that I am an individual who scanned my finger(s) on a finger scanner for tanning purposes at a Palm Beach Tan facility in the state of Illinois between November 13, 2010 and March 24, 2016.

Signature: _____ Date: ___ ___/ ___ ___/ ___ ___ (MM-DD-YY)

The Settlement Administrator will review your Claim Form. If accepted, you will be mailed four payments, the amount of which will depend on the number of valid claim forms received. This process takes time, please be patient.

Questions, visit www.[tobedetermined**].com or call [toll free number]**

This notice is to inform you that a proposed settlement has been reached in a class action lawsuit between Palm Beach Tan, Inc. and PBT Acquisition I, LLC ("Palm Beach Tan") and individuals who used a finger scanner at a Palm Beach Tan facility in the state of Illinois. The lawsuit claims that Palm Beach Tan violated an Illinois law called the Illinois Biometric Information Privacy Act when it collected individuals' biometric data through its finger-scanning customer identification system, without complying with the law's requirements. Palm Beach Tan denies it did anything wrong. The Court has not decided who is right or wrong. Please read this notice carefully. Your legal rights are affected whether you act, or don't act.

Who is included in the Settlement Class? Our records indicate that you may be included in the Settlement Class. The Settlement Class includes all persons who scanned their finger(s) on a finger scanner for tanning purposes at a Palm Beach Tan facility in the state of Illinois between November 13, 2010 and March 24, 2016.

What can I get out of the settlement? If you're eligible and the Court approves the settlement, you can file a claim to receive cash payments. The payment amount is estimated to be between 700 to $1,400, depending on the number of valid claims submitted. This amount is an equal share of a $10,300,00 fund that Palm Beach Tan agreed to create, after any Court-approved payment of settlement expenses, attorneys' fees, and any incentive award. In order to allow Palm Beach Tan to pay all of the money, the Settlement Fund will be paid in four installments over four years. Settlement Class members who submit a valid claim during the claims period will get their estimated payment in four equal installments of $175 to $350 per year.

How do I get my payment? Just complete and return the attached Claim Form by mail, or file online at www.[tobedetermined].com, ***by [Claims Deadline].***

What are my Options? You can do nothing, comment on or object to any of the settlement terms, or exclude yourself from the settlement. If you do nothing, you won't get any payment, and you won't be able to sue Palm Beach Tan or certain related companies and individuals in a future lawsuit about the claims addressed in the settlement. If you exclude yourself, you won't get any payment but you'll keep your right to sue Palm Beach Tan on the issues the settlement concerns. You must contact the settlement administrator by mail or e-mail to exclude yourself. You can also object to the settlement if you disagree with any of its terms. ***All Requests for Exclusion and Objections must be received by [Objection/Exclusion Deadline].***

Do I have a lawyer? Yes. The Court has appointed lawyers from the law firm Edelson PC as "Class Counsel." They represent you and other Settlement Class Members. The lawyers will request to be paid from the total amount that Palm Beach Tan agreed to pay to the Settlement Class Members. You can hire your own lawyer, but you'll need to pay that lawyer's legal fees if you do. The Court has also chosen Jennifer Rottner—a class member like you—to represent the Settlement Class.

When will the Court approve the settlement? The Court will hold a final approval hearing on [date] at [time] before the Honorable Celia G. Gamrath in Room 2508 at the Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602. The Court will hear objections, determine if the settlement is fair, and consider Class Counsel's request for fees and expenses of up to 35% of the Settlement Fund, also paid in four installments and an incentive award of $5,000 for the Class Representative. The request will be posted on the settlement website by [two weeks prior to Objection/Exclusion Deadline].

_____

_____

_____

NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES

Rottner v. Palm Beach Tan, Inc. Settlement
c/o Settlement Administrator
PO Box 0000
City, ST 00000-0000

XXX

EXHIBIT C

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

OUR RECORDS INDICATE YOU MAY HAVE USED A FINGER SCANNER AT A PALM BEACH TAN TANNING SALON BETWEEN NOVEMBER 13, 2010 AND MARCH 24, 2016 IN ILLINOIS AND MAY BE ENTITLED TO PAYMENTS FROM A CLASS ACTION SETTLEMENT.

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

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

This notice is to inform you that a proposed settlement has been reached in a class action lawsuit between Palm Beach Tan, Inc. and PBT Acquisition I, LLC ("Palm Beach Tan") and individuals who used a finger scanner at a Palm Beach Tan in Illinois. The lawsuit claims that Palm Beach Tan violated an Illinois law called the Illinois Biometric Information Privacy Act when it collected individuals' biometric data through its finger-scanning customer identification system, without complying with the law's requirements. Palm Beach Tan denies it did anything wrong. The Court has not decided who is right or wrong. Please read this notice carefully. Your legal rights are affected whether you act, or don't act.

Who is included in the Settlement Class? Our records indicate that you may be included in the Settlement Class. The Settlement Class includes all persons who scanned their finger(s) on a finger scanner for tanning purposes at a Palm Beach Tan facility in the state of Illinois between November 13, 2010 and March 24, 2016.

What can I get out of the settlement? If you're eligible and the Court approves the settlement, you can file a claim to receive a cash payment. The payment amount is estimated to be between 700 to $1,400, depending on the number of valid claims submitted. This amount is an equal share of a $10,300,000 fund that Palm Beach Tan agreed to create, after any Court-approved payment of settlement expenses, attorneys' fees, and any incentive award. In order to allow Palm Beach Tan to pay all of the money, the Settlement Fund will be paid in four installments over four years. Settlement Class members who submit a valid claim during the claims period will get their payment in four equal installments of an estimated $175 to $350 per year.

How do I get my payment? Just complete the short and simple Claim Form online at [Claim Form Link]. You can choose to receive your payment via Zelle, PayPal, Venmo, or a check. A paper Claim Form with pre-paid postage was attached to the postcard notice you may have received in the mail. The paper claim form lets you select to receive your payment, if you are eligible, via Zelle, Paypal, Venmo, or check. ***All Claim Forms must be submitted online or postmarked by [Claims Deadline].***

What are my Options? You can do nothing, comment on or object to any of the settlement terms, or exclude yourself from the settlement. If you do nothing, you won't get any payment, and you won't be able to sue Palm Beach Tan or certain related companies and individuals in a future lawsuit about

the claims addressed in the settlement. If you exclude yourself, you won't get a payment but you'll keep your right to sue Palm Beach Tan on the issues the settlement concerns. You must contact the settlement administrator by mail or email ([email address]) to exclude yourself. You can also object to the settlement if you disagree with any of its terms. ***All Requests for Exclusion and Objections must be received by [Objection/Exclusion Deadline].***

Do I have a lawyer? Yes. The Court has appointed lawyers from Edelson PC as "Class Counsel." They represent you and other Settlement Class Members. The lawyers will request to be paid from the total amount that Palm Beach Tan agreed to pay to the Settlement Class Members. You can hire your own lawyer, but you'll need to pay that lawyer's legal fees if you do. The Court has also chosen Jennifer Rottner—a class member like you—to represent the Settlement Class.

When will the Court approve the settlement? The Court will hold a final approval hearing on [date] at [time] before the Celia G. Gamrath in Room 2508 at the Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602. The Court will hear objections, determine if the settlement is fair, and consider Class Counsel's request for fees and expenses of up to 35% of the Settlement Fund, also paid in four installments, and an incentive award of $5,000 for the Class Representative. The request will be posted on the settlement website by [two weeks prior to Objection/Exclusion Deadline].

EXHIBIT D

CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Rottner v. Palm Beach Tan, Inc., Case No. 2015-CH-16695

IF YOU USED A FINGER SCANNER AT A PALM BEACH TAN TANNING SALON IN ILLINOIS BETWEEN NOVEMBER 13, 2010 AND MARCH 24, 2016, YOU CAN CLAIM A PAYMENT FROM A CLASS ACTION SETTLEMENT.

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

- A Settlement has been reached in a class action lawsuit between Palm Beach Tan, Inc. and PBT Acquisition I, LLC ("Defendants" or "Palm Beach Tan") and certain individuals who visited a Palm Beach Tan salon in the state of Illinois. The lawsuit claims that Palm Beach Tan violated an Illinois law called the Illinois Biometric Information Privacy Act ("BIPA") by collecting individuals' fingerprint data through its fingerprint-scanning identification system at its tanning salons throughout Illinois without complying with the law's requirements. Palm Beach Tan denies it did anything wrong. The Court has not decided who is right or wrong. The Settlement has been preliminarily approved by a court in Cook County, Illinois.

- You are included in the Settlement if you scanned your finger(s) for tanning purposes at a Palm Beach Tan facility in the state of Illinois between November 13, 2010 and March 24, 2016. If you received a notice of the Settlement in the mail or by e-mail, our records indicate that you may be a class member and you can submit a claim form online or by mail to receive a cash payment.

- If the Court approves the Settlement, members of the Class who submit valid claims will receive four payments of an equal, or *pro rata*, share of a $10,300,000 settlement fund that Palm Beach Tan has agreed to establish, after all notice and administration costs, incentive award, and attorneys' fees have been paid. Individual payments to class members who submit a valid Claim Form are estimated to be $700 to $1,400, depending on the number of valid claims submitted. In order to allow Defendants to pay all the money, estimated payments of $175 to $350 will be made **once a year for four years**.

- Please read this notice carefully. Your legal rights are affected whether you act, or don't act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	This is the only way to receive a payment. You must submit a claim form either online or by mail before [**Claims Deadline**].
DO NOTHING	You will receive no payment under the Settlement and give up your rights to sue Defendants about the issues in this case.
EXCLUDE YOURSELF	You will receive no payment, but you will retain any rights you currently have to sue Defendants about the issues in this case.
OBJECT	Write to the Court explaining why you don't like the Settlement.
ATTEND A HEARING	Ask to speak in Court about the fairness of the Settlement.

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

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

BASIC INFORMATION

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

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

Judge Celia G. Gamrath of the Circuit Court of Cook County, Illinois is overseeing this class action. The case is called *Rottner v. Palm Beach Tan, Inc.*, Case No. 2015-CH-16695. The person who filed the lawsuit, Jennifer Rottner, is the Plaintiff. The companies she sued, Palm Beach Tan, Inc. and PBT Acquisition I, LLC are the Defendants. Palm Beach Tan operates a chain of tanning salons located throughout the United States, including in Illinois.

2. What is a class action lawsuit?

A class action is a lawsuit in which an individual called a "Class Representative" brings a single lawsuit on behalf of other people who have similar legal claims. All of these people together are a "Class" or "Class Members." Once a Class is certified, a class action Settlement finally approved by the Court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement Class.

THE CLAIMS IN THE LAWSUIT AND THE SETTLEMENT

3. What is this lawsuit about?

The Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1, *et seq*., prohibits the collection, storage, and/or use of a person's biometric data for any purpose, without first providing notice and getting consent in writing. Biometrics are things like your fingerprint, faceprint, or a scan or your eye's iris. This lawsuit alleges that Defendants violated BIPA by using finger-scanning devices at Palm Beach Tan salons in Illinois to identify individuals without complying with the law's requirements. Defendants deny these allegations and deny that they violated BIPA. No Court has decided who is right.

More information about the complaint in the lawsuit and the Defendants' position can be found in the "Court Documents" section of the settlement website at www.[tobedetermined].com.

4. Who is included in the Settlement Class?

The Court has decided that this Settlement includes all individuals who scanned their finger(s) for tanning purposes at a Palm Beach Tan facility located in the state of Illinois between November 13, 2010 and March 24, 2016. If you received a notice of the Settlement via email or in the mail, our records indicate that you may be a Class Member included in the Settlement. You may call or email the Settlement Administrator at [phone number] or [email address] to ask whether you are a member of the Settlement Class.

THE SETTLEMENT BENEFITS

5. What does the Settlement provide?

Cash Payments. If you're eligible, you can file a claim to receive cash payments. The amount of each payment is estimated to be around $700 to $1,400, depending on the number of valid claims submitted. This is an equal share of a $10,300,000 fund that Palm Beach Tan has agreed to create, after the payment of settlement expenses, attorneys' fees, and any incentive award for the Class Representative in the litigation approved by the Court. In order to allow Palm Beach Tan to pay all the money, the Settlement Fund will be paid in four installments over four years. Settlement Class members who submit a valid claim during the claims period will get their payment in four estimated equal installments of $175 to $350 per year by the Settlement Administrator.

Prospective Relief. Palm Beach Tan stopped using finger-scanning devices in March of 2016, but further agrees under the Settlement that, if it uses biometric technology in the future, it will comply with BIPA going forward by obtaining written releases from all Illinois customers who use biometric devices, making BIPA-required disclosures, destroying biometric data in compliance with the statute, and establishing a publicly-available retention policy.

How to Get Settlement Benefits

6. How do I get a payment?

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

7. When will I get my payments?

The hearing to consider the fairness of the Settlement is scheduled for [**Final Approval Hearing Date**]. If the Court approves the Settlement and there are no appeals, Class Members whose claims were approved by the Settlement Administrator will be sent their first of four payments within 60 days in the method they selected. The remaining three payments will be made by the same method at around the same time for the following three years. Please be patient. Uncashed checks and electronic payments that are unable to be completed for the first three payments will expire and become void 90 days after they are issued and will be returned to the fund and distributed to class members in later payments. Any final uncashed checks or undeliverable electronic payments will be donated to the Illinois Bar Foundation or such other not-for-profit organization(s) as the Court may order.

The Lawyers Representing You

8. Do I have a lawyer in the case?

Yes, the Court has appointed lawyers Jay Edelson, J. Eli Wade-Scott, and Theo J. Benjamin of Edelson PC as the attorneys to represent you and other Class Members. These attorneys are called "Class Counsel." In addition, the Court appointed Plaintiff Jennifer Rottner to serve as the Class Representative. She is a Class Member like you. Class Counsel can be reached by calling 1-866-354-3015.

9. Should I get my own lawyer?

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

10. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees and expenses of up to 35% of the Settlement Fund, and will also request an incentive award of $5,000 for the Class Representative from the Settlement Fund. The Court will determine the proper amount of any attorneys' fees and expenses to award Class Counsel and the proper amount of any award to the Class Representative. The Court may award less than the amounts requested. The lawyers will receive any award of attorneys' fees in four installments over a period of four years like the class members.

Your Rights and Options

11. What happens if I do nothing at all?

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

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

12. What happens if I ask to be excluded?

You may exclude yourself from the Settlement. If you do so, you will not receive any cash payment, but you will not release any claims you may have against Palm Beach Tan and the Released Parties (as that term is defined in the Settlement Agreement) and are free to pursue whatever legal rights you may have by pursuing your own lawsuit against Palm Beach Tan and the Released Parties at your own risk and expense.

13. How do I ask to be excluded?

You can mail or email a letter stating that you want to be excluded from the Settlement. Your letter must: (a) be in writing; (b) identify the case name, *Rottner v. Palm Beach Tan, Inc.*, 2015-CH-16695 (Cir. Ct. Cook Cty. Ill.); (c) state the full name and current address of the person in the Settlement Class seeking (d) be signed by the person(s) seeking exclusion; and (e) be postmarked or received by the Settlement Administrator on or before [Objection/Exclusion Deadline]. Each request for exclusion must also contain a statement to the effect that "I hereby request to be excluded from the proposed Settlement Class in *Rottner v. Palm Beach Tan, Inc.*, 2015-CH-16695 (Cir. Ct. Cook Cty. Ill.)." You must mail or e-mail your exclusion request no later than [Objection/Exclusion Deadline] to:

Rottner v. Palm Beach Tan Settlement Administrator
P.O. Box 0000
City, ST 00000-0000

-or-

[e-mail address]

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

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

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

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

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

16. How do I object to the Settlement?

If you do not exclude yourself from the Settlement Class, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should deny approval by filing an objection. To object, you must file a letter or brief with the Court stating that you object to the Settlement in *Rottner v. Palm Beach Tan, Inc.*, 2015-CH-16695 (Cir. Ct. Cook Cty. Ill.), no later than [Objection/Exclusion Deadline]. Your objection must be e-filed or delivered to the Court at the following address:

Clerk of the Circuit Court of Cook County - Chancery Division
Richard J. Daley Center, 8th Floor
50 West Washington Street
Chicago, Illinois 60602

The objection must be in writing, must be signed, and must include the following information: (a) your full name and current address, (b) a statement that you believe you are a member of the Settlement Class, (c) whether the objection applies only to you, to a specific subset of the Settlement Class, or to the entire Settlement Class, (d) the specific grounds for your objection, (e) all documents or writings that you wish the Court to consider, (f) the name and contact information of any attorneys representing, advising, or in any way assisting you in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection, and (g) a statement indicating whether you intend to appear at the Final Approval Hearing. If you hire an attorney in connection with making an objection, that attorney must file an appearance with the Court or seek *pro hac vice* admission to practice before the Court, and electronically file the objection by the objection deadline of [Objection/Exclusion Deadline]. If you do hire your own attorney, you will be solely responsible for payment of any fees and expenses the attorney incurs on your behalf. If you exclude yourself from the Settlement, you cannot file an objection.

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

Class Counsel	Defense Counsel
Theo J. Benjamin tbenjamin@edelson.com EDELSON PC 350 North LaSalle Street, 14th Floor Chicago, Illinois 60654	Michael P. Lynn mlynn@lynnllp.com Jared Eisenberg jeisenberg@lynnllp.com LYNN PINKER HURST & SCHWEGMANN, LLP 2100 Ross Avenue, Suite 2700 Dallas Texas 75201 Joseph Cancila, Jr. jcancila@rshc-law.com Nick Kahlon nkahlon@rshc-law.com RILEY SAFER HOLMES & CANCILA LLP 70 West Madison Street, Suite 2900, Chicago, Illinois 60602

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

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

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

THE COURT'S FINAL APPROVAL HEARING

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

The Court will hold the Final Approval Hearing at [**time**] on [**date**] before the Honorable Celia G. Gamrath in Room 2508 at the Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602, or via remote means as instructed by the Court. The purpose of the hearing is for the Court to determine whether the Settlement is fair, reasonable, adequate, and in the best interests of the Class. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed Settlement, including those related to the amount requested by Class Counsel for attorneys' fees and expenses and the incentive award to the Class Representative.

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

19. Do I have to come to the hearing?

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

the Settlement, the Court will consider it. You may also pay a lawyer to attend, but you don't have to.

20. May I speak at the hearing?

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

GETTING MORE INFORMATION

21. Where do I get more information?

This notice summarizes the proposed Settlement. More details, including the Settlement Agreement and other documents are available at www.[tobedetermined].com or at the Clerk's Office in the Clerk's Office in the Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays and any closures as a result of the COVID-19 pandemic. You can also contact Class Counsel at 1-866-354-3015 with any questions.

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

EXHIBIT 2

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

JENNIFER ROTTNER, individually and on behalf of all others similarly situated,

Plaintiff,

v.

PALM BEACH TAN, INC., a Texas corporation, PBT ACQUISITION I, LLC, a Texas limited liability company, and JOHN DOE DEFENDANTS 1-20, Illinois citizens,

Defendants.

Case No.: 2015-CH-16695

Hon. Celia G. Gamrath

PERCENTAGE FEE AWARDS AND
INCENTIVE AWARDS IN SIMILAR BIPA CASES

CHART 1 - BIPA CASES IN ILLINOIS AND N.D. ILL. AWARDING 35% OF COMMON FUND		
Case	**Judge**	**Fund Size**
Kusinski v. ADP LLC, 2017-CH-12364 (Cir. Ct. Cook Cnty. Feb. 10, 2021)	Atkins, J.	$25,000,000.00
Barnes v. Aryzta, No. 2017-CH-11312 (Cir. Ct. Cook Cnty. Nov. 13, 2020)	Moreland, J.	$2,900,000.00
Miracle-Pond v. Shutterfly, 2019-CH-07050 (Cir. Ct. Cook Cnty. Sept. 9, 2021)	Mitchell, J.	$6,750,000.00
Brown v. Moran Foods, LLC, 2019-CH-02576 (Cir. Ct. Cook Cnty. Mar. 16, 2021)	Moreland, J.	$ 762,300.00
Fluker v. Glanbia Inc., No. 2017-CH-12993 (Cir. Ct. Cook Cnty. Aug. 25, 2020)	Mitchell, J.	$1,197,300.00
Lloyd v. Xanitos, No. 2018-CH-15351 (Cir. Ct. Cook Cnty. July 25, 2019)	Valderrama, J.	$295,000.00
Mazurkiewicz v. Mid City Nissan, Inc., No. 18-CH-09798 (Cir. Ct. Cook Cnty. Jan. 20, 2021)	Mullen, J.	$483,750.00
Taylor v. Sunrise Senior Living Mgmt., Inc., No. 2017-CH-15152 (Cir. Ct. Cook Cnty. Feb. 4, 2019)	Loftus, J.	$320,570.00

Cornejo v. Amcor Rigid Plastics USA, LLC, No. 18-cv-07018, dkt. 57 (N.D. Ill. Sept. 10, 2020)	Pacold, J.	$175,000.00
Lopez-McNear v. Superior Health Linens, LLC, No. 19-cv-2390, dkt. 69 (N.D. Ill. Apr. 27, 2021)	Pallmeyer, J.	$790,000.00
Alvarado v. Int'l Laser Prods., Inc., No. 18-cv-7756, dkt. 70 (N.D. Ill. Jan. 24, 2020)	Pallmeyer, J.	$895,788.74

CHART 2 - BIPA CASES IN ILLINOIS AWARDING 40% OF COMMON FUND		
Case	**Judge**	**Fund Size**
Prelipceanu v. Jumio Corp., 2018-CH-15883 (Cir. Ct. Cook Cnty. July 21, 2020)	Mullen, J.	$7,000,000.00
McGee v. LSC Commc'ns, Inc., 2017-CH-12818 (Cir. Ct. Cook Cnty. Nov. 11, 2019)	Atkins, J.	$700,000.00
Sekura v. L.A. Tan Enters., Inc., 2015-CH-16694 (Cir. Ct. Cook Cnty. Dec. 1, 2016)	Garcia, J.	$1,500,000.00
Svagdis v. Alro Steel Corp., 2017-CH-12566 (Cir. Ct. Cook Cnty. Jan. 14, 2019)	Larsen, J.	$300,000.00
Zepeda v. Intercontinental Hotels Grp., Inc., 2018-CH-02140 (Cir. Ct. Cook Cnty.)	Atkins, J.	$500,000.00
Zhirovetskiy v. Zayo Grp., LLC, 2017-CH-09323 (Cir. Ct. Cook Cnty. Apr. 8, 2019)	Flynn, J.	$900,000.00[1]

CHART 3 – INCENTIVE AWARDS IN ILLINOIS AND N.D. ILL. BIPA CASES		
Case	**Judge**	**Award**
Barnes v. Aryzta, No. 2017-CH-11312 (Cir. Ct. Cook Cnty. Nov. 13, 2020)	Moreland, J.	$5,000.00
Brown v. Moran Foods, LLC, 2019-CH-02576, (Cir. Ct. Cook Cnty. Mar. 16, 2021)	Moreland, J.	$5,000.00
Fluker v. Glanbia Inc., No. 2017-CH-12993 (Cir. Ct. Cook Cnty. Aug. 25, 2020)	Mitchell, J.	$5,000.00

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

Lloyd v. Xanitos, No. 2018-CH-15351 (Cir. Ct. Cook Cnty. July 25, 2019)	Valderrama, J.	$5,000
Cornejo v. Amcor Rigid Plastics USA, LLC, No. 18-cv-07018, dkt. 57 (N.D. Ill. Sept. 10, 2020)	Pacold, J.	$5,000.00
Lopez-McNear v. Superior Health Linens, LLC, No. 19-cv-2390, dkt. 69 (N.D. Ill. Apr. 27, 2021)	Pallmeyer, J.	$5,000.00
Kusinski v. ADP LLC, 2017-CH-12364 (Cir. Ct. Cook Cnty. Feb. 10, 2021)	Atkins, J.	$7,500
Svagdis v. Arlo Steel Corp., No. 2017-CH-12566 (Cir. Ct. Cook Cnty, Jan. 14. 2019)	Atkins, D.	$7,500
Martinez v. Nando's Rest. Grp., Inc., 19-cv-07012, dkt. 63 (N.D. Ill. Oct. 27, 2020)	Ellis, J.	$7,500.00
Jones v. CBC Rests. Corp., No. 19-cv-6736, dkt. 53 (N.D. Ill. Oct. 22, 2020)	Alonso, J.	$7,500.00
Thome v. NOVAtime Tech., Inc., No. 19-cv-6256, dkt. 90 (N.D. Ill. Mar. 8, 2021)	Kennelly, J.	$7,500.00
Burlinksi v. Top Golf USA Inc., No. 19-cv-06700, dkt. 103 (N.D. Ill. Oct. 13, 2021)	Chang, J.	$7,500.00
Wickens v. Thyssenkrupp, No. 19-cv-6100, dkt. 52 (N.D. Ill. Jan. 26, 2021)	Dow, J.	$7,500.00
Montgomery v. Peri Framework Sys., Inc., No. 20-cv-07771, dkt. 33 (N.D. Ill. Nov. 9, 2021)	Pallmeyer, J.	$7,500.00
Prelipceanu v. Jumio Corp., 2018-CH-15883 (Cir. Ct. Cook Cnty. July 21, 2020)	Mullen, J.	$10,000.00
Bedford v. Lifespace Communities, Inc., No. 20-cv-04574, dkt. 31 (N.D. Ill. May 12, 2021)	Shah, J.	$10,000.00
Bryant v. Loews Chicago Hotel, Inc., No. 19-cv-03195, dkt. 78 (N.D. Ill. Oct. 30, 2020)	Norgle, J.	$10,000.00
Davis v. Heartland Emp. Servs., LLC, No. 19-cv-00680, dkt. 130 (N.D. Ill. Oct. 25, 2021)	Valderrama, J.	$10,000.00
Dixon v. Washington & Jane Smith Cmty.-Beverly, No. 17-cv-8033, dkt. 103 (N.D. Ill. May 31, 2018)	Kennelly, J.	$10,000.00

EXHIBIT 3

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

JENNIFER ROTTNER, individually and on behalf of all others similarly situated, Plaintiff, v. PALM BEACH TAN, INC., a Texas corporation, PBT ACQUISITION I, LLC, a Texas limited liability company, and JOHN DOE DEFENDANTS 1-20, Illinois citizens, Defendants.	Case No.: 2015-CH-16695 Hon. Celia G. Gamrath

DECLARATION OF J. ELI WADE-SCOTT IN SUPPORT OF PLAINTIFF'S MOTION AND MEMORANDUM OF LAW FOR ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARD

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

1. I am an attorney admitted to practice before the Supreme Court of the State of Illinois. I am entering this Declaration in support of Plaintiff's Motion and Memorandum of Law for Attorneys' Fees, Expenses, and Incentive Award (the "Motion"). This Declaration is based upon my personal knowledge except where expressly noted otherwise. If called upon to testify to the matters stated herein, I could and would competently do so.

The Litigation and Settlement History

2. This is one of the first-filed BIPA cases. When my firm filed this case on November 13, 2015, there was not a single court opinion of which I am aware interpreting any one of BIPA's provisions. *See Norberg v. Shutterfly, Inc.*, 152 F. Supp. 3d 1103, 1106 (N.D. Ill.

2015) ("The BIPA was enacted in 2008, and to this date, the Court is unaware of any judicial interpretation of the statute.").

3. The case has been extensively litigated. Following a failed mediation at the very outset of the case, Defendants moved to dismiss on May 18, 2016, which was fully briefed and oral argument was held before Judge Mikva. The motion was granted in part and denied in part, preserving Plaintiff's BIPA claim. Plaintiff re-pleaded her other claims at the time (unjust enrichment and negligence) with a third amended complaint.

4. Meanwhile, Plaintiff issued sets of Interrogatories and Document requests on Defendants and received written responses.

5. Defendants then filed a motion to strike Plaintiff's claim for damages and a motion for reconsideration of the Court's decision on the motion to dismiss. Both were fully briefed and argued before this Court on December 20, 2016.

6. The Court denied the motion to reconsider the prior motion to dismiss decision, but granted Defendants' motion to strike Plaintiff's claim for damages under BIPA's damages provision.

7. In January 2017, Plaintiff sought to certify the damages question to the Appellate Court under Ill. Sup. Ct. R. 308(a). Shortly thereafter in February 2017, Defendant moved to dismiss Plaintiff's remaining remedy—injunctive relief—under BIPA as well. These two motions were also fully briefed.

8. In August 2017, the Court entered a written ruling certifying the question of whether Plaintiff could recover liquidated damages under BIPA to the appellate court.

9. In the meantime, the Second District's opinion in *Rosenbach v. Six Flags Entm't Corp.* was issued. 2017 IL App (2d) 170317. Defendants moved the Court to reconsider its

decision on reconsideration—that is, to reconsider again the July 2016 Order of the Court denying Defendants' motion to dismiss the BIPA claim entirely—based on the holding of *Rosenbach*. This motion, too, was fully briefed.

10. The Court issued a written opinion granting that motion to reconsider on March 2, 2018 and dismissed the case. Plaintiff appealed.

11. The appeal was fully briefed, with Plaintiff filing her opening brief on September 27, 2018, followed by Defendants' response and Plaintiff's reply in December 2018.

12. The appeal in this case occurred during an enormously active several months of appeals in the BIPA landscape. First, in *Sekura v. Krishna Schaumburg Tan, Inc.* (also litigated by my firm), the First District disagreed with the Second District's holding in *Rosenbach* and found that no additional harms were required to plead a claim for BIPA's damages. 2018 IL App (1st) 180175. Then, the Illinois Supreme Court agreed in *Rosenbach*, overturning the Second District's holding. 2019 IL 123186.

13. In light of the *Rosenbach* decision, Plaintiff moved for summary reversal. The First District took that motion with the case, considering Defendants' argument that it had achieved a distinct ruling from that addressed by *Sekura* and *Rosenbach*: that the BIPA claim may be permitted without additional harms, but that BIPA's damages provision is not available to plaintiffs without such harm.

14. The First District ultimately agreed with Plaintiff in an unpublished order. *Rottner v. Palm Beach Tan, Inc.*, 2019 IL App (1st) 180691-U.

15. Defendants sought a rehearing before the First District pursuant to Ill. Sup. Ct. R. 367. The First District denied that petition.

16. Defendants then petitioned the Illinois Supreme Court for leave to appeal. *Rottner v. Palm Beach Tan, Inc.*, No. 123823. Plaintiff answered the petition. The Illinois Supreme Court ultimately denied it.

17. The mandate in this case was returned in late 2019. Shortly thereafter, the COVID-19 pandemic began, and the Court suspended routine operations.

18. Plaintiff then filed an amended motion for class certification in July 2020. Defendants filed its answer to her third amended complaint, to which Plaintiff replied. The Parties then exchanged further sets of written discovery: Plaintiff issued her second set of Interrogatories and Requests for Production, and Defendants issued its first set of Interrogatories, Requests for Production, and Request to Admit on Plaintiff.

19. Shortly after Plaintiff filed her amended motion for class certification, the Parties revisited discussions about potential settlement. After several months of arm's-length negotiations, the Parties executed a written Settlement Agreement on February 8, 2022, which the Court preliminarily approved on February 25, 2022.

Class Counsel's Work in this Litigation

20. Despite the risk of nonpayment, Class Counsel took on Plaintiff's case, also on a purely contingent basis, and embarked on a fact-intensive investigation of Defendants' practices and Plaintiff's claims, appealing to the First District Appellate Court of Illinois, including full briefings and oral arguments, exchanging extensive discovery, determining the size of the putative class, and eventually, engaging in meaningful settlement discussions and arm's-length negotiation.

21. In this case, Edelson PC agreed to undertake Plaintiff's and the Class's case on a contingent basis. We knew from the outset that we would be required to spend hundreds of hours

investigating and litigating the case with no guarantee of success and foregoing other opportunities.

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

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

24. Throughout litigating this case, the Firm has incurred $8,379.81 in expenses, which include filing fees, and transcript costs. These expenses are being considered as part of Class Counsel's percentage-of-the recovery request. The Firm's itemized expenses for which Class Counsel are seeking reimbursement are detailed below:

THE CLASS ACTION	
EXPENSE	AMOUNT
Mediation	$3,600.00
Transcript	$1,566.45
Case Research	$800.00
Service of Process	$725.00
Hotel	$562.17
Filing Fees	$360.95
Flight	$290.60
Copies/Binding/Production	$211.61
Cab	$85.55
Online Services	$78.98
Internet	$72.87
FedEx	$43.63
TOTALS	**$8,397.81**

Plaintiff Rottner's Involvement in this Action

25. Finally, I believe that Plaintiff Jennifer Rottner's participation was critical to the case's resolution, and Plaintiff dutifully represented the interests of the Class throughout the

case. She was involved in all aspects of the case, including assisting in Class Counsel's pre-suit investigation, reviewing the Class Action Complaint and Demand for Jury Trial before filing, helping respond to Defendants' interrogatories and requests for production, and reviewing the settlement documents.

26. Were it not for Plaintiff's efforts and contributions to the litigation—monitoring the litigation, and expending time and effort conferring with Class Counsel throughout the litigation and settlement process—the Class would not have obtained the substantial benefits conferred by the Settlement.

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

* * *

I declare under penalty of the perjury that the foregoing is true and correct. Executed on May 13, 2022 at Chicago, Illinois.

/s/ J. Eli Wade-Scott
J. Eli Wade-Scott

EXHIBIT 3-A

Edelson

April 2022

Inside the Firm

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

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

—Law360

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Who We Are

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

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

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

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

In the News

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

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

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

Our Practice

General Mass/Class Tort Litigation

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

Representative cases and settlements include:

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

Environmental Litigation

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

Representative cases and settlements include:

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

Banking, Lending, and Finance Litigation

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

Representative cases and settlements include:

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

Privacy and Data Security

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

Representative cases and settlements include:

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

Privacy and Data Security

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

Privacy and Data Security

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

General Consumer Matters

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

Representative cases and settlements include:

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

General Consumer Matters

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

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

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

Insurance Matters

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

Representative cases and settlements include:

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

Insurance Matters

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

Public Client Litigation and Investigations

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

Representative cases and settlements include:

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

Public Client Litigation and Investigations

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

General Commercial Litigation

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

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Our Team

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Jay Edelson

Founder and CEO

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

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

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

> *Big banks. Big tech firms. Big Pharma. The big business that is the NCAA. Plaintiff's attorney Jay Edelson wages battle against many of the nation's most fortified institutions. Not only does he refuse to back down to anyone, regardless of their stature or deep pockets, he welcomes the challenge.*
>
> *Edelson earned a monumental victory in the US Supreme Court in what's been characterized as one of the most important consumer privacy cases of the last several years, Robins v. Spokeo. He and his team are leading the charge against the NCAA in representing former college football players who suffered concussions, and their families. And, on behalf of labor unions and governmental bodies, he's elbow-deep in litigation against pharmaceutical companies and distributors for their pivotal role in the opioid crisis.*
>
> *Simply put, he's a transformational lawyer.*

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

Jay Edelson

Founder and CEO

- Jay has received special recognition for his success in taking on Silicon Valley. The national press has dubbed Jay and the firm the "most feared" litigators in Silicon Valley and, according to the New York Times, tech's "babyfaced … boogeyman." Most recently, Chicago Lawyer Magazine dubbed Jay "Public Enemy No. 1 in Silicon Valley." In the emerging area of privacy law, the international press has called Jay one of the world's "profiliertesten (most prominent)" privacy class action attorneys. The National Law Journal has similarly recognized Jay as a "Cybersecurity Trailblazer"—one of only two plaintiff's attorneys to win this recognition.

- Jay has taught seminars on class actions and negotiations at Chicago-Kent College of Law and privacy litigation at UC Berkeley School of Law. He has written a blog for Thomson Reuters, called Pardon the Disruption, where he focused on ideas necessary to reform and reinvent the legal industry and has contributed opinion pieces to TechCrunch, Quartz, the Chicago Tribune, Law360, and others. He also serves on Law360's Privacy & Consumer Protection editorial advisory board. In recognition of the fact that his firm runs like a start-up that "just happens to be a law firm," Jay was recently named to "Chicago's Top Ten Startup Founders over 40" by Tech.co.

- Jay has been regularly appointed to lead complicated MDLs and other coordinated litigation, including those seeking justice for college football players suffering from the effects of concussions to homeowners whose HELOCs were improperly slashed after the 2008 housing collapse to some of the largest privacy cases of the day.

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

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

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Rafey S. Balabanian

Global Managing Partner
Director of Nationwide Litigation

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

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

- Rafey has been at the forefront of protecting consumer data, and in 2018 helped lead the effort to obtain adversarial class certification for the first time in the history of the Illinois Biometric Information Privacy Act, on behalf of a class of Illinois users. On the eve of trial, the case settled for a record-breaking $650 million.

- Some of Rafey's more notable achievements include nationwide settlements involving the telecom industry, including companies such as AT&T, Google, Sony, Motricity, and OpenMarket valued at more than $100 million.

- Rafey has been appointed to represent state Attorneys General and regulators on a variety of issues including the District of Columbia in a suit against Facebook for the Cambridge Analytica scandal. He also represents labor unions and governmental entities in lawsuits against the drug manufacturers and distributors over the ongoing opioid crisis.

- Rafey has also been appointed to the Executive Committee in the NCAA concussion cases, considered to be "one of the largest actions pending in the country, a multi district litigation ... that currently include [more than 300] personal injury class actions filed by college football players[.]" And he represents a member of the Tort Claimant's Committee in the PG&E Bankruptcy action, which resulted in a historic $13.5 billion settlement.

- Rafey served as trial court counsel in *Robins v. Spokeo, Inc.*, 2:10-cv-05306-ODW-AGR (C.D. Cal.), which has been called the most significant consumer privacy case in recent years.

Rafey S. Balabanian

Global Managing Partner
Director of Nationwide Litigation

- Rafey's class action practice also includes his work in the privacy sphere, and he has reached groundbreaking settlements with companies like Netflix, LinkedIn, Walgreens, and Nationstar. Rafey also served as lead counsel in the case of *Dunstan, et al. v. comScore, Inc.*, No. 11-cv-5807 (N.D. Ill.), where he led the effort to secure class certification of what is believed to be the largest adversarial class to be certified in a privacy case in the history of U.S. jurisprudence.

- Rafey's work in general complex commercial litigation includes representing clients ranging from "emerging technology" companies, real estate developers, hotels, insurance companies, lenders, shareholders and attorneys. He has successfully litigated numerous multi-million dollar cases, including several "bet the company" cases.

- Rafey is a frequent speaker on class and mass action issues, and has served as a guest lecturer on several occasions at UC Berkeley School of Law. Rafey also serves on the Executive Committee of the Antitrust, Unfair Competition and Privacy Section of the State Bar of California where he has been appointed Vice Chair of Privacy, as well as the Executive Committee of the Privacy and Cybersecurity Section of the Bar Association of San Francisco.

- Rafey received his J.D. from the DePaul University College of Law in 2005. A native of Colorado, Rafey received his B.A. in History, with distinction, from the University of Colorado – Boulder in 2002.

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Eve-Lynn J. Rapp

Managing Partner, Boulder

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

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

- Specific to her Public Client and Government Affairs practice, Eve is presently leading the litigation on behalf of the City of Chicago in the Marriott data breach litigation, which seeks to hold the hotel giant accountable for a massive data breach where attackers stole the personal date of up to 383 million guests—including over 5 million unencrypted passport numbers. She likewise represented the City of Chicago in the data breach litigation against Equifax where she secured a landmark seven-figure settlement under Chicago's City-specific ordinance.

- Eve is part of the team representing the District of Columbia in its litigation against Juul for its deceptive e-cigarette manufacturing and sales and the State of New Mexico in its suit against Google alleging that its G-Suite for Education product and services illegally collected data from New Mexico school children in violation of COPPA. Eve also counsels governments on a range of issues involving consumer protection, privacy, technology, and data security and was recently designated a Panel Member of Delaware's Department of Justice's Environmental Counsel Panel.

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

Eve-Lynn Rapp

Managing Partner, Boulder

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

- In addition to her government and privacy work, Eve has led over a dozen consumer fraud cases, against a variety of industries, including e-cigarette sellers, on-line gaming companies, and electronic and sport products distributors. She lead and resolved a case against a 24 Hour Fitness for misrepresenting its “lifetime memberships,” which resulted in over 25 million dollars of relief.

- Due to Eve’s knowledge and practice in the data privacy, technology and consumer protection space, Eve serves as the Chair of the San Francisco Bar Association’s Cybersecurity and Privacy Committee, where she is responsible for hosting and speaking about a range of cutting-edge issues. She also speaks on various panels about cutting edge issues ranging from upcoming regulatory efforts, “issues to watch,” and litigation trends.

- Eve is passionate about diversity and social justice. She is a Board Member of the Law Firm Antiracism Alliance, a coalition of more than 240 law firms that team up with organizations to amplify voices of communities impacted by systemic racism, promote racial equality in the law, and support the use of law that benefits communities of color. She also works with various organizations such as the Diverse Attorney Pipeline Program, where she helps her firm conduct over 20 mock interviews for women of color each year in effort to help expand their postgraduate opportunities, and organizations like the East Bay Community Law Center and Berkeley’s Women of Color Collective. As a young attorney, Eve likewise devoted a significant amount of time to the Chicago Lawyers’ Committee for Civil Rights Under Law’s Settlement Assistance Project, where she represented a number of pro bono clients for settlement purposes.

- From 2015-2019, Eve was selected as an Illinois Emerging Lawyer by Leading Lawyers.

- Eve received her J.D. from Loyola University of Chicago-School of Law, graduating cum laude, with a Certificate in Trial Advocacy. During law school, she was an Associate Editor of Loyola’s International Law Review and externed as a “711” at both the Cook County State’s Attorney’s Office and for Cook County Commissioner Larry Suffredin. Eve also clerked for both civil and criminal judges (The Honorable Judge Yvonne Lewis and Plummer Lott) in the Supreme Court of New York. Eve graduated from the University of Colorado, Boulder, with distinction and Phi Beta Kappa honors, receiving a B.A. in Political Science.

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Benjamin H. Richman

Managing Partner, Chicago

Recovered hundreds of millions of dollars for his clients.

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

- Ben represents state Attorneys General, counties, and cities in high-stakes litigation and investigations, including the State of Idaho, in asserting claims against some of the largest pharmaceutical manufacturers and distributors in the world related to the ongoing opioid epidemic, including in the MDL pending in the Northern District of Ohio. Ben also leads the team representing approximately 50 other governmental entities in opioid litigation; the State of New Mexico in its lawsuit against Google LLC for allegedly collecting data from children under the age of 13 through its G-Suite for Education products and services; the District of Columbia in a suit against e-cigarette giant Juul for alleged predatory and deceptive marketing; and was appointed as a Special Assistant State's Attorney to prosecute Facebook's violations of the Illinois Consumer Fraud Act in the Cambridge Analytica scandal.

- Ben has been one of the primary forces behind the development of the firm's environmental practice. In the last year alone, Ben led a team representing hundreds of individuals across the country suffering from the effects of exposure to ethylene oxide—a carcinogenic chemical compound used in sterilization applications—emitted into the air in their communities, which included coordinating litigation across state and federal courts in various jurisdictions; was appointed to the Plaintiffs' Executive Committee overseeing the prosecution of the *In re: Aqueous Film-Forming Foams Prods. Liability Litig.*, No. 18-mn-2873, MDL No. 2873 (D.S.C.) (which includes more than 500 cases against the largest chemical manufacturers in the world, among others); and was designated as a Panel Member on a State Attorney General's Environmental Counsel Panel, which was formed to assist and represent the State in a wide range of environmental litigation.

- Ben is currently part of the team leading the *In re National Collegiate Athletic Association*

Benjamin H. Richman

Managing Partner, Chicago

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

- Some of Ben's notable achievements include acting as class counsel in litigating and securing a $45 million settlement of claims against for-profit DeVry University related to its allegedly false reporting of job placement statistics. He has acted as lead counsel in securing settlements collectively worth $50 million in over a half-dozen nationwide class actions against software companies involving claims of fraudulent marketing and unfair business practices. He was part of the team that litigated over a half-dozen nationwide class actions involving claims of unauthorized charges on cellular telephones, which ultimately led to settlements collectively worth hundreds of millions of dollars. And he has been lead counsel in numerous multi-million dollar privacy settlements, including several that resulted in individual payments to class members reaching into the tens of thousands of dollars and another that—in addition to securing millions of dollars in monetary relief—also led to a waiver by the defendants of their primary defenses to claims that were not otherwise being released.

- Ben's work in complex commercial matters includes successfully defending multiple actions against the largest medical marijuana producer in the State of Illinois related to the issuance of its cultivation licenses, and successfully defending one of the largest mortgage lenders in the country on claims of unjust enrichment, securing dismissals or settlements that ultimately amounted to a fraction of typical defense costs in such actions. Ben has also represented startups in various matters, including licensing, intellectual property, and mergers and acquisitions.

- Each year since 2015, Ben has been recognized by Super Lawyers as a Rising Star and Leading Lawyers as an Emerging Lawyer in both class action and mass tort litigation.

- Ben received his J.D. from the University of Illinois Chicago School of Law, where he was an Executive Editor of the Law Review and earned a Certificate in Trial Advocacy. While in law school, Ben served as a judicial extern to the late Honorable John W. Darrah of the United States District Court for the Northern District of Illinois. Ben also routinely guest-lectures at various law schools on issues related to class actions, complex litigation and negotiation.

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Tracy Hernandez

Chief Financial Officer

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

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

- Tracy is the Chief Financial Officer of Edelson PC and a member of the Executive Committee.

- Prior to joining Edelson PC, she was the CFO of Ocean Tomo, LLC which is a financial consulting firm that specializes in Intellectual Property (IP) as economic damages experts in IP lawsuits and as management advisors for companies looking to monetize or value their IP assets. During her nine years with Ocean Tomo, Tracy oversaw the administrative, human resources and finance departments before moving into the CFO role. As CFO, she worked through the due diligence process and sale to a Private Equity firm as well as a subsequent acquisition of a 20-person consulting firm.

- Tracy began her career in public accounting working at KPMG for several years before joining the Chicago Blackhawks as the Controller. As Controller, she was responsible for the day-to-day accounting and reporting to the owners and the NHL. After six years with the Blackhawks, she worked with National Equity Fund as Controller and then began to work independently as a consultant for several small businesses prior to joining Ocean Tomo.

- Tracy graduated from Saint Mary's College (IN) with a Bachelor of Business Administration degree with a concentration in Accounting.

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Kelsey McCann

Chief of Staff

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

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

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

- Kelsey's creation and leadership of diversity efforts within the firm has made her a national thought leader. She created novel outreach programs to law schools, law school groups, and attorney organizations in order to broaden the pool of applicants the firm was seeing. Today, as a result of her efforts, Edelson PC is considered one of the most diverse "high stakes" plaintiff's firms in the country, and was recently awarded the Diversity Initiative Award, given to the plaintiff's firm demonstrating a successful effort to promote diversity within its organization and the profession at large by The National Law Journal. The firm also has been recognized as having the second highest lawyer satisfaction rate in the country by law360 and the highest one nationally by Above the Law.

- Kelsey also works with the different practice groups and the individual employees to set and execute short and long term individual and firm-specific goals.

- Kelsey also works with the different practice groups and the individual employees to set and execute short and long term individual and firm-specific goals.

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

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Amy B. Hausmann

Associate Committee Liaison

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

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

- Specific to her public client practice, Amy secured preliminary injunction on behalf of the Cities of Cincinnati, Columbus, Dayton, and Toledo in action against FirstEnergy Corp. for alleged violations of the Ohio Corrupt Practices Act, saving the Cities and all Ohio consumers from paying $170 million per year in added electric bill fees. *City of Cincinnati v. FirstEnergy Corp.*, No. 20 CV 7005 (Ohio Ct. Common Pleas).

- Amy represents consumers who have suffered losses to illegal interest casinos. Three of those cases recently settled for approximately $200 million, with damages-adjusted claims rates of 15%-33% and class members recovering up to hundreds of thousands of dollars. The largest of the remaining cases is set for trial in November 2021. *See, e.g.*, *Benson v. DoubleDown Interactive, LLC*, No. 18-cv-525 (W.D. Wash.); *Wilson v. PTT, LLC*, No. 18-cv-5275 (W.D. Wash); *Reed v. Scientific Games Corp.*, No. 18-cv-565 (W.D. Wash.).

- Amy received her J.D. from Yale Law School where she participated in the San Francisco Affirmative Litigation Project, a clinic partnering with the San Francisco City Attorney's Office to bring suits challenging unfair and deceptive business practices. She also participated in the Housing Clinic of the Jerome N. Frank Legal Services Organization, defending homeowners in judicial foreclosure proceedings and bringing affirmative suits against mortgage lenders and servicers. She served as Co-Chair of the law school's Clinical Student Board and as a Practical Scholarship Editor on the Yale Law Journal, helping solicit and publish pieces based on legal practice or clinical experience.

- Before law school, Amy worked as a legal assistant at a plaintiffs' firm in New York City focusing on employment and False Claims Act cases.

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Ryan D. Andrews

Partner

Litigated issues of first impression nationwide securing pathmarking victories.

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

- Ryan has been appointed class counsel in numerous federal and state class actions nationwide that have resulted in over $100 million in refunds to consumers, including: *Satterfield v. Simon & Schuster,* No. 06-cv-2893 (N.D. Cal.); *Ellison v Steve Madden, Ltd.*, No. 11-cv-5935 (C.D. Cal.); *Robles v. Lucky Brand Dungarees, Inc.*, No. 10-cv-04846 (N.D. Cal.); *Lozano v. 20th Century Fox,* No. 09-cv-06344 (N.D. Ill.); *Paluzzi v. Cellco P'ship,* No. 2007 CH 37213 (Cir. Ct. Cook Cty., Ill.); and *Lofton v. Bank of America Corp.*, No. 07-5892 (N.D. Cal.).

- Representative reported decisions include: *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016); *Kater v. Churchill Downs Inc.*, 886 F.3d 784 (9th Cir. 2018); *Warciak v. Subway Rests., Inc.*, 880 F.3d 870 (7th Cir. 2018), cert. denied, 138 S. Ct. 2692 (2018); *Beaton v. SpeedyPC Software,* 907 F.3d 1018 (7th Cir. 2018), cert. denied, 139 S. Ct. 1465 (2019); *Klaudia Sekura v. Krishna Schaumburg Tan, Inc.*, 2018 IL App (1st) 180175; *Yershov v. Gannett Satellite Info. Network, Inc.*, 820 F. 3d 482 (1st Cir. 2016); *Resnick v. AvMed, Inc.*, 693 F. 3d 1317 (11th Cir. 2012); and *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946 (9th Cir. 2009).

- Ryan graduated from the University of Michigan, earning his B.A., with distinction, in Political Science and Communications. Ryan received his J.D. with High Honors from the Chicago-Kent College of Law and was named Order of the Coif. Ryan has served as an Adjunct Professor of Law at Chicago-Kent, teaching a third-year seminar on class actions. While in law school, Ryan was a Notes & Comments Editor for The Chicago-Kent Law Review, earned CALI awards for the highest grade in five classes, and was a teaching assistant for both Property Law and Legal Writing courses. Ryan externed for the Honorable Joan B. Gottschall in the United State District Court for the Northern District of Illinois.

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J. Aaron Lawson

Partner

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

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

- Aaron has argued in four federal Courts of Appeals and numerous district courts around the country. In 2019, Aaron won and successfully defended class certification in a case challenging Facebook's collection of facial recognition data gathered through the platform's photo tagging feature. The case settled on the eve of trial for a record breaking $650 million. *In re Facebook Biometric Info. Privacy Litig.*, 326 F.R.D. 535 (N.D. Cal. 2018); 932 F.3d 1264 (9th Cir. 2019). W

- Aaron won and successfully defended class certification in case involving allegedly fraudulently advertised computer software. *Beaton v. SpeedyPC Software*, No. 13-cv-08389 (N.D. Ill.); 907 F.3d 1018 (7th Cir. 2018).

- Aaron helped achieve a landmark decision affirming the ability of plaintiffs to bring statutory claims for relief in federal court. *Robins v. Spokeo*, No. 10-cv-5306 (C.D. Cal.).

- In addition to his work at Edelson PC, Aaron serves on the Privacy Subcommittee of the California Lawyers Association's Antitrust, UCL & Privacy Section, and edits the yearly treatise produced by the subcommittee

- Prior to joining Edelson PC, Aaron served for two years as a Staff Attorney for the United States Court of Appeals for the Seventh Circuit, handling appeals involving a wide variety of subject matter, including consumer-protection law, employment law, criminal law, and federal habeas corpus.

- While at the University of Michigan Law School, Aaron served as the Managing Editor for the Michigan Journal of Race & Law, and participated in the Federal Appellate Clinic. In the clinic, Aaron briefed a direct criminal appeal to the United States Court of Appeals for the Sixth Circuit, and successfully convinced the court to vacate his client's sentence.

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Todd Logan

Partner

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

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

- Todd is routinely appointed by courts nationwide to serve as class counsel in major class action litigation. In recent years, Todd has been appointed Class Counsel in, and led the litigation of, several related cases alleging that internet slot machine apps constitute illegal gambling. Three of those cases recently settled for approximately $200 million, with damages-adjusted claims rates of 15%-33% and class members recovering up to hundreds of thousands of dollars.

- Todd represents Butte County residents who lost their homes and businesses in the Camp Fire, governments and other entities seeking to recover losses arising out of the nationwide opioid epidemic, former NCAA football players suffering from the harmful effects of concussions, consumers seeking compensation for their gambling losses to illegal internet casinos, and consumers who have been defrauded or otherwise suffered damages under state consumer protection laws.

- In recent years, Todd has led the litigation and settlement of a variety of class action cases alleging claims under federal, state, and local laws. For example, in *Dickey v. Advanced Micro Devices, Inc.*, No. 15-cv-04922, 2019 WL 251488, (N.D. Cal. Jan. 17, 2019), Todd briefed and argued a successful motion for nationwide class certification in a complex consumer class action alleging claims under California Law. In *Robins v. Spokeo*, No. 10-cv-5306 (C.D. Cal.), after remand from both the Supreme Court and the Ninth Circuit, Todd led the litigation of the class' claims under the Fair Credit Reporting Act for more than a year before the case entered settlement posture on favorable terms. And in *Sekura v. L.A. Tan Enterprises, Inc.*, No. 2015-CH-16694 (Cir. Ct. Cook Cty., Ill.), Todd represented a class of consumers alleging claims under Illinois' Biometric Information Privacy Act (BIPA) and ultimately obtained a seven-figure class action settlement – the first ever BIPA class action settlement.

- Before becoming a lawyer, Todd built SQL databases for a technology company and worked at various levels in state and local government. Todd received his J.D. cum laude from Harvard Law School, where he was Managing Editor of the Harvard Journal of Law and Technology. Todd also assisted Professor William B. Rubenstein with research and analysis on a wide variety of class action issues, and is credited for his work in more than eighty sections of Newberg on Class Actions.

- From 2016-17, Todd served as a judicial law clerk for the Honorable James Donato of the Northern District of California.

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David I. Mindell

Partner
Co-Chair, Public Client and Government Affairs group

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

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

- In addition to his Public Client and Government Affairs practice, David helps direct the firm's Investigations team, including the group's internal lab "of computer forensic engineers and tech-savvy lawyers [who study] fraudulent software and hardware, undisclosed tracking of online consumer activity and illegal data retention." Cybersecurity & Privacy Practice Group of the Year, Law360 (Jan. 2019). His team's research has led to lawsuits involving the fraudulent development, marketing and sale of computer software, unlawful tracking of consumers through mobile-devices and computers, unlawful collection, storage, and dissemination of consumer data, mobile-device privacy violations, large-scale data breaches, unlawful collection and use of biometric information, unlawful collection and use of genetic information, and the Bitcoin industry.

- David also helps oversee the firm's class and mass action investigations, including claims against helmet manufacturers and the National Collegiate Athletic Association by thousands of former high school, college, and professional football players suffering from the long-term effects of concussive and sub-concussive hits; claims on behalf of hundreds of families and business who lost their homes, businesses, and even loved ones in the "Camp Fire" that ravaged thousands of acres of Northern California in November 2018; and on behalf of survivors of sexual abuse.

- Prior to joining Edelson PC, David co-founded several tech, real estate, and hospitality related ventures, including a tech startup that was acquired by a well-known international corporation within its first three years. David has advised tech companies on a variety of legal and strategic business-related issues, including how to handle and protect consumer data. He has also consulted with startups on the formation of business plans, product development, and launch.

- While in law school, David was a research assistant for University of Chicago Law School Kauffman and Bigelow Fellow, Matthew Tokson, and for the preeminent cybersecurity professor, Hank Perritt at the Chicago-Kent College of Law. David's research included cyberattack and denial of service vulnerabilities of the internet, intellectual property rights, and privacy issues.

- David has spoken to a wide range of audiences about his investigations and practice.

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Roger Perlstadt

Partner

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

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

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

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Nicholas Rosinia

Partner

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

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

- Nick is a trial lawyer with more than eight years of experience litigating and leading teams of lawyers through eight- and nine-figure disputes from initial advice to jury verdict. Nick second-chaired two major, multi-week arbitration hearings, and played key roles during an eight-day bench trial and a six-week jury trial.

- Currently, Nick represents hundreds of survivors of wildfires in Oregon who lost their homes, businesses, and livelihoods over the 2020 Labor Day weekend. Nick also represents a putative class of ADT customers in litigation against ADT and one of its former technicians. Nick is additionally assisting with the litigation of several government enforcement actions on behalf of the District of Columbia, including Facebook for its role in the Cambridge Analytica scandal and JUUL Labs for its e-cigarette marketing practices.

- Nick represented a putative class of California raisin growers seeking just compensation from the federal government under the Fifth Amendment's Takings Clause. Following a Supreme Court decision establishing the predicate legal theory, Nick helped conceptualize and develop an ensuing class action that ultimately resulted in an eight-figure class-action settlement. *Ciapessoni, et. al. v. The United States of America*, No. 1:15-cv-00938 (Court of Federal Claims 2015). Along the way, Nick drafted the complaint, worked directly with the class representatives, and helped devise a novel statute of limitations theory that ultimately prevailed and paved the way for the class's recovery.

- Prior to joining Edelson PC, Nick worked at two prominent, international law firms.

- Nick recieved his J.D magna cum laude from Washington University in St. Louis School of Law.

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Yaman Salahi

Partner

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

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

- Yaman devised the legal strategy, researched the legal theories, and briefed all merits motions challenging the Trump administration's denial of COVID-19 stimulus relief under the CARES Act to people in prison. Yaman was the lead author of the winning motion for class certification, preliminary injunction, and summary judgment, which ultimately resulted in over $465 million in cash assistance to over 385,000 people living in prison, and preventing the IRS from seeking over $1 billion already issued from recoupment. Yaman also authored a successful opposition to the IRS's attempt in the Ninth Circuit Court of Appeals to stay the district court's rulings pending appeal. *Scholl v. Mnuchin*, No. 20-cv-5309-PJH (N.D. Cal.).

- In antitrust no-poach litigation, Yaman obtained a $54.5 million settlement for medical professors and $19 million for other faculty at Duke University and University of North Carolina-Chapel Hill, and $48.95 million for railway industry workers.

- Before joining Edelson PC, Yaman was a Partner at another prominent plaintiff-side class action firm in San Francisco.

- From 2017-2018, Yaman served as a judicial law clerk for the Honorable Edward M. Chen in the Northern Distrcit of California.

- From 2013-2016 Yaman worked as a a Staff Attorney in the National Security and Civil Rights Program at Asian Americans Advancing Justice-Asian Law Caucus, where he focused on legal issues surrounding government surveillance and freedom of speech, and an Arthur Liman Fellow at the American Civil liberties Union of Southern California.

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Ari J. Scharg

Partner
Co-Chair, Government Affairs Group

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

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

- Ari has been appointed as a Special Assistant Cook County State's Attorney to litigate cases against Facebook and Cambridge Analytica for their alleged misuse of consumer data and against Uber for its alleged violations of the state's data breach notification law and information security requirements. He is currently representing the Illinois Citizens Utility Board in litigation against Commonwealth Edison for its alleged role in a decade-long bribery scheme, and serves as Special Counsel for Columbus and Cincinnati in litigation alleging money laundering and corruption against FirstEnergy, where he recently secured a preliminary injunction blocking more than $1 billion of new fees from being collected from ratepayers. Ari also represent a broad range of stakeholders in litigation against opioid companies, including governments, municipal risk pools, labor unions, and health and welfare funds.

- Ari is passionate about social justice causes, and in 2017, the Michigan State Bar Foundation presented both Edelson PC and Ari, personally, with its Access to Justice Award for "significantly advancing access to justice for the poor" through his consumer class actions.

- As Special Counsel for Melrose Park, Ari served as lead trial counsel in first-of-its-kind litigation seeking to block the closure of Westlake Hospital, a community hospital providing safety net services to medically and socially vulnerable minority populations. Village of Melrose Park v. Pipeline Health System LLC, et al., No. 19-CH-03041 (Cir. Ct. Cook Cty., Ill.). In what has been called "one of the most complicated hospital closure disputes in the state's history," Ari worked tirelessly to preserve access to healthcare for the community by securing a series of in-court victories, including a temporary restraining order prohibiting the owners from closing the hospital, and later, after a full-day evidentiary hearing, an order holding the owner in contempt for attempting to shut down hospital services prematurely.

- Recognized as a leader on privacy and emerging technologies, Ari serves on the Executive Oversight Council for the Array of Things Project where he advises on privacy and data security matters, founded and chaired the Illinois State Bar Association's Privacy and Information Security Section (2017-2019), and served as Co-Chair of the Illinois Blockchain and Distributed Ledgers Task Force. Ari also enjoys working with law students through the Diverse Attorney Pipeline Program (DAPP) and Berkeley's Women of Color Collective.

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Alexander G. Tievsky

Partner

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

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

- Alex has briefed and argued cases in numerous federal appellate and district courts, and he has successfully defended consumers' right to have their claims heard in a federal forum, including, for example, defeating Facebook's attempt to deprive its users of a federal forum to adjudicate their claims for wrongful collection of biometric information in violation of a state privacy statute in *In re Facebook Biometric Info. Privacy Litig.*, 290 F. Supp. 3d 948 (N.D. Cal. 2018), *aff'd* 932 F.3d 1264 (9th Cir. 2019); receiving preliminary injunction preventing electric utilities from collecting surcharges imposed by Ohio House Bill 6 on the basis that Cincinnati and Columbus were likely to succeed on their allegations that the bill was the product of a bribery scheme involving the former speaker of the Ohio House of Representatives in *Cincinnati & Columbus v. First Energy Corp.*, No. 20-CV-7005 (Franklin Cty., Ohio Ct. of Common Pleas 2020); winning reversal of summary judgment in Telephone Consumer Protection Act (TCPA) case on the basis that the defendant could be held liable for ratifying the actions of its callers, even though it did not place the calls itself in *Henderson v. United Student Aid Funds, Inc.*, 918 F.3d 1068 (9th Cir. 2019); and winning reversal of district court's dismissal in first-of-its-kind ruling that so-called "free to play" casino apps are illegal gambling, which allows consumers to recover their losses under Washington law. *See Kater v. Churchill Downs, Inc.*, 886 F.3d 784 (9th Cir. 2018)

- Alex received his J.D. from the Northwestern University School of Law, where he graduated from the two-year accelerated J.D. program. While in law school, Alex was Media Editor of the Northwestern University Law Review. He also worked as a member of the Bluhm Legal Clinic's Center on Wrongful Convictions. Alex maintains a relationship with the Center and focuses his public service work on seeking to overturn unjust criminal convictions in Cook County.

- Alex is admitted to the state bars of Illinois and Washington and is a member of both the Lesbian and Gay Bar Association of Chicago and QLaw, the LGBTQ+ Bar Association of Washington.

- Alex's past experiences include developing internal tools for an enterprise software company and working as a full-time cheesemonger. He received his A.B. in linguistics

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J. Eli Wade-Scott

Partner

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

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

- Eli is frequently appointed to represent states and cities to handle high-profile litigation, including by the District of Columbia against JUUL, Inc. in litigation arising from the youth vaping epidemic, by the State of New Mexico to prosecute Google's violations of the Children's Online Privacy Protection Act, and as a Special Assistant State's Attorney for Illinois and the District of Columbia in litigation against Facebook arising from the Cambridge Analytica scandal.

- Eli is class counsel in nearly a dozen cash settlements on behalf of consumers, collectively worth more than $50 million, including a $25 million all-cash, non-reversionary settlement for employees in action arising under the Illinois Biometric Information Privacy Act ("BIPA"). Kusinski v. ADP LLC, No. 2017-CH-12364 (Cir. Ct. Cook Cty.).

- Lead counsel in a novel putative class action against ADT over security flaws in its home security system that allowed a technician to surreptitiously spy on families—including children—in their most intimate moments at home.

- Lead outside attorney for the ACLU and other public interest organizations in a lawsuit against Clearview seeking to enjoin Clearview's mass collection of facial recognition templates. Clearview raised a host of novel, existential arguments for privacy rights at the motion to dismiss stage, which was rejected in a thorough opinion and the case is ongoing. See American Civil Liberties Union v. Clearview AI, Inc., No. 20 CH 4353, 2021 WL 4164452, at *1 (Ill.Cir.Ct. Aug. 27, 2021).

- Before joining Edelson PC, Eli served as a law clerk to the Honorable Rebecca Pallmeyer of the Northern District of Illinois. Eli has also worked as a Skadden Fellow at Legal Aid Chicago, Cook County's federally-funded legal aid provider. There, Eli represented dozens of low-income tenants in affirmative litigation against their landlords to remedy dangerous housing conditions.

- Eli received his J.D. magna cum laude from Harvard Law School, where he was an Executive Editor on the Harvard Law and Policy Review and a research assistant to Professor Vicki C. Jackson.

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Ben Thomassen

Counsel

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

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

- Ben's work at the firm has achieved significant results for classes of consumers. He has been appointed as class counsel in several high profile cases, including, *Harris v. comScore, Inc.*, No. 11-cv-5807 (N.D. Ill.) (estimated to be the largest privacy class action certified on adversarial basis and resulted in $14 million settlement). Ben has also played critical and leading roles in developing, briefing, and arguing novel legal theories on behalf of his clients, including by delivering the winning oral argument to the Eleventh Circuit in the seminal case of *Resnick, et al. v. AvMed, Inc.*, No. 10-cv-24513 (S.D. Fla.) (appointed class counsel in industry-changing data breach case, which obtained a landmark appellate decision endorsing common law unjust enrichment theory, irrespective of whether identity theft occurred) and recently obtaining certification of a class of magazine subscribers in *Coulter-Owens v. Time, Inc.*, No. 12-cv-14390 (E.D. Mich.) (achieved adversarial certification in a privacy case brought by a class of magazine subscribers against a magazine publisher under Michigan's Preservation of Personal Privacy Act). His cases have resulted in millions of dollars to consumers.

- Ben graduated magna cum laude from Chicago-Kent College of Law, where he also earned a certificate in Litigation and Alternative Dispute Resolution and was named Order of the Coif. He also served as Vice President of Chicago-Kent's Moot Court Honor Society and earned seven CALI awards for receiving the highest grade in Appellate Advocacy, Business Organizations, Conflict of Laws, Family Law, Personal Income Tax, Property, and Torts. In 2017, Ben was selected as an Illinois Emerging Lawyer by Leading Lawyers.

- Before settling into his legal career, Ben worked in and around the Chicago and Washington, D.C. areas in a number of capacities, including stints as a website designer/developer, a regular contributor to a monthly Capitol Hill newspaper, and a film projectionist and media technician (with many years' experience) for commercial theatres, museums, and educational institutions. Ben received a Master of Arts degree from the University of Chicago and his Bachelor of Arts degree, summa cum laude, from St. Mary's College of Maryland.

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Arthur Turner II

Of Counsel

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

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

- After college, Art served as a community organizer and mentor to youth in North Lawndale. He worked as a tax credit analyst and underwriter for the Illinois Housing Development Authority. In 2010, he was elected to serve as the state representative in the 9th House District.

- As a legislator, Art sponsored legislation to increase economic development and help give loans to small businesses; particularly in areas in need of the greatest economic growth. Art advocated for stronger personal privacy measures to protect consumers and their personal information online. Art's legislative agenda also focused on providing affordable housing for Illinois residents, and access to quality health care for all.

- Art joined the House Leadership team in 2013 as an Assistant Majority leader. He became Deputy Majority Leader in 2017. Art served as a member of various committees including Executive, Revenue & Finance, Public Utilities, Cybersecurity; Data Analytics & IT, and chairman of the Judiciary – Criminal Law Committee.

- Art has been recognized for his legislative efforts by a wide variety of advocates and organizations, including being named an Edgar Fellow in 2012.

- Art graduated with a degree in political science from Morehouse College and received his J.D. from Southern Illinois University School of Law.

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Theo Benjamin

Associate

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

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

- Theo is currently litigating several government enforcement actions on behalf of the District of Columbia, including Facebook for its role in the Cambridge Analytica scandal and JUUL Labs for its e-cigarette marketing practices. Theo likewise serves as one of the lead associates responsible for Edelson's discovery efforts in the Facebook and JUUL litigation, where he is responsible for leveraging case assessment techniques, including the identification, review, and collection of complex electronic discovery and building trial outlines to discern the specific needs of a case.

- Theo is a member of Edelson's COVID-19 Legal Task Force and is currently litigating insurance class actions on behalf of businesses nationwide alleging wrongful denial of claims for business interruption insurance coverage resulting from losses sustained due to the ongoing COVID-19 pandemic.

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

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Évieallе Dawkins

Associate

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

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

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

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

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

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

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

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Palden Flynn

Associate

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

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

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

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Michael Ovca

Associate

Litigating a half-dozen Telephone Consumer Protection Act cases.

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

- Michael's recent consumer class action work involves bringing claims on behalf of students suing for-profit colleges that used allegedly-fraudulent advertising to lead them to enroll. Michael's environmental practice involves representing individuals who were exposed to ethylene oxide ("EtO") emitted by medical equipment sterilization and chemical manufacturing plants, as well as those exposed to dangerous "forever" chemicals through tainted groundwater that accumulate in the body, ultimately causing cancer. Michael is also litigating a half-dozen Telephone Consumer Protection Act cases brought by recipients of text messages sent by entertainment venues from around the country. In terms of governmental representation, Michael has worked on cases brought by the City of Chicago against Uber; by various cities and towns in Illinois against opiate manufacturers, distributors, and prescribers; and a village seeking to prevent the closure of its hospital.

- Michael received his J.D. cum laude from Northwestern University, where he was an associate editor of the Journal of Criminal Law and Criminology, and a member of several award-winning trial and moot court teams.

- Prior to law school, Michael graduated summa cum laude with a degree in political science from the University of Illinois.

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Emily Penkowski

Associate

Cum laude from Northwestern University Pritzker School of Law

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

- Emily received her J.D. cum laude from Northwestern University Pritzker School of Law, where she served as an Associate Editor of Northwestern University Law Review and a Problem Writer for the 2020 Julius Miner Moot Court Board. Emily participated in the Bluhm Legal Clinic's Supreme Court Clinic, where she worked on cases before the Supreme Court including *Ritzen Group, Inc. v. Jackson Masonry, LLC*, 140 S. Ct. 582, 584 (2020). She placed on the Dean's List every semester and served on the student executive boards for the Moot Court Society and the Collaboration for Justice, a justice system reform-oriented student group.

- Emily spent her law school summers at the Maryland Office of the Attorney General and the U.S. Attorney's Office for the Western District of Washington. In the Western District of Washington, Emily assisted in prosecuting cryptocurrency money laundering, cybercrime, and complex frauds. In Maryland, she wrote criminal appeals briefs for the State in the Maryland Court of Special Appeals.

- Before entering law school, Emily worked as an intelligence analyst for the National Security Agency, in the Office of Counterintelligence & Cyber (previously the NSA/CSS Threat Operations Center) and the Office of Counterterrorism. She analyzed significant, technical, complex, and short-suspense intelligence in support of law enforcement, military, computer network defense, diplomatic, and other intelligence efforts, while serving as a "reporting expert" for over three hundred analysts on an agency-wide project. She also briefed NSA and military leadership on cyber and counterintelligence threats to the U.S. government and military.

- As a digital network analyst, Emily increased intelligence coverage on a counterterrorism target through social network analysis, including eigenvector and cluster analysis, used metric databases to manage and prioritize intelligence collection, and worked with collectors to streamline data flows and eliminate duplicative sources of information.

- Emily received her Bachelor of Science in International Studies, specializing in Security and Intelligence, at Ohio State. She also received minors in Computer and Information Science and Mandarin Chinese. She began learning Mandarin in high school. During college, Emily interned at the National Security Agency, in the Office of Counterproliferation, and at Huntington National Bank, on its Anti-Money Laundering and Bank Secrecy Act team.

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Albert J. Plawinski

Associate

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

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

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

- Prior to law school, Albert graduated with Highest Distinctions with a degree in Political Science from the University of Illinois at Urbana-Champaign.

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Angela Reilly

Associate

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

Angela focuses on consumer class actions and government actions.

- Angela received her J.D. from the University of Chicago Law School, where she dedicated her time to providing criminal and civil legal services to indigent clients. Angela was involved with the school's clinical program, specifically the Criminal and Juvenile Justice Project. Further, Angela interned at Access Living of Metropolitan Chicago, where she helped clients enforce their rights under the Americans with Disabilities Act, and the Fair Housing Act.

- Angela also conducted research for Professor Genevieve Lakier on a variety of First Amendment issues, and externed for the Honorable Sophia H. Hall in the Chancery Division of the Circuit Court of Cook County.

- Angela received Pro Bono Honors from the University of Chicago Law School, which is awarded to graduating students who complete 250 or more pro bono hours; Angela completed 500 hours.

- Before law school, Angela worked on multiple research projects that ultimately inspired her legal career. During that time, she published multiple papers in peer-reviewed psychology journals.

- Angela graduated from the University of Notre Dame, where she earned her B.A. in psychology. She completed a thesis titled, "Schadenfreude as a Moral Emotion: Moral Identity and the Experience of Pleasure at the Misfortune of Rivals".

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Zoë Seman-Grant

Associate

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

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

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

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Brandt Silver-Korn

Associate

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

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

- Brandt represents over 1,000 victims, from residents to business owners, who suffered the devastating loss of their homes, property, and loved ones in the 2018 Camp Fire. The lawsuit alleges that the fire was caused by PG&E's equipment, resulting from PG&E's failure to maintain their electrical infrastructure in Butte County. The case resulted in a historic $13.5 billion settlement.

- Brandt represents consumers in seven class action lawsuits alleging that various online "social casinos" violate state gambling laws. Brandt has taken a leading role both in discovery and in briefing in these cases, and recently provided live testimony to the Washington State Legislature.

- Brandt serves as counsel for the State of Idaho in the State's opioid litigation, where he is part of the team spearheading lawsuits against the nation's leading manufacturers and distributors of opioid products.

- Brandt received his J.D. from Stanford Law School, where he was awarded the Gerald Gunther Prize for Outstanding Performance in Criminal Law, and the John Hart Ely Prize for Outstanding Performance in Mental Health Law. While in law school, Brandt was also the leading author of several simulations for the Gould Negotiation and Mediation Program.

- Prior to law school, Brandt graduated summa cum laude from Middlebury College with a degree in English and American Literatures.

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Schuyler Ufkes

Associate

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

Schuyler focuses on consumer and privacy-related class actions.

- Schuyler is currently litigating nearly a dozen consumer class actions on behalf of employees under the Illinois Biometric Information Privacy Act ("BIPA") for their employers' failure to comply with the Act's notice and consent requirements before collecting, storing, and in some instances disclosing their biometric data. Schuyler is also litigating several Telephone Consumer Protection Act cases brought by recipients harassing debt-collection calls as well as spam text messages.

- Schuyler received his J.D. magna cum laude, and Order of the Coif, from the Chicago-Kent College of Law. While in law school, Schuyler served as an Executive Articles Editor for the Chicago-Kent Law Review and was a member of the Moot Court Honor Society. Schuyler earned five CALI awards for receiving the highest grade in Legal Writing II, Legal Writing III, Pretrial Litigation, Supreme Court Review, and Professional Responsibility.

- Prior to law school, Schuyler graduated with High Honors from the University of Illinois Urbana-Champaign earning a degree in Consumer Economics and Finance.

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Shawn Davis

Director of Digital Forensics

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

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

- Shawn has experience testifying in federal court, briefing members of U.S. Congress on Capitol Hill, and is routinely asked to testify before legislative bodies on critical areas of cybersecurity and privacy, including those impacting the security of our country's voting system, issues surrounding children's privacy (with a special emphasis on surreptitious geotracking), and other ways data collectors and aggregators exploit and manipulate people's private lives. Shawn has taught courses on cybersecurity and forensics at the undergraduate and graduate levels and has provided training and presentations to other technology professionals as well as members of law enforcement, including the FBI.

- Shawn's investigative work has forced major companies (from national hotel chains to medical groups to magazine publishers) to fix previously unrecognized security vulnerabilities. His work has also uncovered numerous issues of companies surreptitiously tracking consumers, which has led to groundbreaking lawsuits

- Prior to joining Edelson PC, Shawn worked for Motorola Solutions in the Security and Federal Operations Centers as an Information Protection Specialist. Shawn's responsibilities included network and computer forensic analysis, malware analysis, threat mitigation, and incident handling for various commercial and government entities.

- Shawn is an Adjunct Industry Associate Professor for the School of Applied Technology at the Illinois Institute of Technology (IIT) where he has been teaching since December of 2013. Additionally, Shawn is a faculty member of the IIT Center for Cyber Security and Forensics Education which is a collaborative space between business, government, academia, and security professionals. Shawn's contributions aided in IIT's designation as a National Center of Academic Excellence in Information Assurance by the National Security Agency.

- Shawn graduated with high honors from the Illinois Institute of Technology with a Masters of Information Technology Management with a specialization in Computer and Network Security. During graduate school, Shawn was inducted into Gamma Nu Eta, the National Information Technology Honor Society.